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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 97–063–1]

Tuberculosis in Cattle and Bison; State Designation; Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by reducing the designation of Hawaii from an accredited-free State to an accredited-free (suspended) State. We have determined that Hawaii no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as an accredited-free (suspended) State. This change is necessary to prevent the spread of tuberculosis in cattle and bison.

DATES: Interim rule effective July 11, 1997. Consideration will be given only to comments received on or before September 9, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–063–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–063–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell Essey, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis.* The tuberculosis regulations contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle and bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States, accredited-free (suspended) States, or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document captioned ''Uniform Methods and Rules—Bovine Tuberculosis Eradication,'' which is incorporated by reference into the regulations.

An accredited-free State, as defined in § 77.1 of the regulations, is a State that has no findings of tuberculosis in any cattle or bison in the State for at least 5 years. The State must also comply with all the provisions of the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' incorporated by reference in the regulations regarding accredited-free States.

An accredited-free (suspended) State is defined as a State with accredited-free status in which tuberculosis has been detected in any cattle or bison in the State. A State with accredited-free (suspended) status is qualified for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed. However, if tuberculosis is detected in two or more herds in the State within 48 months, the State's accredited-free status is revoked.

Before publication of this interim rule, Hawaii was designated in § 77.1 of the regulations as an accredited-free State. However, because tuberculosis has recently been confirmed in one beef herd within the State, the Administrator has determined that Hawaii no longer meets the criteria for designation as an accredited-free State, but instead meets the criteria for designation as an accredited-free (suspended) State. Therefore, we are amending the regulations by removing Hawaii from the list of accredited-free States in § 77.1 and adding it to the list of accredited-free (suspended) States in that section.

Because tuberculosis has been confirmed in only one cattle herd on one island of Hawaii, Molokai, APHIS considered adapting the regulations to establish different regions in Hawaii and to designate the island of Molokai as an accredited-free (suspended) region without affecting the status of the remainder of the State. However, revising the regulations' regulatory framework to establish regions for tuberculosis would take considerable time and would require an opportunity for public comment. APHIS may develop a proposal to do this in the future. However, due to the need for immediate action described below, we are not attempting to establish regions in Hawaii in this action.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Hawaii as an accredited-free (suspended) State. This will provide prospective cattle and bison buyers with accurate and up-to-date information.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the

Federal Register. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

According to the 1992 Census of Agriculture, Hawaii has 874 cattle herds containing 191,230 cattle. Some 757 of these herds, or 87 percent, contain 200 or fewer cattle apiece and are assumed to be owned by small businesses. Changing the status of Hawaii may affect the marketability of cattle from the State, since some prospective cattle buyers prefer to buy cattle from accredited-free States. This may result in a small detrimental economic impact on some small entities, although it appears that sales of cattle from Hawaii to other States are quite small in volume. We anticipate that this action will not have a significant effect on marketing patterns in Hawaii and will therefore not have a significant effect on those small entities affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for Accredited-free state, paragraph (2) is amended by removing ''Hawaii,'.

3. In § 77.1, in the definition for Accredited-free (suspended) State, *paragraph* (2) is amended by removing ''None'' and adding ''Hawaii'' in its place.

Done in Washington, DC, this 7th day of July 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–18205 Filed 7–10–97; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

Description of NCUA; Requests for Agency Action

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Several months ago, the NCUA Board officially changed the name of the Asset Liquidation and Management Center (ALMC) to the Asset Management and Assistance Center (AMAC). A new description of the AMAC was placed in the regulations. The substitution of AMAC for ALMC is made in one section of the regulations. This is merely a housekeeping change.

DATES: Effective July 11, 1997.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel at the above address or telephone: 703–518–6540.

SUPPLEMENTARY INFORMATION: The NCUA Board established the ALMC in July 1988, to deal with an emerging concentration of real estate assets in a limited number of troubled credit unions. The ALMC's mission and responsibilities have expanded over the years. In October of 1996, the NCUA Board changed the name of the Asset Liquidation Management Center to the Asset Management and Assistance Center. In February 1997, the NCUA Board noted the name change in the **Federal Register**. The NCUA Board also replaced the description of the duties of the ALMC with a new description of the duties of the AMAC. (*See* 62 FR 8155, 2/24/97.) The substitution of Asset Management and Assistance Center for Asset Liquidation Management Center is now being made in paragraph 790.2(a) of the NCUA Regulations. This paragraph sets forth the general organization of NCUA.

Regulatory Procedures

Since the amendment is merely a housekeeping change to reflect current nomenclature, none of the regulatory analyses are required.

List of Subjects in 12 CFR Part 790

Credit unions.

By the National Credit Union Administration Board on July 7, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set out in the preamble, 12 CFR Ch. VII is amended as set forth below.

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

1. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f.

2. Amend § 790.2 by revising paragraph (a) to read as follows:

§ 790.2 Central and regional office organization.

(a) *General organization.* NCUA is composed of the Board with a Central Office in Alexandria, Virginia, six Regional Offices, the Asset Management and Assistance Center, the Community Development Revolving Loan Program, and the NCUA Central Liquidity Facility (CLF).

* * * * *

[FR Doc. 97–18224 Filed 7–10–97; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–19–AD; Amendment 39–10069; AD 97–14–13]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect chafe wear on the upper diagonal engine mount tube, and replacement or repair, if necessary. This amendment requires the installation of chafe guards at the engine mounts, which terminates the currently required inspections. It also requires that the chafe guards then be repetitively inspected for chafe wear. This amendment is prompted by the development of a modification that will provide better protection of the subject area against future chafe wear. The actions specified by this AD are intended to prevent excessive chafe wear in the area of the upper diagonal engine mount tubes and trusses; if not detected and corrected, such wear could result in failure of the engine mount assembly and possible separation of the engine from the airplane.

DATES: Effective August 15, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 15, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. 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 FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 67–17–05, amendment 39–511 (32 FR 7248, May 16, 1967), which is applicable to certain Gulfstream Model G–159 (G–I) airplanes, was published in the **Federal Register** on March 6, 1997 (62 FR 10226). The action proposed to superseded AD 67–17–05 to continue to require repetitive visual inspections to detect chafe wear of the engine mount tube, and repair or replacement of the tube(s), if necessary. These inspections would be required to continue until (1) a one-time inspection is performed to detect chafe wear of the upper diagonal truss, and (2) chafe guards are installed. (Once chafe guards are installed, the previously required visual inspections of the engine mount tubes would be terminated.) The action also proposed to require that, after the chafe guards are installed, an inspection of the chafe guards be conducted at intervals of 2,500 hours time-in-service.

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

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 67–17–05 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $17,280, or $240 per airplane, per inspection.

The installation of the chafe guards that is required by this AD action will take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $152 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $183,744, or $2,552 per airplane.

The inspections of the chafe guards that are required by this AD action will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $17,280, or $240 per airplane, per inspection.

The cost impact figures discussed above are 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 removing amendment 39–511 (32 FR 7248, May 16, 1967), and by adding a new airworthiness directive (AD), amendment 39–10069, to read as follows:

97–14–13 Gulfstream Aerospace Corporation (formerly Grumman): Amendment 39–10069. Docket 97–NM–19–AD. Supersedes AD 67–17–05, Amendment 39–511.

Applicability: All Model G–159 (G–I) 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 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 (c) 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 excessive chafe wear of the engine mount tube and upper diagonal truss, which could lead to failure of the engine mount assembly and possible separation of the engine from the airplane, accomplish the following:

(a) For airplanes on which chafe guards, part number (P/N) 159WP10017–11, *have not been* installed on each upper diagonal truss prior to the effective date of this AD: Accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) *Restatement of Requirements of AD 67–17–05:* Within 100 hours time-in-service after May 16, 1967 (the effective date of AD 67–17–05, amendment 39–511), visually inspect to detect chafe wear of the lower half of the upper diagonal engine amount tubes having P/N 159W10172–11 (left engine) and P/N 159W10172–13 (right engine).

(i) If no chafe wear is detected: Repeat this inspection thereafter at intervals not to exceed 200 hours time-in-service until the requirements of paragraph (a)(2) are accomplished.

(ii) If any tube is found to have wear depth greater than 0.030 inch (as measured from the outer edge of the tube): Prior to further flight, replace the tube with a tube of the same part number or with an FAA-approved equivalent part. After replacement, repeat the inspection required by this paragraph at intervals not to exceed 200 hours time-in-service until the requirements of paragraph (a)(2) are accomplished.

(iii) If any tube is found to have wear depth of 0.030 inch deep or less, as measured from the outer edge of the tube: Prior to further flight, either repair the tube in accordance with an FAA-approved repair, or replace the tube with a part of the same part number or with an FAA-approved equivalent part. After repair or replacement, repeat the inspection required by this paragraph at intervals not to exceed 200 hours time-in-service until the requirements of paragraph (a)(2) are accomplished.

(2) *One-Time Inspection of Upper Diagonal Truss and Installation of Chafe Guards.* Within 600 hours time-in-service after the effective date of this AD, perform a one-time visual inspection to detect chafe wear of the left-hand and right-hand upper diagonal truss, P/N's 159W10172–5 (left-hand nacelle) and P/N 159W10172–7 (right-hand nacelle), in accordance with Grumman Gulfstream Service Change No. 180, dated October 17, 1966. Once this inspection is completed, the repetitive inspections required by paragraph (a)(1) of this AD may be terminated.

(i) If there is no evidence of chafe wear on the truss; or if there is evidence of chafe wear and the depth of wear is .030 inch or less (measured from the surface of the tube): Prior to further flight, install a chafe guard, P/N 159WP10017–11, on the truss.

(ii) If there is any evidence of chafe wear and the depth of wear exceeds .030 inch measured (from the surface of the tube): Prior to further flight, install a new upper diagonal truss and install a chafe guard, P/N 159WP10017–11, on the truss.

(3) *Continuing Inspections of Chafe Guards.* Within 2,500 hours time-in-service after installation of the chafe guards required by paragraph (a)(2) of this AD, perform an inspection of the undersurface of each chafe guard for evidence of chafe wear, in accordance with Grumman Gulfstream Service Change No. 180, dated October 17, 1966.

(i) If no chafe wear is detected: Repeat the inspection at intervals not to exceed 2,500 hours time-in-service.

(ii) If any chafe wear is detected: Prior to further flight, replace the chafe guard with a new or serviceable part. After replacement, repeat the inspection for chafe wear of the chafe guard thereafter at intervals not to exceed 2,500 hours time-in-service.

(b) For airplanes on which chafe guards, P/N 159WP10017–11, *have been* installed on each upper diagonal truss prior to the effective date of this AD: Within 2,500 hours time-in-service after the last inspection of the chafe guard required by paragraph (c) of AD 67–17–05, repeat that inspection to detect chafe wear of the chafe guards in accordance with Grumman Gulfstream Service Change No. 180, dated October 17, 1966.

(1) If no chafe wear is detected: Repeat the inspection thereafter at intervals not to exceed 2,500 hours time-in-service.

(2) If any chafe wear is detected: Prior to further flight, replace the chafe guard with a new or serviceable part. After replacement, repeat the inspection thereafter at intervals not to exceed 2,500 hour time-in-service.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small 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, Atlanta ACO.

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

(d) Special flight permits may be issued in accordance with §§ 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.

(e) The actions shall be done in accordance with Grumman Gulfstream Service Change No. 180, dated October 17, 1966. 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 Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 15, 1997.

Issued in Renton, Washington, on June 30, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–17560 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–47–AD; Amendment 39–10074; AD 97–14–16]

RIN 2120–AA64

Airworthiness Directives: Raytheon Aircraft Company (Formerly Beech Aircraft Corporation) Model 1900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Raytheon Aircraft Company (Raytheon) 1900 series airplanes. This action requires repetitively inspecting the flap aft roller bearings and flap attachment brackets for indications of contact (wear), inspecting for elongation of the holes in the flap attachment brackets, and repairing or replacing any part showing wear. The actions specified by this AD

are intended to prevent interference between the flap and the aileron which could inhibit aileron movement and result in possible loss of control of the airplane.

DATES: Effective August 4, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 4, 1997.

Comments for inclusion in the Rules Docket must be received on or before September 4, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97–CE–47–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Raytheon Aircraft Company, 9709 E. Central, P. O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97–CE–47–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Potter, Aerospace Engineer, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 946–4128; facsimile (316) 946–4164.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received three reports of Raytheon Aircraft Company (Raytheon) 1900 series airplanes entering into an uncommanded roll after setting the flaps at 35°. In each incident, the operator applied extreme force to the control wheel to counter the roll and landed.

Further investigation revealed that the outboard flaps detached from the flap aft roller bearings at the outboard flap inboard flap track. Detachment of the outboard flap from the roller bearing results in a flap asymmetric condition causing contact between the outboard flap and the aileron, consequently inhibiting aileron movement. In addition, as the flap aft roller bearing detaches from the outboard flap, the outer flange element of the roller bearing repositions on the bearing, resulting in contact between the outer flange element and the attachment bracket. This contact eventually wears through the attachment bracket allowing the outboard flap to detach from the aft roller bearing.

Relevant Service Information

Raytheon has issued Safety Communiqué No. 137, dated May, 1997, which specifies procedures for inspecting the flap attachment brackets for signs of wear, and inspecting the aft roller bearing attachment holes for elongation. If wear from contact is visible or the roller bearing attachment holes are elongated, the Safety Communiqué specifies repairing or replacing the part.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to preclude interference between the flap and the aileron, which could prevent aileron movement and result in possible loss of control of the airplane.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon 1900 series airplanes of the same type design, this AD requires repetitively inspecting the outboard flap attachment brackets and aft roller bearings for wear, inspecting for elongation of the holes in the flap attachment brackets, and repairing or replacing any part showing wear. The actions are to be done in accordance with the instructions in Raytheon Aircraft Safety Communiqué No. 137, dated May, 1997 and Temporary Revision No. 57–1 to Raytheon Aircraft Company Beech 1900 Airliner Series Structural Repair Manual, part number 114–590021–9B, dated May 16, 1997; Reissued June 30, 1992.

Justification of Compliance Time and Determination of the Effective Date of This AD

Wear of the flap aft roller bearings and flap attachment brackets and elongation of the flap attachment bracket holes occurs over time. Examination of the referenced incidents and all information available to the FAA indicates that this problem has the potential of becoming detectable at around 2,600 ground-air-ground (GAG) cycles. Numerous 1900 series airplanes are either currently over or closely approaching this 2,600 GAG cycle threshold. These airplanes are utilized primarily in commuter service. Operators of these airplanes average anywhere from 8 GAG cycles per day to 14 GAG cycles per day. Based on these averages, operators of 1900 series airplanes would reach the above thresholds between 185 days to 325 days after manufacture of the airplane, and thereafter every 185 to 325 days after each inspection.

For these reasons, the FAA has determined that the inspections required by this AD should occur ''Upon the accumulation of 2,600 GAG cycles or within the next 100 GAG cycles after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,600 GAG cycles.'' The 100 GAG cycles for the initial compliance time is utilized to allow a grace period for those airplanes already over the 2,600 GAG cycle time, so as not to inadvertently ground the affected airplanes.

Determination of the Effective Date of the AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to 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 should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments 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 No. 97–CE–47–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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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 a new airworthiness directive (AD) to read as follows:

97–14–16. Raytheon Aircraft Company: Amendment 39–10074; Docket No. 97–CE–47–AD.

Applicability: Model 1900, 1900C, and 1900D airplanes (all serial numbers), 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 (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 upon the accumulation of 2,600 ground-air-ground (GAG) cycles or within the next 100 GAG cycles after the effective date of this AD, whichever occurs later, unless already accomplished within the last 2,500 GAG cycles, and thereafter at intervals not to exceed 2,600 GAG cycles.

Note 2: The compliance time of this AD takes precedence over the compliance time set out in the Raytheon Safety Communique No. 137, dated May, 1997.

Note 3: If the owners/operators of the affected airplane have not kept track of GAG cycles, hours time-in-service (TIS) may be substituted by calculating 2 GAG cycles per hour TIS. For example, 2,600 GAG cycles would equal 1,300 hours TIS.

To prevent interference between the flap and the aileron, which could inhibit aileron movement and result in possible loss of control of the airplane, accomplish the following:

(a) Inspect the outboard flap attachment brackets and aft roller bearings on both wings for visible wear and elongation of the bracket holes in accordance with instructions 1 through 18 in Raytheon Aircraft (Raytheon) Safety Communiqué No. 137, dated May 1997.

(b) Prior to further flight, repair or replace any worn or damaged part in accordance with Temporary Revision No. 57–1 to the Raytheon Aircraft Beech 1900 Airliner Series Structural Repair Manual P/N 114–590021–9B, dated May 16,1997; Reissued June 30, 1992.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) The inspections and repairs required by this AD shall be done in accordance with Raytheon Aircraft Safety Communiqué No. 137, dated May, 1997 and Temporary Revision No. 57–1 to the Raytheon Aircraft Beech 1900 Airliner Series Structural Repair Manual P/N 114–590021–9B, dated May 16,1997; Reissued June 30, 1992. 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 Raytheon Aircraft Company, 9709 E. Central, P. O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–10074) becomes effective on August 4, 1997.

Issued in Kansas City, Missouri, on July 3, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–18064 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–24–AD; Amendment 39–10058; AD 97–14–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2A and BN–2A Mk 111 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 97–14–01, which was published in the **Federal Register** on July 2, 1997 (62 FR 35670), and is applicable to Pilatus Britten-Norman Ltd. (PBN) BN–2A and BN–2A Mk 111 series airplanes. This AD currently has an issue date and effective date of August 18, 1997. The AD currently requires inspecting the LH rudder bar assembly for wall thickness

of the slider tube unit and modifying the rudder bar assembly by replacing the LH slider tube with a new strengthened slider tube unit. This action changes the issue date of this AD to June 24, 1997 and leaves the effective date at August 18, 1997.

EFFECTIVE DATE: August 18, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

On June 24, 1997, the FAA issued AD 97–14–01, Amendment 39–10058 (62 FR 35670, July 2, 1997), which applies to Pilatus Britten-Norman Ltd. (PBN) BN–2A and BN–2A Mk 111 series airplanes. This AD requires inspecting the left-hand (LH) rudder bar assembly for wall thickness of the slider tube unit and modifying the rudder bar assembly by replacing the LH slider tube with a new strengthened slider tube unit.

Need for the Correction

This AD currently has the wrong issue date of August 18, 1997. The last sentence of the AD reads ''Issued in Kansas City, Missouri on August 18, 1997.'' This is the effective date of this AD and was repeated as the issue date by mistake.

Correction of Publication

Accordingly, the publication of July 2, 1997 (62 FR 35670), of Amendment 39–10058; AD 97–14–01, which was the subject of FR Doc. 97–17098, is corrected as follows:

§ 39.13 [Corrected]

In AD 97–14–01, the issue date before the signature block of the AD, **Federal Register** page number 35672, third column should read ''Issued in Kansas City, Missouri on June 24, 1997''.

Action is taken herein to correct this reference in AD 97–14–01 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date of the AD remains August 18, 1997.

Issued in Kansas City, Missouri on July 2, 1997.

James E., Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–18139 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 101 and 122

[T.D. 97–64]

Customs Service Field Organization; Establishment of Sanford Port of Entry

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to Customs field organization by establishing a new port of entry at Sanford, Florida, and deleting the Sanford Regional Airport from the list of user-fee airports. The new port of entry, designated Orlando-Sanford Airport, is located in Central Florida. This change will assist the Customs Service in its continuing efforts to achieve more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, Resource Management Division (202) 927–0196.

SUPPLEMENTARY INFORMATION:

Background

In 1991 Sanford Regional Airport began operating as a user-fee airport. By 1993, a report prepared for the Central Florida Regional Airport Board, which manages the airport at Sanford, showed Sanford Regional Airport as the fastest growing airport for international passenger clearance services in Florida. Applying the criteria used by Customs since 1973 for establishing ports of entry (see, Treasury Decision (T.D.) 82–37 (47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328)), to the figures projected by the Central Florida Regional Airport Board, Customs believed that sufficient justification existed for redesignating the airport facility from its user-fee status to that of a port of entry.

The report projected that in an approximate six-month period in 1996 the airport would process over 100,000 international passengers. (For 1996, the actual number of international passengers processed exceeded 272,000.) As Customs criteria specify a minimum annual workload of 15,000 international air passengers for establishment of a port of entry, the Sanford airport facility clearly met that criterion. The modes of transportation serving the port of entry and the minimum population base within the immediate service area also are adequate to establish a port of entry at Sanford. Accordingly, Customs proposed to establish the port of entry in the belief that such a designation would help Customs achieve the more efficient use of its personnel, facilities, and resources, and provide better services to carriers, importers, and the public in Central Florida.

On June 17, 1996, Customs published a notice of proposed rulemaking in the **Federal Register** (61 FR 30552) that solicited comments concerning a proposal to amend § 101.3(b), Customs Regulations (19 CFR 101.3), by establishing a new port of entry at Sanford, Florida, and § 122.15(b), by removing the Sanford Regional Airport from the list of user-fee airports.

The public comment period for the proposed amendments closed July 9, 1996.

Discussion of Comments

Five comments were received: Two in favor and three against. A discussion of the comments follows:

Comment: Two commenters argue that there is no present legal authority or existing procedure that allows Customs to force any airport to become a port of entry against its desire, *i.e.*, without the airport itself initiating the request for a change in status, and the third commenter argues that since there has been no such request made, Customs decision to change the status constitutes an arbitrary determination. One of the commenters further argues that the statute providing for the rearranging of customs districts (19 U.S.C. 2) appears to permit the establishment of ports of entry only in connection with replacing another port or ports that have been discontinued.

One of the commenters (a private terminal operator) also states that it decided to develop its new international terminal facility at Sanford based on that facility remaining a user-fee airport; that to change the airport's designation to that of a port of entry could completely undermine the operator's legitimate business expectations regarding a development project backed by millions of private investment dollars, and would frustrate the operator's ability to use its facility for the only purpose for which it is economically viable. In short, the commenter believes that the establishment of a port of entry at the Sanford airport and the termination of the airport's user-fee status would be grossly and patently unfair and, without compensation by the government,

would amount to an unconstitutional taking.

Customs Response: The statutory scheme which establishes Customs field organization to administer and enforce the customs and related laws of the United States is found at 19 U.S.C. 1 and 2, which allow for ports of entry, and at 19 U.S.C. 58b, which allows for user-fee arrangements at certain small facilities.

Section 2 of title 19 of the United States Code (19 U.S.C. 2), allows for the rearrangement and limitation of districts and the changing of locations. This statute, in part, authorizes the President from time to time, as the exigencies of the service may require, to rearrange, by consolidation or otherwise, the several customs collection districts and to discontinue ports of entry by abolishing the same or establishing others in their stead. In 1951, the President delegated his authority to the Secretary of the Treasury (Exec. Order 10289 of September 17, 1951, 16 FR 9499, 3 CFR parts 1949–1953 Comp. p. 787, *reprinted in* 3 U.S.C. 301 note) who, in 1995, delegated the authority to the Deputy Assistant Secretary for Regulatory, Tariff, and Trade Enforcement (19 CFR 101.3(a)). Further, unlike the statute providing for the establishment of a user-fee facility, this statute does not require any local consent in the establishment of a port of entry. The criteria Customs employs to determine whether a facility should be designated as a port of entry are not regulatory, and were published as specified above so that communities seeking new or expanded Customs services could justify to Customs the expense of maintaining a new office or expanding service at an existing location.

Customs does not agree with the commenter's argument that the statute permits the establishment of ports of entry only in connection with the simultaneous replacement of another port or ports that have been discontinued. The Secretary has interpreted 19 U.S.C. 2 to provide authority to the President and his delegate to establish ports of entry without the simultaneous abolition of other ports. *See, e.g.,* T.D. 95–62 (60 FR 41804, dated Aug. 14, 1995, providing for the port of entry at Rockford, Illinois) and T.D. 96–3 (60 FR 67056, dated Dec. 28, 1995, providing for the port of entry at Sioux Falls, South Dakota). While the Secretary has not abolished ports of entry simultaneously with the establishment of these ports of entry, the number of ports of entry has actually decreased. Thus, the interpretation of this statute suggested by the commenter is contrary to the position of the Treasury Department as reflected in longstanding practice and the plain language of the statute grants the Secretary, as the President's delegate, the authority to determine that the exigencies of the Customs Service require that Sanford be designated as a port of entry.

Section 58b of title 19 of the United States Code (19 U.S.C. 58b), entitled ''User Fee for Customs Services at Certain Small Airports and Other Facilities,'' provides, in part, that the Secretary may designate airports, seaports, and other facilities as recipients of customs services on a fee-basis only if he has made a determination that the volume or value of business cleared through such facility is insufficient to justify the availability of customs services at such facility. But when the volume or value of business cleared through such a designated user-fee facility reaches such a level justifying the availability of customs services at the facility, Customs may make a determination concerning that facility's continuing status within Customs field organization. This is the circumstance which has overcome Sanford; based on its own report, not that of Customs, international passenger workload figures are far in excess of those normally considered adequate for port of entry status. Accordingly, Customs has made a determination that the volume of business cleared through this facility is no longer ''insufficient to justify the availability of customs services'' at this facility and that Sanford should be designated as a port of entry. Concerning port of entry status, it should be noted that facilities are usually helped by this designation, as they are able to offer permanent and a full range of Customs services instead of just temporary and limited ones that are based on a user-fee arrangement.

Concerning the regulatory takings argument advanced, it is Customs position that a change in designation of a particular field location does not constitute a taking of property for public use.

Comment: One commenter states that all user-fee airports should be treated similarly and that the proposed action threatens all other small user-fee airports, such as Daytona Beach and Melbourne, Florida, who now may be pushed into port of entry status with its associated higher costs. The commenter alleges that unequal and discriminatory treatment is being imposed on Sanford; the commenter claims that user-fee airports at Ft. Myers, Florida and Wilmington, Ohio for years have exceeded the minimum criteria for establishing port of entry status, whereas, Sanford's status is to be changed based on projected passenger counts.

Customs Response: There is nothing automatic about when a facility's designation must be changed into another designation. As discussed above, Customs field organization is based on the needs of the entire Customs Service, as determined by the Secretary of the Treasury.

Concerning the referenced user-fee airports located at Ft. Myers and Wilmington, Customs is currently looking into whether Ft. Myers, Florida, should be redesignated as a port of entry; in the case of Wilmington, Ohio, Customs has already determined that that location does not meet any of the criteria for port of entry status.

Comment: One commenter claims that because there was no local request for port of entry status Customs has *de facto* established, without proper notice, a new, broadly applicable procedure for creating new ports of entry, which possibly violates the requirement of 5 U.S.C. 551 [sic] that each agency publish ''the nature and requirements of all formal and informal procedures available.'' The commenter asserts that before applying this new procedure in a specific case, Customs should publish a general notice alerting the public to the new procedure.

Customs Response: This comment misinterprets the public information requirements of the Administrative Procedure Act (APA) and the publication of the criteria for establishing ports of entry. Regarding the APA, section 552 of the APA (5 U.S.C. 552) requires, in part, that agencies publish in the **Federal Register** information pertaining to descriptions of its central and field organization for informational purposes, which Customs does in Part 101 of the Customs Regulations. Concerning the notice and public comment procedures of section 553 of the APA (5 U.S.C. 553), which applies to agency rulemaking, Customs has followed these procedures in its proposal to change the designation of Sanford Airport.

Regarding the publication of the criteria for establishing ports of entry, no new procedure for establishing ports of entry has been established. As stated above, the authority to designate ports of entry is a plenary authority vested in the President or his delegate under the provisions of 19 U.S.C. 2. Customs publication of the criteria for establishing ports of entry does not operate to inhibit that plenary authority to establish ports of entry ''as the exigencies of the Service may require,''

but rather serves to inform those communities interested in obtaining such government capabilities to focus their requests for such status on the criteria actually utilized by the Treasury Department.

Conclusion

After analysis of the comments and further review of the matter, Customs has determined that Sanford Regional Airport no longer qualifies as a small, user-fee facility under the provisions of 19 U.S.C. 58b, and that Customs needs in the administration and enforcement of customs and related laws would best be served by establishing Sanford as a port of entry. Accordingly, Customs has decided to adopt the proposed amendments to part 101 and 122 of the Customs Regulations, published in the **Federal Register** on June 17, 1996 (61 FR 30552). However, a delayed effective date is observed because this document will serve as the written notice of termination of user-fee status to the Sanford Regional Airport as required by § 122.15(c).

The Regulatory Flexibility Act, and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities, as these amendments concern the status of only one airport facility. Accordingly, these amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. These amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

List of Subjects

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Customs duties and inspection, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated above, parts 101 and 122 of the Customs Regulations (19 CFR parts 101 and 122) are amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The general authority citation for Part 101 and the specific authority for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

2. Section 101.3(b)(1) is amended by adding, in appropriate alphabetical order, under the state of Florida ''Orlando-Sanford Airport'' in the ''Ports of entry'' column and ''T.D. 97–64'' in the adjacent ''Limits of port'' column.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644,; 49 U.S.C. App. 1509.

2. Section 122.15(b) is amended by removing ''Sanford, Florida'' from the column headed ''Location'' and, on the same line, ''Sanford Regional Airport'' in the column headed ''Name''.

Dated: March 24, 1997.

George J. Weise,

Commissioner of Customs.

[FR Doc. 97–18206 Filed 7–10–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Part 126

[Public Notice 2567]

Amendment to the List of Proscribed Destinations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Mongolia. All requests for approval involving items covered by the U.S. Munitions List will be reviewed on a case-by-case basis.

DATES: This rule is effective June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Kurt F. Luertzing, Office of Arms Transfer and Export Control Policy, Bureau of Political-Military Affairs, Department of State (202–647–1254).

SUPPLEMENTARY INFORMATION: In connection with the President's policy that U.S. laws and regulations be updated to reflect the end of the Cold War, and Presidential Determination 95–38 of August 22, 1995 making Mongolia eligible to receive defense articles and service, the Department of State is amending the ITAR to reflect that it is no longer the policy of the United States, pursuant to 22 CFR § 126.1, to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Mongolia. Requests for licenses or other approvals for Mongolia involving items covered by the U.S. Munitions List (22 CFR part 121) will no longer be presumed to be disapproved.

This amendment to the ITAR involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. This final rule does not contain a new or amended information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et. seq.*).

List of Subjects in 22 CFR Part 126

Arms and Munitions, Exports.

Accordingly, under the authority of section 38 of the Arms Export Control Act (22 U.S.C. 2778) and Executive Order 11958, as amended, 22 CFR subchapter M is amended as follows:

PART 126—[AMENDED]

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 41 FR 4311; E.O. 11322, 32 FR 119; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28206.

§ 126.1 [Amended]

2. Section 126.1 is amended by removing ''Mongolia,'' from paragraph (a).

Dated: June 26, 1997.

Lynn E. Davis,

Under Secretary of State for Arms Control and International Security Affairs.

[FR Doc. 97–18192 Filed 7–10–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of committee meeting and signing ceremony.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting of SENRAC. Notice is also hereby given of a signing ceremony which will take place if the members reach consensus on the text of a proposed rule. In addition, notice is given of the location of the meeting and signing ceremony. This meeting and signing ceremony will be open to the public.

DATES: The meeting and signing ceremony will take place on July 24, 1997. The meeting will begin at 11:00 a.m. and the signing ceremony is scheduled to take place at 1:00 p.m. on July 24th.

ADDRESSES: The meeting and signing ceremony will be held at the U.S. Department of Labor, Room S–2508, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: On May 11, 1994, OSHA announced that it had established the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC)(59 FR 24389) in accordance with the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act of 1990 (NRA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to resolve issues associated with the development of a Notice of Proposed Rulemaking (NPRM) on Steel Erection. Appointees to the Committee include representatives from labor, industry, public interests and government agencies.

SENRAC began negotiations in mid-June, 1994, and has met eleven times since. Initial meetings dealt with procedural matters, including schedules, agendas and the establishment of workgroups. The Committee established workgroups to address issues on Fall Protection, Allocation of Responsibility, Construction Specifications and Scope. During subsequent meetings foundations for negotiations were established, and additional workgroups were formed.

Considerable progress was made towards reaching a consensus on the first portion of a proposed steel erection standard by the December 1995 meeting. Following that meeting, OSHA completed the preamble and prepared a NPRM for publication in the **Federal Register**. At this meeting SENRAC will consider the draft text. If it reaches a consensus on this draft, a signing ceremony will take place wherein SENRAC will present its recommended proposed rule on steel erection to OSHA.

All interested parties are invited to attend the Committee meeting and the signing ceremony at the time and the place indicated above. Persons with disabilities who need special accommodations should contact OSHA by July 17, 1997.

The SENRAC Facilitator, Philip J. Harter, can be reached at Suite 404, 2301 M Street, N.W., Washington, D.C. 20037; telephone (202) 887–1033, FAX (202) 887–1036.

Signed at Washington, D.C., this 7th day of July, 1997.

Greg Watchman,

Acting Assistant Secretary of Labor.

[FR Doc. 97–18193 Filed 7–10–97; 8:45 am]

BILLING CODE 4610–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 79–116]

RIN 2115–AA03

Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Final rule; Establishment of a delayed compliance date.

SUMMARY: The Coast Guard establishes a delayed compliance date for a portion of the final rule concerning qualifications for tankermen and for persons in charge of transfers of dangerous liquids and liquefied gases. The delayed compliance date also applies to a paragraph that was established in the interim rule, but not revised in the final rule. Because the Coast Guard finds that added time will be necessary for affected mariners to comply, the Coast Guard establishes a delayed compliance date for one requirement for licensing with respect to a vessel with a capacity of 250 barrels or more.

DATES: The effective date of the final rule published in the **Federal Register** on May 8, 1997 (62 FR 25115), remains June 9, 1997. However, the compliance date for the revisions to 33 CFR 155.710(e) introductory text, (e)(1), (e)(2), and (e)(3) is January 1, 1998. Furthermore, the compliance date for 33 CFR 155.710(e)(4), not revised in the final rule, is January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mark C. Gould, Project Manager, Maritime Personnel Qualifications Division, (202) 267–6890.

SUPPLEMENTARY INFORMATION: 33 CFR 155.710(e) introductory text, (e)(1), (e)(2), (e)(3), and (e)(4) were published in the interim rule (60 FR 17134). In the final rule, 33 CFR 155.710 (e) introductory text, (e)(1), (e)(2), and (e)(3) were revised—33 CFR 155.710 (e)(4) was not.

Because procurement of a license or MMD with a Tankerman-PIC endorsement on any vessel with a capacity of 250 or more barrels of fuel oil, cargo oil, hazardous material, or liquefied gas as regulated in Table 4 of 46 CFR part 154 presupposes formal training and proof of service, and because there are mariners who only now realize that they must obtain licenses or MMDs, it is clear that they are unable to comply by June 9, 1997. There are too few schools in the areas most affected, nor can the regional examination centers of the Coast Guard handle such an increase in customers in such a short time. To allow ample time for those mariners to obtain both the required training and the license or document, the Coast Guard establishes a delayed compliance date for 33 CFR 155.710(e) introductory text, (e)(1), (e)(2), (e)(3), and (e)(4), of January 1, 1998.

Dated: July 3, 1997.

R.C. North,

Rear Admiral, U.S. Coast Guard Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–18263 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–97–012]

RIN–AA97

Safety Zone Regulation; SeaFair's Blue Angels Air Show, Lake Washington, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of Lake Washington from 6 a.m. (PDT) to 4 p.m. (PDT) August 7, 8, 9, and 10, 1997. The Captain of the Port Puget Sound, Seattle, Washington, is taking this action to safeguard watercraft and their occupants from the safety hazards associated with high performance aircraft conducting complex maneuvers at high speeds and low altitudes. The safety zone will encompass the area of Lake Washington over which the air show will take place. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective on August 7, 8, 9, and 10, 1997, from 6 a.m. (PDT) to 4 p.m. (PDT).

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection and copying at U.S. Coast Guard Marine Safety Office, Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 7 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Joel Roberts, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective less than 30 days from the date of publication in the **Federal Register.** Publishing a NPRM would be contrary to the public interest since immediate action is necessary to ensure the safety of vessels and spectators operating in the area of the Air Show. Due to the complex planning and coordination involved, the sponsor of the event, Seafair Incorporated, was unable to provide the Coast Guard with the final details for the show until 60 days prior to the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is adopting a temporary safety zone regulation for the U.S. Navy Blue Angels Air Show sponsored by Seafair, Incorporated. The safety zone encompasses all waters of Lake Washington, Seattle, Washington, bounded by a line commencing at position latitude 47°35′35″ N, longitude 122°15′13″ W; thence to position latitude 47°35′55″ N, longitude 122°15′44″ W; thence to position latitude 47°35′48″ N, longitude 122°15′44″ W; thence to position latitude 47°33′06″ N, longitude 122°15′28″ W; thence along the shore of Bailey Peninsula to position latitude 47°33′44″ N, longitude 122°15′01″ W; thence to position latitude 47°33′43″ N, longitude 122°13′53″ W; thence returning along the shore of Mercer Island to the point of origin. The zone is needed to protect watercraft and their occupants from safety hazards associated with high performance aircraft conducting complex maneuvers at high speeds and low altitudes. Many onlookers may attempt to view the air show at close range, thereby increasing their exposure to these hazards. Entry into the safety zone will be prohibited during the air show and practice sessions. This safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal, state, and local agencies.

Regulatory Evaluation

This proposal 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 CFR 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 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation would encompass approximately 4.75 square miles on Lake Washington from the vicinity of the I–90 bridge to Bailey Peninsula. Operation within the regulated area would be controlled over the duration of the safety zone but only actually prohibited for less than four hours each of the four days during the performances. An extensive media and public relations campaign will notify local land owners and area recreational boaters of the event schedule and operating restrictions.

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'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because the impacts of this proposal are expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule 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 final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has concluded that under Section 2.B.2.c. of Commandant Instruction M16475.1B, 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.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, 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.T13–011 is added to read as follows:

§ 165.T13–011 Safety Zone; Lake Washington, Seattle, WA.

(a) *Location.* The following area is a safety zone: All waters of Lake Washington, Seattle, Washington, bounded by a line commencing at position latitude 47°35′35″N, longitude 122°15′13″W; thence to position latitude 47°35′55″N, longitude 122°15′44″W; thence to position latitude 47°35′48″N, longitude 122°15′44″W; thence to position latitude 47°33′02″N, longitude 122°15′28″W; thence to position latitude 47°33′44″N, longitude 122°15′01″W; thence to position latitude 47°33′43″N, longitude 122°13′53″W; thence returning along the shore of Mercer Island to the point of origin. [Datum NAD 83]

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone, except for participants in the event, supporting personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or his designated representatives.

(c) *Effective dates.* This regulation is effective on August 7, 8, 9, and 10, 1997, from 6 a.m. (PDT) to 4 p.m. (PDT) each day.

Dated: June 21, 1997.

Myles S. Boothe,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 97–18267 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA014–0035; FRL–5850–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Four Local Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on June 12, 1996. The revisions concern rules from the following: El Dorado County Air Pollution Control District (EDCAPCD), Kern County Air Pollution Control District (KCAPCD), Placer County (PCAPCD), and Santa Barbara County Air Pollution Control District (SBCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from graphic arts operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on August 11, 1997.

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

Rulemaking Section (Air–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

El Dorado County APCD, 2850 Fairlane Court, Placerville, CA 95667.

Kern County APCD, 2700 M Street, Suite 290, Bakersfield, CA 93301.

Placer County APCD, 11464 B Avenue, Auburn, CA 95603.

Santa Barbara County APCD, 26 Castilian Drive, B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include the following: EDCAPCD Rule 231, ''Graphic Arts Operations''; KCAPCD Rule 410.7, ''Graphic Arts''; PCAPCD Rule 239, ''Graphic Arts Operations''; and SBCAPCD Rule 354, ''Graphic Arts''. These rules were adopted by the local air pollution control agencies on the following respective dates: September 27, 1994; May 6, 1991; June 8, 1995; and June 28, 1994.

The above rules were submitted by the California Air Resources Board (CARB) to EPA, in respective order, on November 30, 1994, May 30, 1991, October 13, 1995, and July 13, 1994.

II. Background

On June 12, 1996, EPA published a notice of direct final rulemaking action (61 FR 29659) and a action of proposed rulemaking (61 FR 29725).[1] This direct final rule would have appro9ved the rules described in the applicability section above, as well as South Coast Air Quality Management District Rule 1130.1, ''Screen Printing Operations'', into the California SIP. However, prior to the close of the comment period for the direct final rulemaking, EPA received a request from SCAQMD to withdraw Rule 1130.1 from the SIP. Because this request to withdraw was essentially an adverse comment, EPA was required by the provisions of the Administrative Procedures Act to withdraw the direct final rule. A **Federal Register** action withdrawing the direct final rule of June 12 was published on August 27, 1996 (61 FR 43976).

As a result of SCAQMD's withdrawal request, EPA is finalizing the approval into the California SIP of the rules described in the rulemaking actions of June 12, with the exception of SCAQMD Rule 1130.1. Therefore, EPA is approving the rules listed in the applicability section into the California SIP.

The rules being approved in this action were submitted in response to EPA's 1988 SIP–Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of these rules and nonattainment areas is provided in the Direct Final action of June 12, 1996.

EPA has evaluated all of these rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy

[1] Unless a direct final rulemaking is withdrawn (if EPA receives an adverse comment), such a notice of proposed rulemaking is moot. However, if EPA receives an adverse comment, the direct final rulemaking is withdrawn, and the notice of proposed rulemaking, together with the notice of direct final rulemaking, serves to propose approval for subsequent finalization.

guidance documents referenced in the Direct Final action cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 61 FR 29659 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated March 18, 1996).

Final approval of SBCAPCD Rule 354, ''Graphic Arts'', will permanently stop the FIP clock associated with this rule.

III. Response to Public Comments

A 30-day public comment period was provided in 61 FR 29659. As described above, EPA received one significant comment from the SCAQMD on SCAQMD Rule 1130.1. SCAQMD management requested that Rule 1130.1, as submitted to EPA on November 18, 1993, be withdrawn from consideration for SIP approval. The SCAQMD requested that this rule be withdrawn because, in light of information provided to them by the coating industry, they believed that the VOC limits of the rule as submitted to EPA were too stringent, and they were in the process of drafting and adopting a new version of the rule with less stringent limits.

IV. EPA Action

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

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

V. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1996, 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 private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan or informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 15, 1997.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(185)(i)(A)(*9*), (198)(i)(K), (207)(i)(B)(*2*), and (225)(i)(B)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(185) * * *

(i) * * *

(A) * * *

(*9*) Rule 410.7, adopted May 6, 1991.

* * * * *

(198) * * *

(i) * * *

(K) Santa Barbara County Air Pollution Control District.

(*1*) Rule 354, adopted June 28, 1994.

* * * * *

(207) * * *

(i) * * *

(B) * * *

(*2*) Rule 231, adopted September 27, 1994.

* * * * *

(225) * * *

(i) * * *

(B) * * *

(*3*) Rule 239, revised June 8, 1995.

* * * * *

[FR Doc. 97–18254 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–55–1–7335; FRL–5856–3]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The EPA is granting conditional interim approval of a State Implementation Plan (SIP) revision submitted by Texas. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in the Houston/Galveston and El Paso areas and a basic I/M program in the Dallas/Fort Worth area. The effect of this action is to conditionally approve Texas's I/M program for an interim period to last 18 months, based upon the good faith estimate of the program's performance. This action is being taken under section 110 of the Clean Air Act (Act) and section 348 of the National Highway Systems Designation Act (NHSDA).

DATES: This interim final rule is effective on August 11, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Davis, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7584.

SUPPLEMENTARY INFORMATION:

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E. Petitions for Judicial Review

I. Background

On October 3, 1996 (61 FR 51651), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Texas. The NPR proposed conditional interim approval of Texas' I/M program, submitted to satisfy the applicable requirements of both the Act and the NHDSA. The formal SIP revision was submitted by Texas on March 14, 1996.

As described in that notice, the NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals. The NHSDA also directs EPA and the states to review the interim program results at the end of that 18-month period, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort, to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start up as soon as possible, which EPA believes should be on or before November 15, 1997, so that at least six months of operational program data can be collected to evaluate the interim programs. The EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of this program. If Texas fails to fully start its program according to this schedule, this conditional interim approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the state. Unlike the other specified conditions of this rulemaking, which are explicit conditions under section 110(k)(4) of the Act and which will trigger an automatic disapproval should Texas fail to meet its commitments, the startdate provision will only trigger a disapproval upon EPA's notification to the State by letter that the startdate has been missed. This letter will not only notify Texas that this rulemaking action has been converted to a disapproval, but also that the sanctions clock associated with this disapproval has been triggered as a result of this failure. Because the startdate condition is not imposed pursuant to a commitment to correct a deficient SIP under section 110(k)(4), EPA does not believe it is necessary to have the SIP approval convert to a disapproval automatically if the startdate is missed. The EPA is imposing the startdate condition under its general SIP approval authority of section 110(k)(3), which does not require automatic conversion. It should be noted that the State of Texas has already started major elements of its program in all three program areas.

The program evaluation to be used by the state during the 18-month interim period must be acceptable to EPA. The Environmental Council of States (ECOS) group has developed such a program evaluation process which includes both short term qualitative and long term quantitative measures, and this process has been deemed acceptable to EPA. The core requirement for the long term quantitative measure is that a Mass Emission Transient Test be performed on 0.1 percent of the subject fleet, as required by the I/M Rule at 40 CFR 51.353 and 366.

Per the NHSDA requirements, this conditional interim rulemaking will expire on February 11, 1999. A full approval of Texas final I/M SIP revision (which will include Texas' 18-month program evaluation) is still necessary under section 110 and under sections 182, 184 or 187 of the Act. After EPA reviews Texas' submitted program evaluation and other required elements for final approval, final rulemaking on the Texas' I/M SIP revision will occur.

Specific requirements of the Texas I/M SIP and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

II. Public Comments/Response to Comments

This section discusses the content of the comments submitted to the docket during the Federal comment period for the notice of proposed rulemaking, published in the October 3, 1996 **Federal Register**, and provides EPA's responses to those comments. On November 18, 1996, EPA granted a 60-day extension of the comment period which was requested by four parties. The extended comment period closed on January 3, 1997. Four sets of comments were received by the Region. The comments were from the Texas Natural Resource Conservation Commission (TNRCC), the Environmental Defense Fund (EDF), the Sierra Club (SC) and by the law firm Bickerstaff, Heath, Smiley, Pollan, Kever, & McDaniel, L.L.P (BHS). Copies of the original comment letters are available at EPA's Region 6 office at the address listed in the **ADDRESSES** section of this notice. The EPA has first grouped similar comments and summarized them, followed by EPA's response to specific comments. For clarity, in some cases EPA has provided background information within a comment on its requirements or its proposed action relevant to Texas' SIP, prior to summarizing the comment itself.

Comment—Legal Authority of Texas I/M Plan

The SC and BHS commented that the State program does not have adequate authority to implement the program. The law firm BHS commented that the State law (Senate Bill 178) the State is using to implement the program is unconstitutional. The law firm BHS commented that a written decision in favor of Texas is forthcoming and will be forwarded to EPA when issued, thus EPA should not be considering approving the State's program. The law firm BHS commented that even if Senate Bill 178 were constitutional it does not give the State authority to implement major portions of its program including, reregistration denial, enforcement of remote sensing, and test on resale provisions of the program. Thus, EPA cannot approve the program based on the NHSDA which requires that ''all'' authority be present for EPA to approve the program. It is argued that EPA's proposal does not address whether the State's submission meets the requirements of the NHSDA while other EPA actions on NHSDA submittals do. The law firm BHS contends the NHSDA only allows a brief window of 120 days for a submittal which is required to include all authority. Since this window has already passed, EPA cannot extend the deadline. The SC similarly noted that EPA cannot postpone the deadline by using a conditional approval following the Natural Resource Defense Council case of 1994.

Response to Comment

The EPA's proposal explicitly identified the lack of authority as a deficiency which required correction by the imposition of major conditions which if not fulfilled would convert the action to a disapproval. Thus, EPA agrees that the State submittal does not meet all of the requirements of the NHSDA and is deficient in this regard. We also stated that the SIP contained enabling legislation that would allow the State to implement ''most'' of its program and that the State could get the legislative authority in the next legislative session. To support the State's commitment on obtaining the additional required authority the SIP included a Governor's Executive Order stating the intention of the Governor to support the needed legislation in the 1997 legislative session. The Texas legislature meets only once every two years and therefore obtaining the additional legislation four months after passage of the NHSDA was impractical. Also, it is EPA's understanding that the Texas legislature has recently passed legislation during the 1997 session addressing legislative deficiencies in the SIP. The EPA will be evaluating the legislation over the next several months. The EPA is authorized to promulgate conditional approvals under the Clean Air Act and does not believe the action postpones the deadlines contained in the NHSDA. The NRDC case involved postponing of a deadline by the use of a ''committal SIP'' which did not include a substantive submittal of legislation, regulations, SIP narrative, etc. Due to the substantive nature of the Texas submittal EPA does not believe the submittal constitutes merely a ''committal SIP.''

Texas has submitted a substantive I/M SIP, and has adequate legal authority to adopt and implement that SIP. The SIP has several deficiencies, which Texas has committed to remedy. It will require the adoption of additional legislative authority to remedy the deficiencies. The EPA believes it is authorized to conditionally approve a substantive SIP submittal under the Act section 110(k)(4) in these circumstances, and that such approval is consistent with the holding of the court interpreting the Act section 110(k)(4), *NRDC* v. *EPA*, 22 F.3d 1125, 1134 (D.C. Cir. 1994). The EPA further believes that this action is consistent with the requirements of the NHSDA. The EPA believes that so long as a state submits a substantative I/M SIP with underlying statutory authority during the 120-day period specified in the NHSDA, EPA can conditionally approve that SIP even if it contains some deficiencies that require additional legislative authority to remedy. Such authority must be obtained before EPA can give full final approval to the I/M SIP.

Regarding the constitutionality of the State's authority, a Texas Court ruled that the two laws creating the Texas Motorists' Choice program, Texas Senate Bills 19 and 178, were in violation of both the Texas and Federal Constitution. The Court ruled that those laws were an unconstitutional ''taking'' and an unconstitutional interference with contract, *Tejas Testing Technologies I, et al,* v. *The State of Texas*, No. 95–1462 (126th Dist. Court, Travis County, Texas) (April 21, 1997).

The State has filed a Notice of Intent to Appeal the ruling. Texas Rules of Appellate Procedure, Rule 47 and associated case law seem to indicate that such a filing supersedes the finding of the lower court pending determination by the Court of Appeals. *See, Ammex Warehouse Co.* v. *Archer,* 381 S.W. 2d 478, 481 (Tex. 1964), *Porth* v. *Currie,* 613 S.W. 2d 534 (Tex. Civ. App., Austin 1981), and *Texas Workers' Compensation Commission* v. *Garcia,* 893 S.W. 2d 504, 517 (Texas 1995). However, EPA is not basing today's action on Senate Bill 19 and 178 because of the uncertainty regarding the constitutionality of those laws after the Court's ruling. In order to determine whether the program is supported by adequate legislative authority, EPA reviewed the statute submitted by Texas *excluding* the language added by Senate Bills 19 and 178. Based on that review, EPA has determined that Texas has sufficient authority to implement the program with the exception of remote sensing and registration denial (as discussed in the conditions for final interim approval).

Title 5 of the Texas Health and Safety Code, Section 382.037(a) (Vernon's 1995) authorizes the promulgation of rules to ''establish, implement and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the Federal Clean Air Act.'' This gives very broad authority to establish any type of vehicle inspection

program so long as that program is consistent with the Federal requirements.

Enforcement of the program is authorized by Title 5 of the Texas Health and Safety Code, Section 382.037(d), by a ''sticker-based'' program. As discussed elsewhere, a sticker-based program is not acceptable without an adequate demonstration that the State's pre-1990 Act mechanism was more effective than its registration denial system. Texas has not made such a demonstration, and either an adequate demonstration must be submitted or authority for registration denial must be submitted within one year to fulfill one of the conditions of this approval. It is EPA's understanding that the Texas Legislature has recently passed a law allowing for a registration denial program upon EPA's finding that the State has not made a adequate demonstration that sticker enforcement is more effective than registration denial. Section 382.037(n) authorizes audits to determine compliance, but was added by the laws determined unconstitutional and, therefore, was not considered by EPA. However, Sections 382.038(a) and 382.038(d) authorize the State to pass appropriate regulations to conduct compliance audits.

Comment—Low Enhanced Performance Standard Issues

The TNRCC commented that although the Dallas/Fort Worth area is only required to implement a basic I/M program the State submitted modeling showing that the program also meets the low enhanced performance standard. The SC and BHS commented that EPA cannot allow the use of a ''low enhanced'' I/M program for areas such as Houston/Galveston that need more effective I/M programs to meet air quality goals. The law firm BHS cites EPA's proposed disapproval of the State's original 15% Plan. They also note that EPA cannot approve the revised 15% Plan since it does not achieve the required reductions by 1996, and that EPA cannot extend the deadline of the original November 15, 1993, submittal date for a revision to the 15% Plan. The law firm BHS commented that the revised program does not even start up prior to the end of 1996, and notes the rising contribution of mobile sources to the air quality problem in the area.

Response to Comment

The EPA agrees with the TNRCC's comment that the State's modeling shows that the low enhanced performance standard is met in the Dallas/Fort Worth area. However, the Dallas/Fort Worth area is only required to implement a basic I/M program and all the elements of an enhanced I/M program are not being implemented in the Dallas/Fort Worth program. Therefore, EPA is approving the Dallas/Fort Worth program only as a basic I/M program.

The EPA disagrees with the comment that the State is not eligible for the low enhanced performance standard. While EPA proposed disapproval of the State's original 15% Plan, the EPA has already proposed an approval action on the State's revised 15% Plan. The Texas I/M NPR stated that EPA would not finalize an interim action on the I/M SIP unless an approval action was proposed on the 15% Plan which has now been done. The I/M flexibility rules define eligibility and only require that the State have an approved 15% Plan and not received disapprovals on the other Rate of Further Progress or attainment plans. Issues regarding the approval of the 15% Plan including late start up dates for I/M programs are addressed in the proposed approval of the State's revised 15% Plan. Those are issues relevant to approval of the 15% Plan and will not be further addressed in this notice on the I/M plan. In the case of Texas, the State has already started most of the major elements of its I/M Plan and no further reductions are possible by the end of 1996 since this date already is historical. Also, States may, and often do, make revisions to previously submitted SIPs as part of the SIP process. Section 110 of the Act allows for and contemplates revisions to SIPs.

The EPA agrees that mobile source pollution is a continuing and significant source of pollution in the I/M nonattainment areas. The EPA also believes that it may be necessary to expand the geographic coverage or to improve effectiveness of the State's I/M Program in the future. Additional emission reductions may be required in the Texas nonattainment areas due to a continuing nonattainment status, or that the reductions claimed as a ''good faith estimate'' are not achieved in practice.

Comment—Geographic Coverage Requirements

The SC and BHS commented that the Beaumont/Port Arthur area should be in the I/M program. The SC commented that the redesignation was not completed and the area is an influence on the air quality of the Houston/Galveston area. The law firm BHS commented that the 1990 urbanized area population for Beaumont/Port Arthur is 232,434 and exceeds EPA's cutoff of 200,000.

The SC, BHS, and EDF commented that the Texas I/M program does not adequately cover the entire urbanized area for Dallas/Fort Worth and Houston/Galveston. The SC commented that remote sensing is not complete coverage and incompletely evaluated for effectiveness. The law firm BHS commented that exclusion of some of the urban population is allowed if an equal number of residents is included and the State used vehicles not residents in their analysis. The law firm BHS noted the uncertain feasibility and effectiveness of remote sensing and the delay in the State's data collecting phase of its remote sensing plan. The law firm BHS also commented on the lack of enforcement authority for remote sensing in the State's plan. The EDF commented that the exclusion of the rapidly growing counties of Collin and Denton County will result in dirtier air for the Region. The EDF commented that this exclusion will result in the failure to inspect 147,000 commuting vehicles and an additional 304,000 noncommuting vehicles.

Response to Comment

The Beaumont/Port Arthur area was reclassified from a serious to moderate ozone nonattainment area on April 2, 1996 (61 FR 14496). While the Beaumont/Port Arthur area is one moderate ozone nonattainment area it is composed of at least two separate urbanized areas each with a 1990 urbanized area population of under 200,000. According to the report entitled ''1990 Census of Population and Housing: Population and Housing Unit Counts: Texas'' issued in March 1993 by the U.S. Bureau of the Census, the 1990 population of the Beaumont urbanized area is 122,841. The 1990 population of the urbanized area population for Port Arthur is 109,560. The I/M flexibility rule only requires that for moderate ozone nonattainment areas outside the ozone transport region, basic I/M programs be implemented in any 1990 Census-defined urbanized area of 200,000 or more (40 CFR 51.350(a)(4)). Since the Beaumont/Port Arthur area is a moderate area and contains no 1990 urbanized areas of over 200,000, EPA does not require that I/M be implemented in the Beaumont/Port Arthur nonattainment area.

The EPA agrees that the State's exclusion of counties in both the Houston/Galveston area and the Dallas/Fort Worth area results in a less effective I/M program which hinders each of the areas reaching attainment of the National Ambient Area Quality Standard for ozone. Specifically, the exclusion of heavily populated portions

of the nonattainment areas, such as portions of Collin and Denton Counties, from the regular testing I/M program in the Dallas/Fort Worth area in our view is hindering the State from reaching attainment of air quality standards. However, in the proposed **Federal Register** notice (FRN), EPA made allowance for the State's use of remote sensing to make up deficiencies in the State's area of coverage plans. Nevertheless, recognizing the uncertainty of the remote sensing program, EPA included a provision in the proposed FRN that for permanent I/M SIP approval, the remote sensing program must be demonstrated to be effective in identifying and obtaining repairs on vehicles with high levels of emissions, or the Texas I/M core program must be expanded to include the entire urbanized area for both Dallas/Fort Worth and Houston. Also, since I/M programs are designed to reduce emissions from vehicles, and populations or persons do not directly equate to vehicle population, EPA also allowed for an interpretation of its I/M rule which would apply a ratio to the population shortfall to determine the minimum number of vehicles required to be tested by the State from commuting vehicles outside the I/M core program areas.

The EPA's proposal also identified the lack of authority for enforcement of remote sensing as a deficiency which required correction by the imposition of major conditions which if not fulfilled would convert the action to a disapproval. We also stated that the State could get the legislative authority in the next legislative session. To support the State's commitment the SIP included a Governor's Executive Order stating the intention of the Governor to support the needed legislation in the 1997 legislative session. It is EPA's understanding that the Texas legislature recently passed legislation for enforcement of a remote sensing program.

Comment—Enforcement of Texas I/M Program

The TNRCC commented that the Texas Motorist Choice inspection program is a sticker-based enforcement program with computer matching enhancements. The State commented that it believes that it has demonstrated that sticker-based enforcement is more effective than registration denial. The State included a sticker survey from the I/M areas which indicated that most vehicles (95 percent) had stickers showing appropriate dates of compliance. The SIP also states that unregistered vehicles range from 2 to 15 percent. The SC commented that the lack of registration denial is a major inadequacy. The SC also commented that the State's program to deter fraud and assure accuracy is not adequate. The law firm BHS also commented that the State does not have an effective enforcement system and does not have authority for registration denial and had questions about exactly how the State's plan would work. The law firm BHS argued that a sticker based program without a demonstration of greater effectiveness with a vague undefined threat of reregistration denial does not meet the requirements of the Act. Also, BHS cited the EPA proposed disapproval for the District of Columbia for its lack of similar but more comprehensive deficiencies in its enforcement program. The District of Columbia program also did not have authority for registration denial, and no penalty schedule accompanying the SIP.

Response to Comment

The EPA's proposed approval was based upon the State commitment in the SIP and specifically the commitment in the Governor's Executive Order which specified the State's intention to support legislation for the authority to enforce the program with reregistration denial. The Clean Air Act and Federal I/M regulations specify that registration denial must be the enforcement mechanism for a state unless an alternative enforcement mechanism of a pre-1990 Act program is demonstrated to be more effective. The demonstration is further specified in the Federal I/M rule (40 CFR 51.361(b)). The State's demonstration fails in relation to these requirements in two general areas, the failure to tie stickers issued to tests given and more accurate and substantiated data on the number of vehicles in compliance with the registration requirements. The demonstration was also deficient since it is required to be comprehensive, which the State's current demonstration was not.

The EPA agrees that the lack of authority for enforcement through registration denial is a major deficiency in the plan. The EPA's proposal also identified the lack of authority for registration denial as a deficiency which required correction by the imposition of a major condition which if not fulfilled would convert the action to a disapproval. We also stated that the State could get the legislative authority in the 1997 legislative session. To support the State's commitment the SIP included a Governor's Executive Order stating the intention of the Governor to support the needed legislation in the 1997 legislative session. It is EPA's understanding that the Texas Legislature has recently passed a law allowing for a registration denial program upon EPA's finding that the State has not made a adequate demonstration that sticker enforcement is more effective than registration denial. The State's quality control and consumer protection portions of the I/M plan were consistent with the I/M rule (§§ 51.360 and 51.368(b)). Regarding the District of Columbia's proposed disapproval notice for enforcement deficiencies similar to the Texas program, EPA was required to propose disapproval on this issue because it did not have a commitment from the State to correct the deficiencies in the District's plan. In the case of Texas, EPA had the commitment in the Governor's Executive Order and the SIP narrative to correct the major deficiencies and thus was able to propose conditional interim approval of the plan.

Comment—Waivers in the Texas I/M Modeling

The TNRCC commented that, since the low income time extension is not a waiver, it should not be required to be included in the projected waiver rate.

Response to Comment

The EPA concurs with the State comment that the low income time extension is not legally a waiver. However, the numbers of time extensions granted by the State may impact the air quality benefits of the program and should therefore be accounted for in the State's modeling estimates if significant. If low income time extensions are granted after a vehicle fails the emissions test, the emissions characteristics of the vehicle for the purposes of emissions modeling are identical to a vehicle that has received a waiver. If such time extensions were granted prior to an initial test they should be accounted for in the compliance rate estimates if significant.

Comment—Texas Good Faith Credit Estimates

The EDF commented that while the NHSDA removes EPA's 50 percent credit discount for test-and-repair programs, it does not grant presumptive equivalency between test-and-repair and test-only programs. The SC also commented that the decentralized program fails to demonstrate equivalency with the centralized program. The EDF commented that TNRCC's claim of 100 percent effectiveness is not consistent with other states implementing decentralized

programs and are not based on ''good faith estimates'' with a basis in fact, but rather unsubstantiated assumptions. Additional features to the program such as the electronically connected testing system may increase effectiveness but do not substantiate the State's claim. The law firm BHS similarly also commented that the State's credit estimates are not made in good faith. The law firm BHS commented that the estimates must have a ''basis in fact'' and cites EPA's position contained in the I/M flexibility amendments that all the data gathered from previously running I/M programs justify EPA's previously imposed 50 percent credit discount for test-and-repair programs. The law firm BHS also notes EPA's December 12, 1995, guidance on the NHSDA, which suggested that good faith estimates could be based upon innovative program designs where no data, per se, exists but where the State can make a reasonable argument that the level of enforcement and oversight, and the innovative features included in the program to prevent or eliminate improper testing will together achieve the claimed reductions. In its guidance, EPA stated examples of such innovative designs and BHS commented that the State's program did not include any of these examples.

Response to Comment

The EPA agrees that the NHSDA does not grant presumptive equivalency between test-only and test-and-repair programs, but rather it calls upon the State to make a ''good faith estimate'' which has a basis in fact of its program's effectiveness. The EPA is required by the NHSDA to allow for such an estimate on an interim basis. The NHSDA further specifies that EPA shall grant final approval to a program if data collected from the operation of the program demonstrates the credits are appropriate and the revision is otherwise in compliance with the Act. The EPA agrees that a claim of 100 percent credit for the test-and-repair network may be difficult to justify in the State's program demonstration for final full approval. However, EPA believes it is appropriate under the NHSDA to grant interim approval to the credit based on the State's good faith estimate until the data collected from the program is analyzed by the State and EPA.

In the State's response to comment from its public comment period on this issue, the State cited the electronic data link, the use of remote sensing technology, the test-on-resale component of the program, recognized repair technicians, and the testing of heavy duty vehicles as measures to be implemented which would help to improve the effectiveness of the program. The EPA believes that of these items the electronic data link, use of remote sensing technology, and the recognized repair technician program offer the greatest potential of substantially improving the program's effectiveness with regard to network design. The EPA believes that credit obtained from these enhanced features provides a basis in fact for the interim credit claimed under the NHSDA. Thus, EPA will allow for the State's estimates to be used on an interim basis. Permanent SIP approval of the credit claim however, will be subject to the data collected during the program demonstration.

Comment—Contingency Measures

The EDF commented that contingency measures should be identified and immediately implemented in the likely event that the TNRCC will not achieve the emission reductions claimed.

Response to Comment

The 15% Plan contains contingency measures equal to at least 3 percent reductions for each area required to submit a 15% SIP. If the State's reduction estimates are not achievable by Texas, the State would have to implement contingency measures in the event that a shortfall exists in the State's 15% Plan. In addition, if the State's I/M plan achieves less than the reductions required to meet the appropriate I/M performance standards corrections to the State's I/M plan would be required by EPA. Neither the Act nor the NHSDA require contingency measures to support interim approval of an I/M program. If credit is not demonstrated through the program evaluation, additional control strategies or I/M program enhancements have to be adopted to support final full approval.

Comment—Compliance Rate of Texas I/M Program

The EDF commented that a 96 percent compliance rate will be difficult to achieve. The EDF cites an estimate by Texas Department of Transportation that as many as 15 percent of the vehicles may fail to meet registration requirements and thus effectiveness of the Texas program is overstated.

Response to Comment

The EPA agrees that a 96 percent compliance rate may overstate the State's actual I/M effectiveness. However, the State's estimates on vehicles not meeting registration requirements is given in the SIP as between 2 and 15 percent. Also, the State's SIP includes provisions to help improve the current compliance rate such as the real time data link of all test stations, remote sensing to catch vehicles with high emissions, and computer matching of testing and registration data bases to supplement an improved sticker enforcement program. These enhancements hold the potential to make the State's enforcement mechanism comparable to traditional registration denial. The EPA assumes that a well-run registration denial based program will achieve a compliance rate of 96 percent based upon prior experience with such programs. For SIP purposes, states are required to commit to a compliance rate which will be used in their modeling. States must also commit to corrective actions should the actual compliance rate fall below the modeled level.

Comment—Adequate Oversight of Texas I/M Program

The law firm BHS commented that the State's SIP does not provide adequate oversight to protect against improper testing which is cited as inherent in decentralized I/M programs. The law firm BHS also argues that Texas's plan relies on an unproven data link and an inadequate number of auditing staff. The law firm BHS also notes that the State oversight test fee is only $1.75 per inspection, while in California $7.00 is needed per inspection. Thus, a logical conclusion is that Texas is underfunding its program.

Response to Comment

The EPA rules do not specify the exact oversight test fee or number of employees each State is required to use in support of its I/M program. Rather each State is required to assess and use sufficient resources needed to support the program consistent with the SIP, and identify the dedicated resources for I/M program implementation. The EPA believes the State is in a better position to assess its specific resource needs and fulfill EPA's general resource requirements. The EPA believes that the oversight resources cited in the Texas SIP are sufficient for the purposes of interim approval. As the Texas program operates and undergoes evaluation, EPA will be better able to assess the adequacy of the State resources. For example, the State commits in the SIP to meet the numbers of EPA required covert and overt audits and reporting requirements. If the State is unable to meet the EPA requirements contained in the SIP, EPA could require the State to correct the deficiency.

III. Interim Final Rulemaking Action

The EPA is conditionally approving the Texas I/M program as a revision to the Texas SIP, based upon certain conditions. This conditional approval satisfies the requirements of section 182 and the NHSDA for low enhanced and basic I/M programs. For the purposes of strengthening the SIP, EPA is also giving a limited approval under section 110 if the State fulfills all of its commitments within 12 months of this final rulemaking. This limited approval under section 110 will not expire at the end of the 18 month interim period. Thus, although an approved I/M SIP satisfying the requirements of section 182 may no longer be in place after the termination of the interim SIP approval period provided by the NHSDA, this program will remain a part of the Federally enforceable SIP. Should the State fail to fulfill the conditions by the deadlines contained in each condition, the latest of which is no more than one year after the date of EPA's final interim approval action, this conditional interim approval will convert to a disapproval pursuant to the Act section 110(k)(4). In that event, EPA would issue a letter to notify the State of Texas that the conditions had not been met and that the approval had converted to a disapproval.

IV. Conditional Interim Approval

Under the terms of EPA's October 3, 1996, proposed interim conditional approval rulemaking, the State of Texas was required to remedy three major deficiencies with the I/M program SIP (as specified in the NPR), within twelve months of final interim approval. The State's commitment to support the additional needed legislation was to be carried out in Texas's 75th Legislative Session. The EPA will be evaluating the I/M legislation that was passed during this session. As discussed in detail later in this notice, this approval is being granted on an interim basis, for an 18-month period under authority of the NHDSA.

The major conditions for approvability of the SIP are as follows:

Texas must obtain all of the legal authority needed to implement its program. The specific authority needed was outlined in EPA's proposed approval action (61 FR 51651) and was identified in a February 27, 1996, Governor's Executive Order that was submitted as part of the Texas I/M SIP. The legal authority identified in the Executive Order includes: (1) The denial of reregistration of vehicles that have not complied with I/M program requirements, (2) the establishment of a class C misdemeanor penalty for operating a grossly polluting vehicle in a nonattainment area (i.e., enforcement of remote sensing), and (3) the requirement for an inspection within 60 days of resale and prior to transfer of title to nonfamily member consumers in Dallas, Tarrant, or Harris counties.

The EPA is aware that the State of Texas has expressed plans to remove the ''test-on-resale'' provisions from their I/M plan. In addition, EPA has recently received a SIP submission to remove the ''test-on-resale'' provision from the SIP. The EPA will be evaluating the submission for completeness and approvability. Regarding the ''test-on-resale'' provisions of the State plan, EPA included a condition for obtaining legal authority to implement this provision based on the requirement in the NHSDA's that states have all of the statutory authority needed for program implementation. While the ''test-on-resale'' provision was not required by the Act or the Federal I/M rule, the provision was intended to improve program effectiveness and consumer protection. Texas has stated that certain program changes have made the program unnecessary and that the State is therefore taking no credit for this particular element. The EPA agrees with the State's assessment of the creditable impact of such a component. While the EPA still believes that the ''test-on-resale'' authority may prove to be beneficial for consumer protection and program effectiveness should loaded mode testing develop as the program proceeds, EPA will not require the State to obtain authority for and implement the ''test-on-resale'' provisions of the current State plan if the State submits a SIP revision.

V. Further Requirements for Permanent I/M SIP Approval

This approval is being granted on an interim basis for a period of 18 months, under the authority of section 348 of the National Highway Systems Designation Act of 1995. At the end of this period, the approval will lapse. At that time, EPA must take final rulemaking action upon Texas' SIP, under the authority of section 110 of the Act. Final approval of Texas' plan will be granted based upon the following criteria:

(1) Texas has complied with all the major conditions of its commitment to EPA,

(2) The EPA's review of Texas' program evaluation confirms that the appropriate amount of program credit was claimed by the State of Texas and achieved with the interim program,

(3) Final Texas Department of Public Safety program regulations are submitted to EPA, and

(4) The Texas I/M program meets all of the requirements of EPA's I/M rule, including those *de minimus* deficiencies identified in the October 3, 1996, proposal (61 FR 51651) as minor for purposes of interim approval.

(5) The remote sensing program proves to be effective in identifying and obtaining repairs on vehicles with high levels of emissions, or the Texas I/M core program area is expanded to include the entire urbanized area for both Dallas/Fort Worth and Houston.

VI. Administrative Requirements

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

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Analysis

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

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

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, 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 private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 1997.

Filing a petition for reconsideration by the Administrator of this interim final rule to conditionally approve the Texas I/M SIP, on an interim basis, does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 1, 1997.

Jerry Clifford,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2310 is added to read as follows:

§ 52.2310 Conditional approval.

The State of Texas' March 14, 1996, submittal for an motor vehicle inspection and maintenance (I/M) program, is conditionally approved based on certain contingencies, for an interim period to last eighteen months. If the State of Texas fails to fully start its program by November 15, 1997, at the latest, this conditional approval will convert to a disapproval after EPA sends a letter to the State. If the State of Texas fails to satisfy the following conditions within 12 months of August 11, 1997, this conditional approval will automatically convert to a disapproval as explained under section 110(k) of the Clean Air Act. The conditions for approvability are as follows:

Texas must obtain all of the legal authority needed to implement its program. The specific authority needed was outlined in EPA's proposed approval action and was identified in a February 27, 1996, Governor's Executive Order that was submitted as part of the Texas I/M SIP. The legal authority identified in the Executive Order includes: The denial of reregistration of vehicles that have not complied with I/M program requirements; the establishment of a class C misdemeanor penalty for operating a gross polluting vehicle in a nonattainment area; and the requirement for an inspection within 60 days of resale and prior to transfer of title to nonfamily member consumers in Dallas, Tarrant, or Harris counties (or regarding the third major condition, the removal of the test-on-resale program element from the SIP). Texas has committed to support additional needed legislation in Texas's 75th Legislative Session. Should Texas fail to fulfill these conditions by the end of the 75th Legislative Session, this approval will convert to a disapproval. Texas must also fully start its I/M program by November 15, 1997, or this action will covert to a disapproval.

[FR Doc. 97–18245 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–5; RM–8954]

Radio Broadcasting Services; Thorndale, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jackson Lake Broadcasting Company, allots Channel 257A to Thorndale, Texas, as the community's first local aural transmission service. Channel 257A can be allotted to Thorndale in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.8 kilometers (8.6 miles) south in order to avoid a short-spacing conflict with the licensed operation of Station WACO(FM), Channel 260C, Waco, Texas. The coordinates for Channel 257A at Thorndale are 30–29–29 NL and 97–11–21 WL. With this action, this proceeding is terminated.

DATES: Effective August 11, 1997. The window period for filing applications will open on August 11, 1997, and close on September 11, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No.97–5, adopted June 18, 1997, and released June 27, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Thorndale, Channel 257A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–18293 Filed 7–10–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268; DA 97–1377]

Advanced Television Systems and Their Impact on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: By this Order, we are clarifying our action in the Sixth Report and Order in this proceeding, which dealt with advanced television systems and their impact on the existing television service, with regard to OET Bulletin No. 69, and are providing an additional 45-day period of time for parties requesting reconsideration of individual digital television (DTV) allotments included in the DTV Table of Allotments to submit supplemental information relating to their petitions. We are also releasing OET Bulletin No. 69 concurrent with this Order. This action will resolve concern that has arisen with regard to OET Bulletin No. 69 and will allow parties filing requests for reconsideration of individual DTV channel allotments to finalize their requests regarding changes to the DTV Table.

DATES: Supplemental filings relating to petitions for reconsideration of the Sixth Report and Order that request changes to DTV allotments are due August 22, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–418–2470) or Alan Stillwell (202–418–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION:

1. By this Order, we are clarifying our action in the Sixth Report and Order, 62 FR 26684, May 14, 1997, in MM Docket No. 87–268, adopted April 3, 1997, FCC 97–115 (released April 21, 1997), with regard to OET Bulletin No. 69, and are providing an additional period of time for parties requesting reconsideration of individual allotments included in the DTV Table of Allotments to submit supplemental information relating to their petitions. We are also releasing OET Bulletin No. 69 concurrent with this Order.

2. In the Sixth Report and Order, the Commission set forth a Table of Allotments for digital TV (DTV) service, rules for initial DTV allotments, procedures for assigning DTV allotments to eligible broadcasters, and plans for spectrum recovery. A number of parties have submitted petitions for reconsideration expressing concern that OET Bulletin No. 69, which is referenced in the new DTV allotment rules as a source of guidance for evaluating DTV coverage areas, is not available and that they therefore have not been able to fully evaluate the DTV channels that were paired with existing television stations. These parties generally argue that without the technical guidance to be provided in OET Bulletin No. 69, they are unable to fully evaluate either the acceptability of the DTV allotments provided for their existing stations or the suitability of alternative channels. These parties also generally request that we provide additional time after the issuance of OET Bulletin No. 69 to evaluate their allotments and then supplement their petitions with additional information relating to specific changes to the DTV Table.

3. OET Bulletin No. 69 provides guidance on the implementation and use of Longley-Rice methodology for evaluating DTV and NTSC coverage and interference. We wish to clarify that the technical guidance to be provided in OET Bulletin No. 69 is generally intended to be used for the purposes of preparing applications requesting facilities that do not conform to the DTV Table, petitions to amend the DTV Table, applications for new DTV stations, changes in authorized DTV stations, and the impact of low power TV and TV translator stations on DTV service areas. In short, the purpose of OET Bulletin No. 69 is to serve as a guide for parties preparing submissions for possible actions that we might take subsequent to the development of the initial DTV Table.

4. We disagree with those parties that assert that OET Bulletin No. 69 is essential for evaluation of DTV allotments. We note that the terrain dependent Longley-Rice propagation model and the methodologies used in evaluating DTV coverage and interference in the Sixth Report and Order are well known to the broadcast industry. These methodologies were in general developed by the broadcast industry through our Advisory Committee on Advanced Television Service. As early as 1992, they were used by the Advisory Committee in evaluating the various DTV technical systems and were also used in evaluating the ATSC DTV system, a modified version of which was selected by the Commission as the DTV standard. In addition, these same methodologies were used by the Association of Maximum Service Television (MSTV), the Broadcast Caucus and many engineering consulting firms in evaluating the draft DTV Table of Allotments that was included in the 1996 Sixth Further Notice of Proposed Rule Making in this proceeding, 11 FCC Rcd 10968 (1996), and in evaluating the alternative DTV Table submitted by the broadcast industry.

5. Nonetheless, in view of the concern that has occurred with regard to OET Bulletin No. 69, we believe it is appropriate to provide parties that submitted petitions for reconsideration requesting modification of their DTV allotments a brief period of additional time to file supplemental presentations relating to those requests. We believe that a 45-day period will allow those parties sufficient time to supplement

their petitions without delaying our prompt action on the petitions for reconsideration of the Sixth Report and Order.

6. We are issuing OET Bulletin No. 69 concurrent with this Order. Interested parties are advised that this document may be revised based on any actions that the Commission may take on reconsideration.

7. Accordingly, it is ordered that, pursuant to Sections 4(i) and 303(r) or the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 0.31, 0.241, 1.3, and 1.429 of the Commission's rules, 47 CFR 0.31, 0.241, 1.3, 1.429, parties that submitted petitions for reconsideration requesting modification of their DTV allotments may submit supplemental filings relating to those requests on or before August 22, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–17888 Filed 7–10–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 235, 243, and 252

[DFARS Case 97–D302]

Defense Federal Acquisition Regulation Supplement; Certification of Requests for Equitable Adjustment

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement 10 U.S.C. 2410(a), which requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete.

DATES: Effective date: July 11, 1997. Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 9, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 97–D302 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds a clause at DFARS 252.243–7002, Certification of Requests for Equitable Adjustment, to implement 10 U.S.C. 2410(a), as amended by Section 2301 of the Federal Acquisition Streamlining Act of 1994 (FASA) Pub. L. 103–355).

A similar clause previously existed at DFARS 252.233–7000, Certification of Claims and Requests for Adjustment or Relief. The previous clause implemented 10 U.S.C. 2410e, and required contractor certification of requests for equitable adjustment as well as certification of claims and requests for relief under Public Law 85–804. Section 2301 of FASA repealed 10 U.S.C. 2410e, and the clause at 252.233–7000 was removed from the DFARS on January 17, 1997 (62 FR 2612).

B. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule amends the DFARS to fully implement 10 U.S.C. 2410(a), as amended by Section 2301 of FASA. 10 U.S.C. 2410(a) provides that a request for equitable adjustment to contract terms or requests for relief under Pub. L. 85–804, that exceeds the simplified acquisition threshold, may not be paid unless the contractor certifies that the request is made in good faith and that the supporting data are accurate and complete. Immediate publication of an interim rule is necessary to implement the requirements of 10 U.S.C. 2410(a) pertaining to requests for equitable adjustment. Requirements pertaining to requests for relief under Public Law 85–804 have been implemented in the Federal Acquisition Regulation (FAR). However, the requirements pertaining to requests for equitable adjustment apply only to Department of Defense contracts and are not implemented in the FAR.

C. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it is estimated that approximately 88 percent of the contractors submitting requests for equitable adjustment between $100,000 and $500,000 (above the simplified acquisition threshold and below the cost or pricing data threshold) may be small businesses. Therefore, an Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows: The objective of this rule is to implement 10 U.S.C. 2410(a), which requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The primary impact of the rule relates to requests in the range of $100,000 to $500,000, because requests in excess of $500,000 generally require submission of cost or pricing data and certification thereof. Historically, many of the firms requesting equitable adjustment in amounts of $100,000 to $500,000 have been construction contractors. It is estimated that the rule will affect approximately 330 small entities annually. Accounting skills will be necessary to provide the cost data to support the certification. There are no Federal rules that duplicate, overlap, or conflict with the rule. The rule minimizes the impact on small entities, because it only applies to requests exceeding the simplified acquisition threshold, and because the certification has been limited to that specifically required by 10 U.S.C. 2410(a).

A copy of the analysis may be obtained from the address specified herein. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D302 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) applies because the interim rule contains new information collection requirements. Under the emergency processing provisions of 44 U.S.C. 3507(j) as implemented at 5 CFR 1320.13, the Office of Management and Budget (OMB) has granted emergency approval of the information collection requirement through August 31, 1997, under OMB Clearance Number 0704–0397. The OMB approval required under 44 U.S.C. 3507(a)(2) will be obtained prior to publication of the final rule.

1. *Comments:* Comments are invited. Particular comments are solicited on:

a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. The accuracy of the agency's estimate of the burden of the information collection, including the validity of the methodology and assumption used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or forms of information technology.

2. *Title, Associated Form, and OMB Number:* Contract Modifications—Defense Federal Acquisition Regulation Supplement Part 243 and Associated Clauses at 252.243; OMB Number 0704–0397.

3. *Needs and Uses:* The information collection required by the clause at 252.243–7002, Certification of Requests for Equitable Adjustment, is required by 10 U.S.C. 2410(a). The information is used by DoD contracting officers and auditors to evaluate requests for equitable adjustment.

4. *Affected Public:* Businesses or other for profit or not-for-profit entities.

5. *Annual Burden Hours:* 3,850.

6. *Number of Respondents:* 575.

7. *Responses Per Respondent:* 1.

8. *Number of Responses:* 575.

9. *Average Burden Per Response:* 6.7 hours.

10. *Frequency:* On occasion.

11. *Supplementary Information:* The clause at DFARS 252.243–7002 requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete, and to provide full disclosure of all relevant facts in support of the requested adjustment.

List of Subjects in 48 CFR Parts 235, 243, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 235, 243, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 235, 243, and 252 continues to read as follows:

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

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.7006 [Amended]

2. Section 235.7006 is amended in paragraph (d), in the Exhibit-Research and Development Streamlined Contract Format, by adding at the end of Part II, Section I, the entry ''(I.211) 252.243–7002 Certification of Requests for Equitable Adjustment''.

PART 243—CONTRACT MODIFICATIONS

3. Section 243.204–70 is added to read as follows:

243.204–70 Certification of requests for equitable adjustment.

(a) A request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold may not be paid unless the contract certifies the request in accordance with the clause at 252.243–7002.

(b) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met (see example in FAR 15.804–2(a)(1)(iii)).

4. Section 243.205–72 is added to read as follows:

243.205–72 Certification of requests for equitable adjustment.

Use the clause at 252.243–7002, Certification of Requests for Equitable Adjustment, in solicitations and contracts estimated to exceed the simplified acquisition threshold.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

5. Section 252.212–7001 is amended by revising the clause date to read ''(JUL 1997)''; and in paragraph (b) by adding, in numerical order, the entry ''____ 252.243–7002 Certification of Requests for Equitable Adjustment (10 U.S.C. 2410)''.

6. Section 252.243–7002 is added to read as follows:

252.243–702 Certification of Requests for Equitable Adjustment.

As prescribed in 243.205–72, use the following clause:

Certification of Requests for Equitable Adjustment (July 1997)

(a) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of may knowledge and belief.

_____

(Official's Name)

_____

(Title)

(b) The certification in paragraph (a) of this clause requires full disclosure of all relevant facts, including—

(1) Cost or pricing data if required in accordance with FAR 15.804–2; and

(2) Actual cost data and data to support any estimated costs, even if cost of pricing data are not required.

(c) The certification requirement in paragraph (a) of this clause does not apply to—(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustments under an incentive provision of the contract.

(d) The amount requested shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(End of clause)

[FR Doc. 97–18218 Filed 7–10–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 97–D023]

Defense Federal Acquisition Regulation Supplement; Designation of Hong Kong

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative.

EFFECTIVE DATE: July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131. Telefax (703) 602–0350. Please cite DFARS Case 97–D023.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the clause at DFARS 252.225–7007 to add Hong Kong to the list of countries designated under the Trade Agreements Act of 1979, as directed by the United States Trade Representative. The accession of Hong Kong to the World Trade Organization Government Procurement Agreement became effective on June 19, 1997.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D023 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply. The final rule does not impose any reporting or recordkeeping requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 252 is amended as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

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

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7007 [Amended]

2. Section 252.225–7007 is amended by revising the clause date to read ''(JUL 1997)''; and in paragraph (a)(4) by adding, in alphabetical order, the name ''Hong Kong'' to the list of countries.

[FR Doc. 97–18220 Filed 7–10–97; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1514, 1515, and 1552

[FRL–5850–3]

Acquisition Regulation: Administrative Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to parallel corresponding Federal Acquisition Regulation (FAR) sections, and to make other administrative changes.

DATES: Effective July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW, Washington, D.C. 20460. Telephone: (202) 260–6204.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the EPAAR to parallel corresponding FAR sections, and make other administrative changes.

B. Executive Order 12866

The final rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

D. Regulatory Flexibility Act

The EPA certifies that this final rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the final rule impose no reporting, record-keeping, or any compliance costs.

E. Unfunded Mandates

This final rule will not impose unfunded mandates on state or local entities, or others.

List of Subjects in 48 CFR Parts 1514, 1515, and 1552

Government procurement.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citations for Parts 1514, 1515, and 1552 continue to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1514.205 is amended by adding text to read as follows:

1514.205 Solicitation mailing lists.

When a solicitation and all amendments are posted on the Internet with a synopsis providing information as to how to access the solicitation and all amendments, the CO will need to maintain a mailing list of only those individuals requesting paper copies from the contract service center/branch. When possible, the CO should also build an electronic ''mailing list'' of companies downloading the solicitation from the Internet.

1515.604 [Amended]

3. Section 1515.604 is amended by revising in paragraph (a) the phrase ''Source Evaluation Board, the Technical Evaluation Panel (TEP), and the Business Evaluation Panel (BEP);'' to read Source Evaluation Board and the Technical Evaluation Panel (TEP);'' and removing paragraph (d).

4. Section 1515.612 is amended to remove the term ''and BEP'' in paragraph (a), remove paragraphs (a)(1)(vi) and (vii), revise paragraphs (a)(2) introductory text and (a)(2)(iii), add (a)(3), and revise paragraph (c):.

1515.612 Formal source selection.

(a) * * *

(2) Acquisitions having a potential value exceeding $5,000,000 to $25,000,000:

* * * * *

(iii) TEP chairpersons and memberships shall be constituted as in paragraph (a)(1) (iv) and (v) of this section.

(3) Acquisitions having a potential value of $5,000,000 or less:

(i) SSO—The CO.

(ii) SEB—An SEB may be established only when requested by the program office or determined necessary by the SSO. The SSO shall determine the organizational levels of the individuals to serve on the SEB.

(iii.) TEP—chairpersons and memberships shall be constituted as in paragraph (a)(1) (iv) and (v) of this section. At the request of the program office, it may only be the PO.

* * * * *

(c) *Source Selection Plan*. The CO must describe the scoring system to be

used in evaluating the proposals if the numerical scoring system described at 1515.608(a)(1) is not used.

5. Section 1552.217–73, Option for Increased Quantity—Cost Type Contract is amended by designating in the clause the existing two paragraphs as (a) and (b), and adding a paragraph (c) at the end of the clause reading as follows:

1552.217–73 Option for Increased Quantity—Cost Type Contract.

* * * * *

Option For Increased Quantity—Cost Type Contract (APR 1984)

* * * * *

(c) If this contract contains ''not to exceed amounts'' for elements of other direct costs (ODCs), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2

6. Section 1552.217–74, Option For Increased Quantity—Cost-Plus-Award Fee Contract is amended by designating in the clause the existing two paragraphs as (a) and (b), and adding a paragraph (c) at the end of the clause reading as follows:

1552.217–74 Option for Increased Quantity—Cost-Plus Award Fee Contract.

* * * * *

Option For Increased Quantity—Cost-Plus-Award Fee Contract (APR 1984)

* * * * *

(c) If this contract contains ''not to exceed amounts'' for elements of other direct costs (ODCs), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2

Dated: June 17, 1997.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 97–18249 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket HM–224A; Notice No. 97–5]

RIN 2137–AD02

Hazardous Materials: Shipping Description and Packaging of Oxygen Generators; Notice of Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: On July 23, 1997, RSPA will meet with representatives of the Boeing Company and other interested parties to discuss requirements concerning the transportation of chemical oxygen generators, including the shipping description and packaging of these generators, as issued by RSPA in final rules on June 5 and 27, 1997. Any interested party is welcome to attend this meeting.

DATES: *Public Meeting.* The public meeting will be held on July 23, 1997 beginning at 12:30 p.m.

ADDRESSES: *Public Meeting.* The public meeting will be held in meeting facilities of the Boeing Company in Renton, Washington, at Longacres Park, in the T.A. Wilson Conference Room in Building 25–01.

FOR FURTHER INFORMATION CONTACT: Mr. Nels Johansen of the Boeing Company concerning more particular details in regard to the July 23, 1997 meeting: Telephone 206–662–9707, E-mail Nels.Johansen@PSS.Boeing.com. Questions concerning the requirements for transporting chemical oxygen generators may be addressed to Dr. Richard Tarr, Office of Hazardous Materials Exemptions and Approvals, RSPA, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (202) 366–4496, E-mail richard.tarr@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: On June 5, 1997, RSPA published a final rule in the **Federal Register** (62 FR 30767) which amended the requirements in the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, concerning the transportation of chemical oxygen generators. On June 27, 1997, RSPA published a subsequent final rule correction (62 FR 34667) which made editorial corrections and clarifications in addition to delaying the mandatory compliance date.

Effective August 7, 1997, the shipping description, ''Oxygen generator, chemical, 5.1, UN 3356, II,'' must be used. After September 30, 1997, a chemical oxygen generator that is shipped with its means of initiation attached must incorporate at least two positive means of preventing unintentional activation of the generator, and must be classed and approved by RSPA's Associate Administrator for Hazardous Materials Safety. Each person who offers a chemical oxygen generator for transportation after September 30, 1997, shall: (1) Ensure that it is offered in conformance with conditions of the approval; (2) maintain a copy of the approval at each facility where the chemical oxygen generator is packaged; and (3) mark the approval number on the outside of the package.

A chemical oxygen generator may not be transported as cargo on a passenger-carrying aircraft. When transported by cargo-only aircraft, a chemical oxygen generator must conform to the provisions of the approval issued by RSPA's Associate Administrator for Hazardous Materials Safety and must be contained in a packaging prepared and originally offered for transportation by the approval holder.

RSPA has received numerous questions on these requirements, including procedures for obtaining approvals, since these requirements were adopted in the final rules issued on June 5 and 27, 1997. RSPA has accepted an invitation to meet with representatives of the Boeing Company to discuss these requirements on July 23, 1997, in Renton, Washington. Any interested party may participate in this meeting. It is suggested that interested parties contact Mr. Nels Johansen for more specific details in regard to the meeting location.

Issued in Washington, DC on July 8, 1997, under authority delegated in 49 CFR, part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–18257 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 355, 382, 383, 384, 389, 391, and 392

RIN 2125–AE16

Commercial Driver's License Program and Controlled Substances and Alcohol Use and Testing; Conforming and Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: The FHWA is making technical amendments to its regulations regarding physical qualifications and examinations for interstate drivers, and controlled substance and alcohol use and testing for drivers under the commercial driver's license program. The amendments are necessary to correct minor errors and to remove obsolete regulations. This final rule will clarify the agency's statutory authorities and will provide current applicable controlled substances and alcohol testing regulations.

EFFECTIVE DATE: This rule is effective August 11, 1997.

FOR FURTHER INFORMATION CONTACT: *For information regarding program issues:* Mr. Mark Snider, Office of Motor Carrier Safety and Technology, (202) 366–6121, *For information regarding legal issues:* Ms. Grace Reidy, Office of the Chief Counsel—Motor Carrier Law Division, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: A final rule containing technical amendments was published in the **Federal Register** on March 8, 1996 (61 FR 9546) and made conforming amendments to 49 CFR parts 382, 383, 390, 391, and 392. The amendments were necessary to correct minor errors in the February 15, 1994, final rule (59 FR 7484), codify final dispositions of waivers of the commercial driver's license program, and make conforming metrication amendments.

The February 15, 1994, final rule established the dates when domestic motor carrier employers were to begin testing. Large domestic employers (each employer with fifty or more drivers on March 17, 1994) were required to implement the requirements of part 382 on January 1, 1995, and small domestic employers (each employer with less than fifty drivers on March 17, 1994) were required to implement the requirements of part 382 on January 1, 1996. Currently, all domestic employers are required to test for controlled substances and alcohol use as set forth in part 382. Technical amendments in this rulemaking proceeding will remove all requirements and references to part 391, subpart H, Controlled Substance Testing, from parts 355 through 391. The implementation of part 382 makes part 391, subpart H, obsolete.

The FHWA is also making conforming amendments to replace authority citations in various regulations in parts 355, 383, 384, 389, 391, and 392. The FHWA's authority has not changed. The authority citations, however, have been recodified. In certain instances, the regulations refer to various common names of a congressional act. The FHWA believes it is better to cite to the United States Code (U.S.C.) rather than the common name of the act or the public law number.

Rulemaking Analyses and Notices

Because this final rule simply makes minor edits to the FHWA's regulations to conform them to various U.S.C. citations and to remove obsolete regulations, the FHWA believes that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B). In addition, due to the technical nature of this final rule, the FHWA has determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures, as it is not anticipated that such action would result in the receipt of useful information. In this final rule, the FHWA is not exercising discretion in a way that could be meaningfully affected by public comment.

Because this final rule makes conforming amendments and removes obsolete regulations, the FHWA also believes that good cause exists to publish this rule less than 30 days before it is effective, as is ordinarily required under 5 U.S.C. 553(d). Accordingly, the FHWA is proceeding directly to a final rule which is effective on its date of publication.

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

The FHWA has determined that this action is neither a significant regulatory action under Executive Order 12866 or significant under the Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this action will not be substantial because this rule simply makes minor, technical and conforming changes to the Federal Motor Carrier Safety Regulations (FMCSRs) to properly cite the FHWA's statutory authority. A full regulatory evaluation, therefore, is not warranted.

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. This final rule will make technical and conforming amendments to various authority citations and remove an obsolete regulation. Accordingly, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The amendments made by this rule do not have a substantial direct effect on the States, nor on the relationship or distribution of power between the national government and the States because these changes do little to limit the policymaking discretion of the States. The only direct impact to the various States will be the requirement for the Governors of States to modify their certification statements for compliance with 49 CFR 384.305. This statement incorrectly cites the proper authority necessary for a Governor to certify substantial compliance with the FMCSRs.

To the extent these amendments require States to make minor modifications to their laws or regulations, a State must make these amendments to obtain Motor Carrier Safety Assistance Program benefits. The rule, therefore, is not intended to preempt any State law or State regulation. Moreover, the changes made by this rule would impose no additional cost or burden upon any State. Nor will the rule have a significant effect upon the ability of the States to discharge traditional State governmental functions. The FHWA, therefore, is not required to prepare a separate Federalism Assessment for this rule.

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 final rule does not contain new information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will 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 355, 382, 383, 384, 389, 391, and 392

Alcohol testing, Controlled substances testing, Drivers, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: June 27, 1997.

Jane F. Garvey,

Acting Administrator for the Federal Highway Administration.

In consideration of the foregoing, the FHWA is amending title 49, CFR, chapter III, parts 355, 382, 383, 384, 389, 391, and 392 as set forth below:

PART 355—[AMENDED]

1. The authority citation for 49 CFR part 355 is revised to read as follows:

Authority: 49 U.S.C. 504 and 31101 *et seq.*; 49 CFR 1.48.

2. In appendix A, under the headings ''Definitions'' and ''Driver Qualifications'' revise the paragraphs to read as follows:

Appendix A to Part 355—Guidelines for the Regulatory Review

* * * * *

Definitions

Definitions of terms must be consistent with those in the FMCSR. For example, a commercial motor vehicle is a vehicle operating in interstate commerce on a public highway, that:

(1) Has a gross vehicle weight rating (GVWR) of 4,537 or more kilograms;

(2) Is designed to transport more that 15 passengers (including the driver); or

(3) Is used to transport hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act, as amended (49 U.S.C. 5101 *et seq.*).

Driver Qualifications

Require a driver to be properly licensed to drive a commercial motor vehicle; require a driver to be in good physical health, at least 21 years of age, able to operate a vehicle safely, and maintain a good driving record; prohibit drug and alcohol abuse; require a motor carrier to maintain a driver qualification file for each driver; and require a motor carrier to ensure that a driver is medically qualified.

Note: The requirements for testing apply only to drivers of commercial motor vehicles as defined in 49 CFR part 383.

* * * * *

PART 382—[AMENDED]

3. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.48.

4. Section 382.115 is revised to read as follows:

§ 382.115 Starting date for testing programs.

(a) *All domestic employers.* Each domestic-domiciled employer that begins commercial motor vehicle operations will implement the requirements of this part on the date the employer begins such operations.

(b) *Large foreign employers.* Each foreign-domiciled employer with fifty or more drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1996.

(c) *Small foreign employers.* Each foreign-domiciled employer with less than fifty drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1997.

(d) *All foreign employers.* Each foreign-domiciled employer that begins commercial motor vehicle operations in the United States after December 17, 1995, but before July 1, 1997, must implement the requirements of this part beginning on July 1, 1997. A foreign employer that begins commercial motor vehicle operations in the United States on or after July 1, 1997, must implement the requirements of this part on the date the foreign employer begins such operations.

5–6. In § 382.401, paragraph (c)(6) is amended by adding the word ''and'' at the end of paragraph (c)(6)(iii); by removing ''; and'' and adding a period at the end of paragraph (c)(6)(iv); and by removing paragraph (c)(6)(v), and paragraph (e)(1) is revised to read as follows:

§ 382.401 Retention of records.

* * * * *

(e)(1) OMB control number. The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2125–0543.

* * * * *

PART 383—[AMENDED]

7. The authority citation for 49 CFR part 383 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

8. Section 383.5 is amended by revising the term ''controlled substance'' to read as follows:

§ 383.5 Definitions.

* * * * *

Controlled substance has the meaning such term has under 21 U.S.C. 802(6) and includes all substances listed on schedules I through V of 21 CFR 1308 (§§ 1308.11 through 1308.15), as they may be amended by the United States Department of Justice.

* * * * *

9. Section 383.51 is amended by revising paragraphs (b)(2)(ii) and (b)(2)(v); and by removing the reference ''(49 U.S.C. App. 1801–1813)'' and replacing it with ''(49 U.S.C. 5101 *et seq.*)'' in paragraphs (b)(3)(i), (b)(3)(ii), and (d)(2)(iv) in all places it appears. As revised, paragraphs (b)(2)(ii) and (b)(2)(v) read as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(b) * * *

(2) * * *

(ii) Driving a commercial motor vehicle while under the influence of a controlled substance as defined by § 383.5 of this part.

* * * * *

(v) The use of a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance as defined by § 383.5 of this part.

* * * * *

10. In § 383.111, paragraph (a) is amended by adding ''382,'' between the words ''49 CFR parts'' and ''391''.

PART 384—[AMENDED]

11. The authority citation for 49 CFR part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

12. Section 384.101 is revised to read as follows:

§ 384.101 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that the States comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)).

(b) *Scope.* This part:

(1) Includes the minimum standards for the actions States must take to be in substantial compliance with each of the 22 requirements of 49 U.S.C. 31311(a);

(2) Establishes procedures for determinations to be made of such compliance by States; and

(3) Specifies the consequences of State noncompliance.

13. Section 384.301 is revised to read as follows:

§ 384.301 Substantial compliance—general requirement.

To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

14. Section 384.305(b) is revised to read as follows:

§ 384.305 State certifications for Federal fiscal years after FY 1994.

* * * * *

(b) *Certification content.* The certification shall consist of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: ''I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) has continuously been in substantial compliance with all requirements of 49 U.S.C. 31311(a), as defined in 49 CFR 384.301, since [the first day of the current Federal fiscal year], and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof, which would affect such substantial compliance through [the last date of the current Federal fiscal year].''

(Approved by the Office of Management and Budget under control number 2125—0542)

15. Section 384.309 is revised to read as follows:

§ 384.309 Results of compliance determination.

(a) A State shall be determined not substantially in compliance with 49 U.S.C. 31311(a) for any fiscal year in which it:

(1) Fails to submit the certification as prescribed in this subpart; or

(2) Does not meet one or more of the standards of subpart B of this part, as established in a final determination by the FHWA under § 384.307(c).

(b) A State shall be in substantial compliance with 49 U.S.C. 31311(a) for any fiscal year in which neither of the eventualities in paragraph (a) of this section occurs.

PART 389—[AMENDED]

16. The authority citation for part 389 is revised to read as follows:

Authority: 49 U.S.C. 104, 501 *et seq.*, 31101 *et seq.*, 31138, 31139, 31301 *et seq.*, and 31502; 42 U.S.C. 4917; and 49 CFR 1.48.

17. Section 389.1 is revised to read as follows:

§ 389.1 Applicability.

This part prescribes rulemaking procedures that apply to the issuance, amendment and revocation of rules under an Act.

18. Section 389.3 is revised to read as follows:

§ 389.3 Definitions.

Act means statutes granting the Secretary authority to regulate motor carrier safety.

Administrator means the Federal Highway Administrator.

19. Section 389.11 is revised to read as follows:

§ 389.11 General.

Unless the Administrator, for good cause, finds a notice is impractical, unnecessary, or contrary to the public interest, and incorporates such a finding and a brief statement of the reasons for it in the rule, a notice of proposed rulemaking must be issued, and interested persons are invited to participate in the rulemaking proceedings involving rules under an Act.

PART 391—[AMENDED]

20. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

21. Section 391.15 is amended by revising paragraphs (c)(2) (ii) and (iii) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) * * *

(2) * * *

(ii) Driving a commercial motor vehicle under the influence of a 21 CFR 1308.11 *Schedule I* identified controlled substance, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug;

(iii) Transportation, possession, or unlawful use of a 21 CFR 1308.11 *Schedule I* identified controlled substance, amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs while the driver is on duty, as the term on-duty time is defined in § 395.2 of this subchapter;

* * * * *

22–23. Section 391.41 is amended by revising paragraph (b)(12) and by removing paragraph (c) to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(12)(i) Does not use a controlled substance identified in 21 CFR 1308.11 *Schedule I*, an amphetamine, a narcotic, or any other habit-forming drug.

(ii) *Exception.* A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who:

(A) Is familiar with the driver's medical history and assigned duties; and

(B) Has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

* * * * *

§ 391.43 [Amended]

24. Section 391.43 is amended as follows:

A. In paragraph (a), remove paragraph (a)(2) and redesignate ''(a)(1)'' as ''(a)'';

B. Under the heading ''Instructions for Performing and Recording Physical Examinations'' remove the entry for ''Controlled Substances Testing'', but leave unchanged the undesignated paragraph reading ''The medical examiner must date and sign his/her findings upon completion of the examination.''; and

C. Under the undesignated center heading ''Physical Examination'' remove the following entry on controlled substances testing:

''Controlled Substances Testing

Controlled substances test performed—

In accordance with subpart H.

Not in accordance with subpart H.

Controlled substances test NOT performed.''

Subpart H—[Removed]

25. Subpart H of part 391, consisting of §§ 391.81 through 391.125, is removed.

PART 392—[AMENDED]

26. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 31136 and 31502; and 49 CFR 1.48.

27. Section 392.4 is amended by revising paragraph (a)(1) to read as follows:

§ 392.4 Drugs and other substances.

* * * * *

(1) Any 21 CFR 1308.11 *Schedule I* substance;

* * * * *

Appendices D and E—[Removed and Reserved]

28. Appendices D and E to subchapter B of chapter III are removed and reserved.

[FR Doc. 97–18260 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. 96–115; Notice 2]

Passenger Automobile Average Fuel Economy Standards; Final Decision To Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final decision.

SUMMARY: This final decision responds to a petition filed by Lotus Cars Ltd. (Lotus) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years (MYs) 1994, 1995, 1997 and 1998 and that lower alternative standards be established. In this document, NHTSA establishes an alternative standard for Lotus of 24.2 mpg for MY 1994 and 23.3 mpg for MY 1995 and denies the requests for MYs 1997 and 1998.

DATES: *Effective date:* August 25, 1997. This exemption and the alternative standards apply to Lotus for MYs 1994 and 1995.

Petitions for reconsideration: Petitions for reconsideration must be received no later than August 25, 1997.

ADDRESSES: Petitions for reconsideration of this rule should refer to the docket number and notice number cited in the heading of this notice and must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Spinner's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. section 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility

(2) Economic practicability

(3) The effect of other Federal motor vehicle standards on fuel economy, and

(4) The need of the United States to conserve energy.

The statute permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Proposed Decision and Public Comment

This final decision was preceded by a proposal announcing the agency's tentative conclusion that Lotus should be exempted from the generally applicable MYs 1994, 1995, 1997 and 1998 passenger automobile average fuel economy standard of 27.5 mpg, and that alternative standards of 24.2 mpg for MY 1994, 23.3 mpg for MY 1995, and 21.2 mpg for MYs 1997 and 1998 be established for Lotus. (61 FR 67518; December 23, 1996). The agency received one comment from a Mr. Lance Tunick, a consultant acting on behalf of Lotus, supporting the establishment of an alternative standard for Lotus for MYs 1994, 1995, 1997 and 1998.

NHTSA Final Determination

With the exception of establishing an alternative standard for the 1997 and 1998 model years, the agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on these conclusions, the maximum feasible average fuel economy level for Lotus is 24.2 mpg for MY 1994 and 23.3 mpg for MY 1995. NHTSA has determined that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision and that the national effort to conserve energy will not be affected by granting this exemption. NHTSA hereby exempts Lotus from the generally applicable passenger automobile average fuel economy standard for the 1994 and 1995 model years and establishes an alternative standard of 24.2 mpg for MY 1994 and 23.3 mpg for MY 1995 for Lotus.

In regard to the 1997 and 1998 model years, NHTSA notes that in October 1996, Perusahaan Otomobil Nasional Berhad (Proton) acquired a controlling interest in Lotus Cars Ltd. Proton, which is a manufacturer of automobiles operating primarily in Malaysia, has an annual worldwide production of more than 10,000 vehicles.

Section 32902(d) provides that an alternative standard may only be established for a manufacturer that manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year 2 years before the model year for which the application is made. The section further provides that an exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year.

On September 21, 1990, the agency published a notice (55 FR 38822) containing NHTSA's interpretation that the definition of ''manufacture,'' derived from section 32902(d)(1)'s phrase ''manufactured (whether in the United States or not),'' applied for purposes of determining eligibility for a low volume exemption under that section. In considering whether an entity is eligible for a low volume exemption, the agency

indicated that it must count all of the cars manufactured by that entity worldwide, and not merely those imported into the U.S.

Importers who are controlled by larger ''parent'' manufacturers have, by virtue of the relationship with the ''parent,'' access to technological and material resources that provide them with the ability to manufacture more fuel efficient vehicles. The fact that the ''parent'' may choose not to import and market cars in the United States does not have any bearing on the availability of these resources.

In regard to Lotus' application for an alternative standard for MY 1997, the agency notes that Lotus submitted materials indicating that its 1997 model year began before Lotus was acquired by Proton. Lotus contends that because its 1997 model year began before it was acquired by Proton, that Proton's October 1996 acquisition of Lotus should not preclude the availability of an alternative standard for MY 1997.

The agency disagrees with this view. Section 32902(d) states that ''An exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year.'' This sentence follows the section's first sentence, which discusses general eligibility for exemptions. Read together, the two sentences make it clear that manufacturers are only eligible for exemption if they manufacture fewer than 10,000 automobiles in the model year 2 years before the model year in question and that if an exemption is granted, that exemption applies only if the manufacturer manufacturers (whether in the United States or not) fewer than 10,000 automobiles in that model year.

Proton acquired Lotus during the 1997 model year. The combined worldwide production of Lotus and Proton will exceed 10,000 vehicles in MY 1997 and Lotus would be ineligible for an exemption even in the event that one had previously been granted. As the agency has not yet granted such an exemption, it will not do so now. Similarly, as Lotus and its parent, Proton, will manufacture more than 10,000 vehicles annually in the 1998 model year, the agency is denying Lotus' request for that year.

Regulatory Impact Analyses

NHTSA has analyzed this decision and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the decision would not establish a ''rule,'' which is defined in the Executive Order as ''an agency statement of general applicability and future effect.'' The decision is not generally applicable, since it would apply only to Lotus Cars Ltd., as discussed in this notice. Under DOT regulatory policies and procedures, the decision is not a ''significant regulation.'' If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this decision is neither major nor significant. The principal impact of this decision is that the exempted company will not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this decision sets an alternative standard at the level determined to be the maximum feasible levels for Lotus for MYs 1994 and 1995, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on ''The Need of the United States to Conserve Energy'' that because of the small size of the Lotus fleet, that incremental usage of gasoline by Lotus Cars Ltd.'s customers would not affect the United States's need to conserve gasoline. There are not any impacts for the public at large.

The agency has also considered the environmental implications of this decision in accordance with the Environmental Policy Act and determined that it does not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, the decision does not affect the amount of fuel used.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burdens on Lotus. It relieves the company from having to pay civil penalties for noncompliance with the generally applicable standard for MY 1994 and 1995. Since the price of 1994 and 1995 Lotus automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 continues to read as follows:

Authority: 49 U.S.C. 32902, delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) is republished for the convenience of the reader and paragraph (b)(6) is amended to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(6) Lotus Cars Ltd.

Model year	Average fuel economy standard (miles per gallon)
1994	24.2
1995	23.3

Issued on: July 3, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–18067 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970318057–7158–02; I.D. 022097C]

RIN 0648–AJ42

Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP); Recreational Measures for the 1997 Summer Flounder Fishery

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

ACTION: Final rule and correction.

SUMMARY: NMFS issues this rule to amend the regulations implementing the

Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) in order to implement management measures for the 1997 summer flounder recreational fishery. The measures include no closed season, a possession limit of ten fish per person, and a minimum fish size of 14.5 inches (36.8 cm). The intent of this rule is to comply with implementing regulations for the fishery that require NMFS to publish measures for the current fishing year that will prevent overfishing of the resource. This rule also makes minor technical changes to 50 CFR part 648 that are unrelated to implementing these management measures.

DATES: Effective July 8, 1997.

ADDRESSES: Copies of the Environmental Assessment and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (508) 281–9221.

SUPPLEMENTARY INFORMATION: The FMP was developed jointly by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. Implementing regulations for the fishery are found at 50 CFR part 648.

Section 648.100 outlines the process for determining annual commercial and recreational catch quotas and other restrictions for the summer flounder fishery. Pursuant to § 648.100, the Administrator, Northeast Region, NMFS, implements measures for the fishing year to ensure achievement of the fishing mortality rate specified in the FMP. This document announces the following measures pertaining to the recreational fishery, which are unchanged from the proposed measures that were published in the **Federal Register** on April 8, 1997 (62 FR 16753): (1) No closed season, (2) a possession limit of ten fish per person, and (3) a minimum fish size of 14.5 inches (36.8 cm).

Comments and Responses

One comment from North Carolina concerning the proposed measures was received during the public comment period, which ended May 8, 1997.

Comment: North Carolina does not support the 14.5 inch (36.8 cm) minimum fish size for three reasons: It is incompatible with the size requirements in its summer flounder commercial fishery and its southern flounder fishery; the larger size limit discriminates against southern states, where the size limit has more of an impact than the bag limit; and the increase of 0.5 inch (1.3 cm) in minimum size creates enforcement problems.

Response: NMFS disagrees that the size limit for the commercial and recreational fishery must be the same. Management measures such as bag limits and fish sizes are established to achieve a harvest limit for a segment of the fishery. Since each segment (commercial and recreational) has differing harvest limits, different management measures were found to be appropriate for each.

The comment states that the size limit has a greater impact than the bag limit for the southern states. NMFS agrees with this statement. The size limit should have a greater impact (in reaching the required reduction in harvest) than the bag limit in the northern states as well. The Council and Commission, in making their recommendation to NMFS, noted that, due to the projected overage of the harvest limit in 1996, some reductions in recreational catch are necessary to reach the 1997 harvest limit, which is the same as the 1996 limit. Since the recreational sector was not constrained by the bag limit in 1996, the Council and Commission decided to meet the reduction by increasing the size limit. The bag limit has been increased to prevent a decrease in participation in the recreational fishery.

The comment letter indicates that an enforcement officer could not easily issue a citation for a fish between 14.0 (35.6 cm) and 14.5 inches (36.8 cm). NMFS does not believe that an enforcement officer would have any difficulty in making such a measurement.

Changes from the Proposed Rule

This rule also makes minor technical changes to 50 CFR part 648, Fisheries of the Northeastern United States, that are unrelated to implementing the above management measures. These technical changes were not included in the proposed rule. These revisions merely correct omissions and errors that occurred in making earlier revisions to the consolidated Northeast fisheries regulations.

In § 648.12, paragraphs (a) through (c) are added, as they were inadvertently deleted during the publication of the final rule implementing management measures for the black sea bass fishery.

In § 648.14, paragraph (a)(103) was omitted during the consolidation of the regulations of the Fisheries of the Northeastern United States and is added.

In § 648.14, paragraph (c)(1), an error was made in the reference to § 648.86(c) and is corrected. Also in paragraph (c), paragraphs (11), (12), (13), (15), (18) and (19), the references to § 648.82(j) are incorrect, because this final rule redesignate § 648.82(j) to (k). These references are corrected to reflect that redesignation.

In § 648.52, paragraph (a), a spelling error is corrected.

In § 648.73, paragraphs (a)(2) and (3), errors were made in the notation of coordinates and are corrected.

In § 648.82, a second paragraph (j) was added, inadvertently overwriting an original paragraph (j). Paragraph (j) is redesignated as (k) and the original (j) is added. In paragraph (k), references to (j) are revised to reflect its redesignation.

In § 648.86, paragraph (b) and (d) are duplicates. Paragraph (b) is deleted and paragraphs (c) and (d) are redesignated as (b) and (c).

Classification

This rule implements management measures for the recreational summer flounder fishery that will enhance the effectiveness of the FMP.

The measures contained in this rule have already been implemented by the applicable states under the Atlantic Coastal Fishery Cooperative Management Act. Consequently, Federal permit holders are already subject to the measures. Since all affected entities are already subject to the measures, it is unnecessary under 5 U.S.C. 553(d)(3) to delay the effective date of this rule for 30 days. Accordingly, since the fishery has already started, the rule is being made effective upon the date of filing for public inspection at the Office of the Federal Register.

This action is authorized by 50 CFR part 648.

This final rule has been determined to be not significant for purposes of E.O. 12866.

When this rule was proposed, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities, such as the charter boats and head boats that participate in the recreational fishery. The reasons were published in the proposed rule and are not repeated here. No comments were received concerning

this determination. As a result, no regulatory flexibility analysis was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 3, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.12, paragraphs (a) through (c) are added to read as follows:

§ 648.12 Experimental fishing.

* * * * *

(a) The Regional Administrator may not grant such an exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the management objectives of the respective FMP, the provisions of the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the respective resources and fishery;

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(b) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of the respective FMP, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

(c) Experimental fishing for surf clams or ocean quahogs will not require an allocation permit.

3. In § 648.14, paragraph (a)(103) is added, and paragraphs (c)(1), (11), (12), (13), (15), (18), and (19) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(103) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than transport, any multispecies, unless the dealer or transferee has a dealer permit issued under § 648.6.

* * * * *

(c) * * *

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of regulated species specified in § 648.86(c) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(3) or § 648.89.

* * * * *

(11) If the vessel has been issued a limited access multispecies permit and fishes under a multispecies DAS, fail to comply with gillnet requirements and restrictions specified in § 648.82(k).

(12) If the vessel has been issued a limited access Day gillnet category designation, fail to comply with the restriction and requirements specified in § 648.82(k)(1).

(13) If the vessel has been issued a Day gillnet category designation, fail to remove gillnet gear from the water as described in § 648.82(g) and § 648.82(k)(1)(iv).

* * * * *

(15) Produce, or cause to be produced, gillnet tags under § 648.82(k)(1) without the written confirmation from the Regional Administrator described in § 648.82(k)(1)(ii).

* * * * *

(18) If the vessel has been issued a Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(k)(2).

(19) Fail to comply with the exemption specifications as described in § 648.86(b)(2).

* * * * *

4. In § 648.52, paragraph (a) is revised to read as follows:

§ 648.52 Possession limits.

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels possessing a General scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops with not more than one scallop trip allowable in any calendar day.

* * * * *

5. In § 648.73, paragraphs (a)(2) and (3) are revised to read as follows:

§ 648.73 Closed areas.

(a) * * *

(2) *New York Bight*. The polluted area and waste disposal site known as the ''New York Bight'' and located at 40°25'04'' N. lat., 73°42'38'' W. long., and with a radius of 6 nm in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31'00'' N. lat., 73°43'38'' W. long., directly northward toward Atlantic Beach Light in New York to the limit of the state territorial waters of New York; and a line from the point on the arc at 40°19'48'' N. lat., 73°45'42'' W. long., to a point at the limit of the state territorial waters of New Jersey at 40°14'00'' N. lat., 73°55'42'' W. long.

(3) *106 Dumpsite*. The toxic industrial site known as the ''106 Dumpsite'' and located between 38°40'00'' and 39°00'00'' N. lat., and between 72°00'00'' and 72°30'00'' W. long.

* * * * *

6. In § 648.82, paragraph (j) added at 62 FR 15388 on April 1, 1997, is redesignated as (k), and newly designated (k)(1)(i) and (iv) are revised to read as follows.

§ 648.82 Effort-control program for limited access vessels.

* * * * *

(k) * * *

(1) * * *

(i) *Number and size of nets*. Vessels may not fish with, haul, possess, or deploy more than 80 roundfish gillnets or 160 flatfish gillnets. Vessels may fish any combination of roundfish and flatfish gillnets, up to 160 nets, provided that the number of roundfish and flatfish gillnets does not exceed the limitations specified in this subparagraph, and the nets are tagged in accordance with paragraph (k)(1)(ii) of this section. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

* * * * *

(iv) *Declaration of time out of the gillnet fishery*. (A) During each fishing year, vessels must declare, and take, a total of 120 days out of the multispecies gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by § 648.82(g) will be credited toward the 120-days time out of the multispecies gillnet fishery. If a vessel owner has not declared and taken, any or all of the remaining periods of time required by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies harvested with gillnet gear, or from having gillnet gear on board the vessel that is not stowed in accordance with

§ 648.81(e)(4), while fishing under a multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time out following the notification procedures specified in § 648.10(f)(2).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear. However, the vessel may fish in an exempted fishery as described in § 648.80, or it may fish under a multispecies DAS provided it fishes with gear other than non-exempted gillnet gear.

* * * * *

7. In § 648.86 as published at 62 FR 15388 on April 1, 1997, instruction 12 is revised to read as follows:

''12. In § 648.86, paragraph (a)(1) is revised and paragraphs (c) and (d) are added to read as follows:''

8. In § 648.86, paragraph (b) is redesignated as (c) and present paragraph (c) is redesignated as (b); newly redesignated paragraph (b) is amended by revising paragraphs (b)(1)(i), (ii) introductory text, (iii), and (b)(2); and paragraph (d) is removed to read as follows:

§ 648.86 Possession restrictions.

* * * * *

(b) * * *

(1) *Landing limit north of 42°*00' North Latitude. (i) Except as provided in paragraph (b)(2) of this section, a vessel fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod per day, or any part of a day, for each of the first 4 days of a trip, and may land up to 1,500 lb (680.4 kg) of cod per day for each day, or any part of a day, in excess of 4 consecutive days. A day, for the purposes of this paragraph, means a 24–hour period. Vessels calling-out of the multispecies DAS program under § 648.10(c)(3) that have utilized ''part of a day'' (less than 24 hours) may land up to an additional 1,000 lb (453.6 kg) of cod for that ''part of a day'', however, such vessels may not end any subsequent trip with cod on board within the 24-hour period following the beginning of the ''part of the day'' utilized (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 2,000 lb (907.2 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday)). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel subject to the cod landing limit restrictions described in paragraph (b)(1)(i) of this section may come into port with and offload cod in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

(A) * * *

(B) * * *

(iii) A vessel that has not exceeded the cod landing limit restrictions described in paragraph (b)(1)(i) of this section and that is offloading some or all of its catch without calling out of the multispecies DAS program under § 648.10(c)(3), is subject to the call-in requirement described in paragraph (b)(1)(ii)(B) of this section.

(2) *Exemption*. A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) when fishing south of 42°00' N. lat., provided that it does not fish north of this exemption area for a minimum of 30 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of the 42°00' N. lat., provided that their gear is stowed in accordance with one of the provisions of § 648.81(e).

9. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) The minimum size for summer flounder is 14.5 inches (36.8 cm) TL for all vessels that do not qualify for a moratorium permit, and party and charter boats holding moratorium permits, but fishing with passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

* * * * *

10. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

(a) No person shall possess more than ten summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit or is issued a summer flounder dealer permit. * * *

* * * * *

[FR Doc. 97–18117 Filed 7–8–97; 4:19 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 070797A]

Fisheries of the Exclusive Economic Zone Off Alaska, Pacific Ocean Perch in the Eastern Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific ocean perch in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the Eastern Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 7, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific ocean perch TAC in the Eastern Regulatory Area of the Gulf of Alaska was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 2,366 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the Pacific ocean perch TAC in the Eastern Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,116 mt, and is

setting aside the remaining 250 as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for Pacific ocean perch in the Eastern Regulatory Area of the GOA.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for Pacific ocean perch in the Eastern Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to public interest. The fleet will soon take the directed fishing allowance for Pacific ocean perch. Further delay would only result in overharvest and disrupt the FMP's objective of allowing incidental catch to be retained throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 7, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–18140 Filed 7–7–97; 4:37 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 133
Friday, July 11, 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–15]

RIN 0579–AA83

Karnal Bunt; Compensation for the 1996–1997 Crop Season

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Karnal bunt regulations by adding compensation provisions for certain growers, handlers, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incur losses and expenses because of Karnal bunt in the 1996–1997 crop season. The payment of compensation is necessary in order to reduce the economic impact of the Karnal bunt regulations on affected wheat growers and other individuals, and to help obtain cooperation from affected individuals in Karnal bunt eradication efforts. The proposed amendments appear necessary to make compensation appropriate for circumstances in the 1996–1997 crop season.

DATES: Consideration will be given only to comments received on or before September 9, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–15, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–016–15. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14. Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of certain regulated articles, including wheat seed and grain, from the regulated areas.

In an interim rule effective June 27, 1996, and published in the **Federal Register** on July 5, 1996, the Animal and Plant Health Inspection Service (APHIS) amended the regulations to provide compensation for certain wheat growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred in the 1995–1996 crop season because of actions taken by the Secretary to prevent the spread of Karnal bunt (61 FR 35102–35107, Docket No. 96–016–7). On May 6, 1997, we published a document in the **Federal Register** (62 FR 24745–24653, Docket No. 96–016–17) making final the July 5 interim rule, and adding compensation provisions for handlers of wheat that was tested and found negative for Karnal bunt and for participants in the National Karnal Bunt Survey whose wheat tested positive for Karnal bunt in the 1995–1996 crop season.

We believe it is appropriate at this time to revise the scope of the 1995–1996 compensation program for wheat to be harvested in 1997. We are, therefore, proposing to add compensation provisions for 1996–1997 crop season wheat.[1] These provisions would provide compensation for growers and handlers, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey in order to mitigate losses and expenses incurred during the 1996–1997 crop season because of the regulations for Karnal bunt.

Compensation for Growers and Handlers

We are proposing to add a new § 301.89–15 to the Karnal bunt regulations, to apply to growers and handlers in the 1996–1997 crop season. This section would provide compensation to growers and handlers for the loss in value of 1996–1997 crop season wheat seed and grain (referred to in the regulations as propagative and nonpropagative wheat) due to Karnal bunt. The compensation calculation we would offer for wheat seed would be the same as that offered for wheat grain. For the 1996–1997 crop season, we are proposing to compensate only for wheat that was tested by APHIS and found positive for Karnal bunt.

Movement of grain that tested negative out of the regulated area during the 1996 harvest season also had restricted movement. It could only move to approved facilities under specific safeguard and sanitation requirements. An interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997 (62 FR 23620–23628, Docket No. 96–016–19), amended the testing requirements and movement restrictions for wheat from the regulated areas. These regulations now allow wheat grain that tests negative to move under certificate to any location in the United States without further safeguarding or sanitation requirements. In light of the amended movement restrictions, we do not believe that it would be necessary to compensate growers and handlers for wheat that tests negative for Karnal bunt in the 1996–1997 crop season.

For the 1996–1997 crop season, we are proposing different levels of compensation for growers and handlers of positive wheat, depending on which of the following two sets of

[1] The 1995–1996 crop season is that season in which wheat was harvested in 1996. The 1996–1997 crop season is that season in which wheat is harvested in 1997.

circumstances applies: (1) The wheat is from an area that became regulated for Karnal bunt after the 1996–1997 crop was planted, or for which an Emergency Action Notification (PPQ Form 523)(EAN) was issued after the 1996–1997 crop was planted, and that remained regulated or under an EAN at the time the wheat was sold; or (2) the wheat is from an area that became regulated for Karnal bunt before the 1996–1997 crop was planted, or for which an EAN was issued before the 1996–1997 crop was planted, and that remained regulated or under an EAN at the time the wheat was sold. We would call these areas ''areas under the first regulated crop season'' and ''areas under the second regulated crop season,'' respectively. Growers and handlers in areas under the first regulated crop season would not have known that their area was to become regulated for Karnal bunt at the time they made their planting and many of their contracting decisions, and would not have been prepared for the loss in value of their wheat due to Karnal bunt. Growers and handlers in areas under the second regulated crop season knew they were in an area regulated for Karnal bunt at the time planting and contracting decisions were made for the 1996–1997 crop season. Understanding the restrictions, growers and handlers could have chosen to alter their planting or contract decisions to avoid experiencing losses due to Karnal bunt. We believe the compensation we are proposing for first regulated crop season areas and second regulated crop season areas is appropriate for the circumstances in each area.

At the present time, there are no areas under the first regulated crop season. All currently regulated areas are in the second regulated crop season. APHIS is continuing to monitor for Karnal bunt throughout wheat producing areas in the United States. If Karnal bunt is found to exist in an area outside the currently regulated area during the 1996–1997 crop season, APHIS will regulate that area, and growers and handlers would be eligible for compensation for the loss in value of their wheat in accordance with the proposed provisions for areas under the first regulated crop season.

First Regulated Crop Season

As stated previously, we would define an area in the first regulated crop season as an area that became regulated for Karnal bunt after the 1996–1997 crop was planted or for which an EAN was issued after the 1996–1997 crop was planted. Further, the area must have remained regulated or under an EAN at the time the wheat was sold in order for a grower or handler to be eligible for compensation. An EAN (issued in accordance with § 301.89–3(d) of the regulations) temporarily regulates a nonregulated area as a regulated area. Areas temporarily regulated under an EAN are subject to the same restrictions, and potential losses or expenses, as areas that are listed in the regulations as ''regulated areas.'' However, the Secretary of Agriculture is authorized to compensate only individuals who are in States for which an extraordinary emergency has been declared.

The compensation we are proposing for growers and handlers of positive-testing wheat grown in an area under the first regulated crop season is similar to the compensation offered to growers and handlers of positive-testing wheat in the 1995–1996 crop season. In areas under the first regulated crop season, we would compensate growers and handlers for positive 1996–1997 crop season wheat and for positive wheat inventories in their possession that were unsold at the time the area became regulated for Karnal bunt.

We are proposing that growers of wheat in an area under the first regulated crop season who sell propagative or nonpropagative wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, would be eligible to receive compensation as follows:

1. If the wheat was grown under contract and a price was determined in the contract before the area where the wheat was grown became regulated for Karnal bunt, compensation would equal the contract price minus the actual price received by the grower; or

2. If the wheat was not grown under contract or a price was determined in the contract after the area where the wheat was grown became regulated for Karnal bunt, compensation would equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the grower.

We are proposing two different compensation calculations for growers in the first regulated crop season because contract prices set after the area where the wheat was grown became regulated for Karnal bunt may reflect the loss-in-value of wheat due to the Karnal bunt regulations. For both situations described above, compensation for positive-testing wheat would not exceed $1.80 per bushel under any circumstances.

Contract price is currently defined in the regulations to mean ''(t)he net price after adjustments for any premiums or discounts stated in the contract.'' We would add a definition to the regulations for ''actual price received'' to read ''the net price after adjustments for any premiums or discounts stated on the sales receipt.'' This is to ensure that individuals are not paid compensation for quality issues not related to Karnal bunt.

For the 1995–1996 crop season, estimated market prices were calculated for durum wheat and hard red winter wheat for the harvest months of May and June. The estimated market prices for durum wheat were calculated based on the following: the daily closing cash prices for choice milling durum wheat traded on the Minneapolis Grain Exchange during the period of May 1 to June 30, 1996, adjusted to account for the handling and transportation charges incurred in getting the wheat from the regulated area in California and Arizona to the central market in Minneapolis. These adjustments were based on the average difference between the Minneapolis cash price and the cash prices within the regulated area for 1995. Estimated market prices for hard red winter wheat were calculated in a similar manner, based on the daily closing futures prices for the July hard red winter wheat contract traded on the Kansas City Board of Trade during the period of May 1 to June 30, 1996, adjusted to account for the handling and transportation charges incurred in getting the wheat from a central point in the regulated area to the market in Kansas City. These adjustments were based on the average difference between the Kansas City futures price and the cash prices within the regulated area for 1995.

For the 1996–1997 crop season, estimated market prices would be calculated in a similar manner, as appropriate for the types of wheat grown in the regulated area that is under the first regulated crop season and the relevant terminal markets and harvest months for that area. Separate estimated market prices would be calculated for propagative and nonpropagative wheat.

We are proposing that handlers who sell propagative or nonpropagative wheat grown in an area under the first regulated crop season would be eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler, as long as the price to be paid is not contingent on the test results. Compensation would equal the

estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the handler. Separate estimated market prices would be calculated for propagative and nonpropagative wheat. However, compensation for positive-testing wheat would not exceed $1.80 per bushel under any circumstances.

The calculation described above for handlers would provide compensation only for handlers who experience a change in the expected value of purchased wheat. Wheat that is negative for Karnal bunt is expected to be worth more than positive wheat because of the restrictions imposed by the Karnal bunt regulations on the movement and use of positive wheat. In the 1995–1996 crop season, wheat was tested twice before movement, with the first test being done from samples taken in the field. Therefore, results of at least one test were known before a grower sold the wheat to a handler. For the 1996–1997 crop season, testing protocols will require wheat to be sampled and tested for the first time at the means of conveyance, at which time the wheat will usually already have been purchased by a handler. If a handler purchases untested wheat at a price appropriate for negative wheat, instead of making the price contingent on test results, and the wheat later tests positive, the handler would experience a loss in value of the wheat.

Second Regulated Crop Season

We would describe an area in the second regulated crop season as an area that became regulated for Karnal bunt before the 1996–1997 crop was planted or for which an EAN was issued before the 1996–1997 crop was planted. Further, the area must have remained regulated or under an EAN at the time the wheat was sold in order for a grower or handler to be eligible for compensation. However, the Secretary of Agriculture is authorized to compensate only individuals who are in States for which an extraordinary emergency has been declared. As discussed previously in this document, all of the areas currently listed as regulated areas in the Karnal bunt regulations, and all the areas currently regulated for Karnal bunt under EANs, would be considered to be in the second regulated crop season.

We are proposing that growers in the second regulated crop season who sell propagative or nonpropagative wheat are eligible to receive compensation only if the wheat was tested by APHIS and found positive for Karnal bunt prior to sale, or was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results. Compensation would be at the rate of $.60 per bushel of positive testing wheat.

We are proposing that handlers who sell propagative or nonpropagative wheat grown in an area under the second regulated crop season are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase, but was tested by APHIS and found positive for Karnal bunt after purchase, as long as the price to be paid is not contingent on the test results. Compensation would be at the rate of $.60 per bushel of positive testing wheat.

Growers and Handlers—To Claim Compensation

We are proposing that the Farm Service Agency (FSA) of USDA would issue compensation to growers and handlers for the loss in value of their wheat. We would require that all compensation claims be received by FSA on or before March 31, 1998. The Administrator of APHIS could extend that deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

Growers and handlers who are eligible for compensation under the proposed first or second regulated crop season regulations would need to provide the same documents for claiming compensation, with a few exceptions. Both growers and handlers would have to submit a Karnal Bunt Compensation Claim form, provided by FSA. (We have developed a form to be used in claiming Karnal bunt compensation. See the information under the ''Paperwork Reduction Act'' section of this document for further information on this form.) If the wheat was grown in an area that is not a regulated area, but for which an EAN has been issued, the grower or handler would have to submit a copy of the EAN. Both growers and handlers would also have to submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the wheat that tested positive (such as a copy of the limited permit under which the wheat is being moved, or other verification).

In addition to the documents described above for both growers and handlers, growers would have to submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the grower. Growers compensated under the regulations for areas in the first regulated crop season would have to submit a copy of the contract the grower has for the wheat, if the wheat was under contract. Growers compensated under the regulations for areas in the second regulated crop season who sold wheat that was not yet tested by APHIS would have to submit documentation showing that the price paid to the grower was contingent on test results (this information could appear on the receipt for the final sale of the wheat or on a contract the grower has for the wheat, if the wheat was under contract).

In addition to the documents described above for both growers and handlers, handlers would have to provide the FSA office with a copy of the receipt for the purchase of the wheat, and a copy of the receipt for the final sale of the wheat. The handler would also have to submit documentation showing that the price paid or to be paid to the grower is not contingent on the test results (this documentation could appear on the receipt for the purchase of the wheat from the grower or on a contract for the purchase of the wheat, if the wheat was purchased under contract).

Compensation for Grain Storage Facilities, Flour Millers, and National Survey Participants

The Karnal bunt compensation regulations for the 1995–1996 crop season provided compensation for the decontamination of grain storage facilities, the treatment of millfeed, and participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found by APHIS to be positive for Karnal bunt. We are proposing to include compensation for these same losses and expenses in the 1996–1997 crop season. Unlike for growers and handlers in the 1996–1997 crop season, there would not be separate compensation for areas in the first and second regulated crop season. The proposed compensation for the decontamination of grain storage facilities, the treatment of millfeed, and participants in the National Karnal Bunt Survey would appear in a new § 301.89–16.

Decontamination of Grain Storage Facilities

As part of the Karnal bunt program, APHIS may require the decontamination of grain storage facilities that have been determined by APHIS to be contaminated with Karnal bunt. Section 301.89–14(d) of the Karnal bunt regulations provides compensation for

the 1995–1996 crop season to owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to an EAN issued by an inspector. We are proposing to offer the same compensation for the decontamination of grain storage facilities in the 1996–1997 crop season. Compensation for decontamination of grain storage facilities would appear in paragraph (a) of proposed § 301.89–16, and would be as follows:

Owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to an EAN issued by an inspector would be eligible to be compensated, on a one time only basis for each facility for each covered crop year wheat, for up to 50 percent of the direct cost of decontamination. However, compensation would not exceed $20,000 per grain storage facility. General clean-up, repair, and refurbishment costs would be excluded from compensation.

Compensation payments for the decontamination of grain storage facilities would be issued by APHIS. To claim compensation, the owner of the grain storage facility would have to submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered to be decontaminated by the EAN on the facility. The records would have to include a copy of the EAN, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show the cost to the owner and that decontamination has been completed.

We would require that claims for compensation be received by APHIS on or before March 31, 1998. The Administrator could extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

Compensation for Treating Millfeed

The compensation regulations for the 1995–1996 crop season provide that flour millers who, in accordance with a compliance agreement with APHIS, heat-treat millfeed made from wheat produced in regulated areas that require such treatment are eligible to be compensated at the rate of $35.00 per short ton of millfeed. Paragraph (b) of proposed § 301.89–16 would provide the same compensation for treating millfeed in the 1996–1997 crop season. The amount of millfeed compensated would be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). Compensation payments would be issued by APHIS. To claim compensation, the miller would have to submit to an inspector verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to the mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Flour millers would also have to submit verification that the millfeed was heat treated (such as a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement; or a copy of PPQ Form 700 (which includes certification of processing) signed by the inspector who monitors the mill). Claims for compensation would have to be received by APHIS on or before March 31, 1998. The Administrator may extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

We are considering proposing to eliminate the requirement to heat treat millfeed made from wheat produced in regulated areas. If this requirement is eliminated by a future rulemaking, compensation would not be paid for millfeed that is heat treated after the effective date of such a rule.

National Karnal Bunt Survey Participants

We are also proposing compensation provisions for participants in the National Karnal Bunt Survey in the 1996–1997 crop season whose wheat tests positive for Karnal bunt. APHIS is conducting a National Karnal Bunt Survey to demonstrate to our trading partners that areas producing wheat for export are free of the disease. APHIS is receiving voluntary cooperation from many grain storage facilities in wheat producing areas both within and outside the States in which the Secretary of Agriculture has declared an extraordinary emergency. The declarations of extraordinary emergency authorize the Secretary of Agriculture to take emergency action with regard to Karnal bunt, and authorize the Secretary to compensate growers and other persons for economic losses incurred by them as a result of those emergency actions. The Secretary is not authorized to pay compensation to individuals who are not in States for which an extraordinary emergency has been declared.

If a grain storage facility participating in the National Survey in one of the States for which an extraordinary emergency has been declared tests positive for Karnal bunt, APHIS will regulate the facility under an EAN. We are proposing that APHIS would compensate the owner for the loss in value of the wheat and for up to 50 percent of the direct cost of decontaminating the facility (not to exceed $20,000) on a one time only basis for any covered crop season wheat. In the event that a grain storage facility participating in the National Survey that is in a State not covered by a declaration of extraordinary emergency should test positive for Karnal bunt, the State may offer to compensate the owner of the facility for the loss in value of the positive wheat and for the cost of decontamination. If the State is unwilling or unable to offer compensation at a level equal to that offered by APHIS (as proposed in this document), the Secretary may, in consultation with the State Department of Agriculture, declare an extraordinary emergency in that State. APHIS could then compensate the owner as discussed above.

We completed the National Survey for the 1995–1996 crop season in the fall of 1996. We plan to continue the National Survey after the 1996–1997 crop season wheat is harvested. If a grain storage facility participating in the National Karnal Bunt Survey in the 1996–1997 crop season tests positive for Karnal bunt, the facility will be regulated, and may be ordered decontaminated, pursuant to an EAN issued by an inspector. We are proposing that, if a declaration of extraordinary emergency has been declared in the State in which the grain storage facility is located, the owner would be eligible for compensation for the loss in value of the positive-testing wheat and for the decontamination of the grain storage facility, if decontamination is required. These provisions would appear in paragraph (c) of proposed § 301.89–16.

Compensation for the loss in value of positive-testing wheat would equal the estimated market price for the relevant class of wheat minus the actual price received for the wheat. The estimated

market price would be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the relevant time period for that facility, with adjustments for transportation and other handling costs. However, compensation would not exceed $1.80 per bushel under any circumstances. Compensation payments for loss in value of wheat would be issued by FSA. To claim compensation, the owner of the facility would have to submit to the local FSA office a Karnal Bunt Compensation Claim form, provided by FSA; a copy of the EAN under which the facility is or was regulated; verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to a mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification); and a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the owner of the grain storage facility. Claims for compensation would have to be received by FSA on or before March 31, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

Compensation for the decontamination of the grain storage facility would be on a one time only basis for each grain storage facility for each covered crop year wheat for the direct costs of decontamination of the facility at the same rate described previously in this document for the decontamination of grain storage facilities (up to 50 per cent of the direct costs of decontamination, not to exceed $20,000 per grain storage facility)(see proposed § 301.89–16(a)). Compensation payments for decontamination of grain storage facilities would be issued by APHIS, and claims for compensation would have to be submitted in accordance with the provisions described previously in this document for compensation for the decontamination of grain storage facilities. Claims for compensation would have to be received by APHIS on or before March 31, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. This rule has been determined to be economically significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This action would amend the regulations to establish compensation for certain growers, handlers, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey to mitigate losses and expenses incurred in the 1996–1997 crop season because of the Karnal bunt quarantine and emergency actions. The quarantine and regulations for Karnal bunt were established by a series of interim rules and a final rule published in the **Federal Register** on October 4, 1996. This proposed rule for 1996–1997 crop season compensation is being issued on an expedited basis, so that we can accept public comments and promulgate compensation regulations before the end of the 1997 harvest. An interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997, substantially reduces the size of the area regulated for Karnal bunt, which means that there will no longer be restrictions imposed upon the movement of regulated articles such as grain, seed, and straw from those areas released from regulation. The interim rule also eases restrictions on the movement of grain and other regulated articles from those areas that remain under regulation. We anticipate that the changes made by the interim rule will have a significant deregulatory impact on affected entities. This will significantly reduce the number of entities in need of compensation, and the amount of compensation those entities are ultimately paid will likely be reduced.

In the interim rule, we explained that the expedited basis on which that rule was issued made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. Given that we cannot yet assess the effects of the interim rule, and the effects of the interim rule will significantly affect the impact of this proposed rule, compliance with section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is also impracticable with regards to this proposed rule. We will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we are requesting approval from the Office of Management and Budget (OMB) of a revision of a currently approved information collection in support of the Karnal bunt regulations.

Title: Karnal Bunt.

OMB Number: 0579–0121.

Expiration Date of Approval: April 30, 2000.

Type of Request: Revision of a currently approved information collection.

Abstract: This rule would require that growers and handlers contact a Farm Service Agency (FSA) office and provide certain documents to that office in order to claim compensation. Growers and handlers would also have to submit to FSA a Karnal Bunt Compensation Claim form. The local FSA office would provide the form and would complete the form using information provided by the grower or handler. The grower or handler would have to sign the form to attest that the information on the form is accurate and to demonstrate acceptance of the compensation. In addition, for compensation claims from growers and handlers in the first regulated crop season, the local FSA office would have to complete a Karnal Bunt Compensation Worksheet in order to calculate the rate of compensation in accordance with the regulations. This worksheet would be completed using the information collected by FSA in completing the Karnal Bunt Compensation Claim form. This rule would also require that owners of grain storage facilities and flour millers provide certain records and documents to an APHIS inspector in order to claim compensation.

The above information collection is necessary in order to verify a claimant's eligibility for compensation and to provide documentation of compensation claims and payments.

Estimate of burden: Public reporting burden for this collection of information is estimated to average .57 hours per response.

Respondents: Growers, handlers, owners of grain storage facilities, and flour millers.

Estimated number of respondents: 2249.

Estimated number of responses per respondent: 4.20.

Estimated total annual burden on respondents: 5332 hours.

In addition, as discussed previously in this document, APHIS is conducting a National Karnal Bunt Survey to demonstrate to our trading partners that areas producing wheat for export are free of Karnal bunt. APHIS is receiving voluntary cooperation in conducting this survey from grain storage facilities in wheat producing areas throughout the United States. To conduct the survey, APHIS is asking that personnel at participating grain storage facilities set aside samples of grain at the time that shipments of wheat enter the facility. The grain samples will be collected, tested, and recorded by APHIS to determine if Karnal bunt is present.

Estimate of burden: Public reporting burden for this collection of information is estimated to average .1 hours per response.

Respondents: Employees of grain storage facilities.

Estimated number of respondents: 2100.

Estimated number of responses per respondent: 10.

Estimated total annual burden on respondents: 2100 hours.

We are soliciting comments from the public (as well as affected agencies) concerning the information collection and recordkeeping requirements in this proposed rule, and concerning the information collection in support of the National Karnal Bunt Survey. We need this outside input to help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 96–016–15. Please send a copy of your comments to: (1) Docket No. 96–016–15, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 would be amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89–1, a definition for *Actual price received* would be added in alphabetical order to read as follows:

§ 301.89–1 Definitions.

Actual price received. The net price after adjustment for any premiums or discounts stated on the sales receipt.

* * * * *

3. New §§ 301.89–15 and 301.89–16 would be added to read as follows:

§ 301.89–15 Compensation for growers and handlers in the 1996–1997 crop season.

Growers and handlers are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1996–1997 crop season to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers and handlers in areas under first regulated crop season.* Growers and handlers are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (a)(1) and (a)(2) of this section if: the wheat was grown in a State where the Secretary has declared an extraordinary emergency; and, the wheat was grown in an area of that State that became regulated for Karnal bunt after the 1996–1997 crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued after the 1996–1997 crop was planted; and, the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers and handlers in areas under the first regulated crop season are eligible for compensation for 1996–1997 crop season wheat and for wheat inventories in their possession that were unsold at the time the area became regulated.

(1) *Growers.* Growers of wheat in an area under the first regulated crop season, who sell propagative or nonpropagative wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation as described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section. However, compensation for positive-testing wheat will not exceed $1.80 per bushel under any circumstances.

(i) If the wheat was grown under contract and a price was determined in the contract before the area where the wheat was grown became regulated, compensation will equal the contract price minus the actual price received by the grower.

(ii) If the wheat was not grown under contract or a price was determined in the contract after the area where the wheat was grown became regulated, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the grower. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices will be calculated for propagative and nonpropagative wheat.

(2) *Handlers.* Handlers who sell propagative or nonpropagative wheat

grown in an area under the first regulated crop season are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler, as long as the price to be paid is not contingent on the test results. Compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the handler. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices will be calculated for propagative and nonpropagative wheat. However, compensation will not exceed $1.80 per bushel under any circumstances.

(b) *Growers and handlers in areas under second regulated crop season.* Growers and handlers are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (b)(1) and (b)(2) of this section if: the wheat was grown in a State where the Secretary has declared an extraordinary emergency; and, the wheat was grown in an area of that State that became regulated for Karnal bunt before the 1996–1997 crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued before the 1996–1997 crop was planted; and, the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers and handlers in areas under the second regulated crop season are eligible for compensation only for 1996–1997 crop season wheat.

(1) *Growers.* Growers of wheat in an area under the second regulated crop season who sell propagative or nonpropagative wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation at the rate of $.60 per bushel of positive testing wheat.

(2) *Handlers.* Handlers who sell propagative or nonpropagative wheat grown in an area under the second regulated crop season are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler, as long as the price to be paid by the handler is not contingent on the test results. Compensation will be at the rate of $.60 per bushel of positive testing wheat.

(c) *To claim compensation.* Compensation payments to growers and handlers under paragraphs (a) and (b) of this section will be issued by the Farm Service Agency (FSA). Compensation claims must be received by FSA on or before March 31, 1998. The Administrator may extend the deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998. To claim compensation, a grower or handler must complete and submit to the local FSA county office the following documents:

(1) *Both growers and handlers.* A grower or handler must submit a Karnal Bunt Compensation Claim form, provided by FSA. If the wheat was grown in an area that is not a regulated area, but for which an Emergency Action Notification (PPQ Form 523)(EAN) has been issued, the grower or handler must submit a copy of the EAN. Growers and handlers must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the wheat that tested positive (such as a copy of the limited permit under which the wheat is being moved, or other verification).

(2) *Growers.* In addition to the documents required in paragraph (c)(1) of this section, growers must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the grower. Growers compensated under paragraph (a)(1) of this section (first regulated crop season) must submit a copy of the contract the grower has for the wheat, if the wheat was under contract. Growers compensated under paragraph (b)(1) of this section (second regulated crop season) whose wheat was not tested prior to sale must submit documentation showing that the price paid to the grower was contingent on test results (such as a copy of the receipt for the final sale of the wheat or a copy of the contract the grower has for the wheat, if this information appears on those documents).

(3) *Handlers.* In addition to the documents required in paragraph (c)(1) of this section, handlers must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the handler. The handler must also submit documentation showing that the price paid or to be paid to the grower is not contingent on the test results (such as a copy of the receipt for the purchase of the wheat or a copy of the contract the handler has with the grower, if this information appears on those documents).

§ 301.89–16 Compensation for grain storage facilities, flour millers, and National Survey participants for the 1996–1997 crop season.

Owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1996–1997 crop season to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Decontamination of grain storage facilities.* Owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible to be compensated, on a one time only basis for each facility for each covered crop year wheat, for up to 50 percent of the direct cost of decontamination. However, compensation will not exceed $20,000 per grain storage facility (as defined in § 301.89–1). General clean-up, repair, and refurbishment costs are excluded from compensation. Compensation payments will be issued by APHIS. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered to be decontaminated by the Emergency Action Notification on the facility. The records must include a copy of the Emergency Action Notification, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show the cost to the owner and that decontamination has been completed. Claims for compensation must be received by APHIS on or before March 31, 1998. The Administrator may extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or

hinder a claimant from requesting compensation on or before March 31, 1998.

(b) *Flour millers.* Flour millers who, in accordance with a compliance agreement with APHIS, heat-treat millfeed made from wheat produced in regulated areas that require such treatment are eligible to be compensated at the rate of $35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). Compensation payments will be issued by APHIS. To claim compensation, the miller must submit to an inspector verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to the mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Flour millers must also submit verification that the millfeed was heat treated (such as a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement; or a copy of PPQ Form 700 (which includes certification of processing) signed by the inspector who monitors the mill). Claims for compensation must be received by APHIS on or before March 31, 1998. The Administrator may extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

(c) *National Karnal Bunt Survey participants.* If a grain storage facility participating in the National Karnal Bunt Survey tests positive for Karnal bunt, the facility will be regulated, and may be ordered decontaminated, pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector. If the Secretary has declared an extraordinary emergency in the State in which the grain storage facility is located, the owner will be eligible for compensation as follows:

(1) *Loss in value of positive wheat.* The owner of the grain storage facility will be compensated for the loss in value of positive wheat. Compensation will equal the estimated market price for the relevant class of wheat minus the actual price received for the wheat. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the relevant time period for that facility, with adjustments for transportation and other handling costs. However, compensation will not exceed $1.80 per bushel under any circumstances. Compensation payments for loss in value of wheat will be issued by the Farm Service Agency (FSA). To claim compensation, the owner of the facility must submit to the local FSA office a Karnal Bunt Compensation Claim form, provided by FSA. The owner of the facility must also submit to FSA a copy of the Emergency Action Notification under which the facility is or was quarantined; verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to a mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification); and a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the owner of the grain storage facility. Claims for compensation must be received by FSA on or before March 31, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

(2) *Decontamination of grain storage facilities.* The owner of the facility will be compensated on a one time only basis for each grain storage facility for each covered crop year wheat for the direct costs of decontamination of the facility at the same rate described under paragraph (a) of this section (up to 50 per cent of the direct costs of decontamination, not to exceed $20,000 per grain storage facility). Compensation payments for decontamination of grain storage facilities will be issued by APHIS, and claims for compensation must be submitted in accordance with the provisions in paragraph (a) of this section. Claims for compensation must be received by APHIS on or before March 31, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

Done in Washington, DC, this 3rd day of July 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–18181 Filed 7–10–97; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0978]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend certain model forms in its Regulation B on equal credit opportunity to reflect recent statutory amendments to the Fair Credit Reporting Act (FCRA) disclosures contained in those forms. Creditors have the option of including the FCRA disclosures with the notice of action taken required under Regulation B.

DATES: Comments must be received on or before August 15, 1997.

ADDRESSES: Comments should refer to Docket No. R–0978, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20051. They may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Senior Attorney, or Sheilah A. Goodman, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation B, which implements the Equal Credit Opportunity Act, requires creditors to provide a consumer with a notice of action taken if an application for credit is denied, an account is terminated, or the terms of an account are unfavorably changed. The Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681a), requires creditors that take adverse action against a consumer, such as denying an application for credit, to

provide a consumer with certain disclosures if the action is based on information provided by a third party or a consumer reporting agency. The required FCRA disclosures include, for example, the name and address of the consumer reporting agency that supplied the information. For information obtained from a third party, the required disclosure includes a statement that the consumer has the right to request the reason for the denial within sixty days. Creditors have the option of including the FCRA disclosures with the notice of action taken required under Regulation B; Appendix C to Regulation B provides model forms that combine the current FCRA and ECOA disclosures.

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) made extensive changes to the FCRA. Among other changes, the amendments require that additional disclosures be given to consumers who are denied credit based on information from an affiliate or from a consumer reporting agency. The disclosure requirements for information from a third party are not affected.

The Board is proposing changes to the FCRA portion of Regulation B's model forms C–1 through C–5 and to the general instructions for these forms. The forms include language that may be used when credit is denied based on information obtained from a consumer reporting agency, from a third party other than a consumer reporting agency, or from an affiliate. The Board anticipates adopting final amended model forms prior to the effective date of the FRCA amendments (September 30, 1997) to ease compliance for creditors that choose to use the forms.

II. New Model Language

When adverse action is taken against a consumer based on information from a consumer reporting agency, section 615(a) of the FCRA now requires the following additional disclosures: a telephone number for the consumer reporting agency (toll-free if the agency compiles and maintains files on consumers nationwide); a statement that the consumer reporting agency did not make the decision to take the adverse action, and cannot state the reason why the adverse action was taken; the consumer's right to a free copy of the credit report from the consumer reporting agency, if the request is made within 60 days of receipt of the adverse action notice; and the consumer's right to dispute with the consumer reporting agency the accuracy or completeness of the credit report.

When the adverse action is based on a consumer report obtained from an affiliate, the Board believes that the creditor must provide the same disclosures as would be required if the report had come directly from the consumer reporting agency. Interpreting the statute otherwise would produce a result that does not appear to be consistent with the purposes of the law, by allowing creditors who could get consumer reports from affiliates rather than consumer reporting agencies to avoid giving consumers the FCRA disclosures and rights. This interpretation is reflected in the instructions to the model forms in Appendix C to Regulation B. The Board solicits comment on this approach.

Creditors are not required to provide the consumer with any FCRA disclosures when the adverse action is based on a creditor's own experience. The amendments expand that exemption so that a creditor does not have to provide any FCRA disclosures if the adverse action taken against the consumer is based on the transactional experience of the creditor's affiliate. In the case of information obtained from an affiliate (other than a credit report or the affiliate's own transactional experience), the amendments require the creditor to give the consumer a disclosure that is substantially similar to the one currently required for information obtained from third parties. The proposed modifications to the Appendix C instructions, and model forms C–1 through C–5 of Regulation B reflect these changes.

In the case of information from an affiliate that is neither a consumer report nor the affiliate's own transactional experience, the Board is proposing to allow creditors to use the current third party notice, as amended. See model form C–1. There is a difference, however, in the timing provisions of section 615(b)(1) (third-party notice) and section 615(b)(2) (affiliate notice). Under the third-party provision, the request must be submitted to the creditor within 60 days after the consumer learns of the action. Under the affiliate provision, the request must be submitted within 60 days after the ''transmittal of the notice.''

To ease compliance for creditors and provide a more understandable time frame for consumers, the Board proposes that Regulation B's existing model language for information from a third party also be used for information from an affiliate. The language, which appears in model form C–1, states that the consumer has 60 days from receipt of the notice to submit a request to the creditor. The Board believes that relatively few transactions will require the affiliate notice; thus, it will be less burdensome for creditors to use the existing third-party notice rather than a separate notice for affiliate transactions. The Board solicits comment on whether the third-party notice is adequate or if model language for adverse action taken by affiliates would be desirable.

III. Section-by-Section Analysis

In Appendix C, the second paragraph would be amended by adding two sentences to the end of the paragraph explaining the FCRA disclosure requirements for information obtained from an affiliate.

Model Form C–1

Sample Notice of Action Taken and Statement of Reasons would be amended in Part II by adding at the end of the first paragraph the FCRA disclosures notifying the consumer of the right to request a copy of the consumer report, and the right to dispute the accuracy of the report with the reporting agency (collectively, the dispute disclosure). In addition, the words toll-free would be put in brackets before the reporting agency's telephone number. A reference to an affiliate would be added in the second paragraph.

Model Form C–2

Sample Notice of Action Taken and Statement of Reasons would be amended by adding to the first sentence in the second paragraph the words toll-free in brackets before the reporting agency's telephone number. The dispute disclosure would be inserted before the last sentence.

Model Form C–3

Sample Notice of Action Taken and Statement of Reasons (Credit Scoring) would be amended by adding to the third sentence in the fourth paragraph the words toll-free in brackets before the reporting agency's telephone number. The dispute disclosure would be added at the end of the paragraph.

Model Form C–4

Sample Notice of Action Taken and Statement of Reasons, and Counteroffer would be amended by adding to the first sentence in the third paragraph the words toll-free in brackets before the reporting agency's telephone number. At the end of the paragraph the disclosure stating that the reporting agency played no part in the decision would be added along with the dispute disclosure.

Model Form C–5

Sample Disclosure of Right to Request Specific Reasons for Credit Denial would be amended by adding to the first sentence in the fourth paragraph the words toll-free in brackets before the reporting agency's telephone number. At the end of the paragraph the disclosure stating that the reporting agency played no part in the decision, and the consumer has a right under the FCRA to know the information in the credit file, would be added along with the dispute disclosure.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–0978, and, when possible, should use a standard Courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text in machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the proposed amendments to Regulation B. The amendments, which provide model language to facilitate compliance, are not expected to have a significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget (OMB). 5 CFR part 1320, Appendix A.1.

The revised collection of information requirements in the proposed revised regulation are found in Appendix C to 12 CFR part 202. The purpose of the disclosures proposed to be revised is to provide consumers whose application for credit has been denied with the reasons for that action and with information about their rights if information from a third party was used in making the decision. The respondents and/or recordkeepers are all for-profit financial institutions, including small businesses, that regularly extend credit or participate in the decision of whether or not to extend credit.

Under the Paperwork Reduction Act the Board accounts for the associated paperwork burden only for state member banks. Any estimates of paperwork burden for other financial institutions would be provided by the federal agency or agencies that supervise those lenders. The estimated average frequency of response for Regulation B disclosures is 4,765 per state member bank each year and the current estimated burden ranges from fifteen seconds to five minutes per response. The current combined annual burden for all state member banks under Regulation B is estimated to be 129,015 hours. The burden per response for any of the five disclosures proposed to be revised is estimated to be two and one-half minutes, on average. As the revisions are minor, this amount is not expected to change. There is estimated to be no annual cost burden over the annual hour burden. The start-up cost for modifying state member banks' current templates to conform to the revised models is estimated to be approximately $100,000 across all 1,005 state member banks.

Comments are invited on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection or disclosure of information associated with this regulation should be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503.

The disclosures under Regulation B are mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. An agency may not collect or sponsor the collection or disclosure of information, and an organization is not required to collect or disclose information unless a currently valid OMB control number is displayed. The OMB control number for Regulation B is 7100–0201.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 202 as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Appendix C would be amended as follows:

a. By revising the second paragraph;

b. By revising Form C–1;

c. By revising Form C–2;

d. By revising Form C–3;

e. By revising Form C–4;

f. By revising Form C–5.

The revisions would read as follows:

Appendix C to 202—Sample Notification Forms

* * * * *

Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615 (a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that played a part in the credit decision). A creditor must provide the section 615(b) disclosure (that a creditor obtained information from an outside source other than a consumer reporting agency that played a part in the credit decision) where appropriate. ►In addition, a creditor must provide the 615(b) disclosure if the creditor obtained information from an affiliate, other than a credit report, or other than the affiliate's own experience with the consumer. If a creditor denies an application based on information in a credit report obtained from an affiliate, the creditor must provide the section 615(a) disclosure, including the name, address and telephone number of the consumer reporting agency from which the report was originally obtained.◄

* * * * *

Form C–1—Sample Notice of Action Taken and Statement of Reasons

Statement of Credit Denial, Termination, or Change

Date: _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

_____

Description of Action Taken:

_____

_____

Part I—Principal Reason(s) for Credit Denial, Termination, or other Action Taken Concerning Credit. *This section must be completed in all instances.*

____Credit application incomplete
____Insufficient number of credit references provided
____Unacceptable type of credit references provided
____Unable to verify credit references
____Temporary or irregular employment
____Unable to verify employment
____Length of employment
____Income insufficient for amount of credit requested
____Excessive obligations in relation to income
____Unable to verify income
____Length of residence
____Temporary residence
____Unable to verify residence
____No credit file
____Limited credit experience
____Poor credit performance with us
____Delinquent past or present credit obligations with others
____Garnishment, attachment, foreclosure, repossession, collection action, or judgment
____Bankruptcy
____Value or type of collateral not sufficient
____Other, specify:

_____

Part II—Disclosure of use of information obtained from an outside source. This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

____Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____

_____

Address: _____

_____

[Toll-free] Telephone number: _____

____Our credit decision was based in whole or in part on information obtained from ''an affiliate or from'' an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

_____

If you have any questions regarding this notice, you should contact:

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–2—Sample Notice of Action Taken and Statement of Reasons

Date: _____

Dear Applicant:

Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

____ is below our minimum requirement.
____ is insufficient to sustain payments on the amount of credit requested.
____ could not be verified.

Your Employment:

____ is not of sufficient length to qualify.
____ could not be verified.

Your Credit History:

____ of making payments on time was not satisfactory.
____ could not be verified.

Your Application:

____ lacks a sufficient number of credit references.
____ lacks acceptable types of credit references.
____ reveals that current obligations are excessive in relation to income.

Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and ►[toll-free]◄ telephone number of the reporting agency]. The reporting agency is unable to supply specific reasons why we have denied credit to you. You do, however, have a right under the Fair Credit Reporting Act to know the information contained in your credit file. ►You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. ◄Any questions regarding such information should be directed to (consumer reporting agency).

If you have any questions regarding this letter, you should contact us at (creditor's name, address and telephone number).

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

Form C–3—Sample Notice of Action Taken and Statement of Reasons (Credit Scoring)

Date: _____

Dear Applicant:

Thank you for your recent application for _____.

We regret that we are unable to approve your request.

Your application was processed by a credit scoring system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons why you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The reporting agency played no part in our decision other than providing us with credit information about you. Under the Fair Credit Reporting Act, you have a right to know the information provided to us. It can be obtained by contacting: [name, address, and ►[toll-free]◄ telephone number of the consumer reporting agency]. ►You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.◄

If you have any questions regarding this letter, you should contact us at

Creditor's Name: _____

Address: _____

_____

Telephone: _____

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

Form C–4—Sample Notice of Action Taken, Statement of Reasons, and Counteroffer

Date: _____

Dear Applicant:

Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s):

_____

We can, however, offer you credit on the following terms:

_____

If this offer is acceptable to you, please notify us within (amount of time) at the following address:

_____

Our credit decision on your application was based in whole or in part on information obtained in a report from (name, address and ►(toll-free)◄ telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. ►The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.◄

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the (name and address of the appropriate federal enforcement agency listed in Appendix A.)

Sincerely,

Form C–5—Sample Disclosure of Right to Request Specific Reasons for Credit Denial

Date: _____

Dear Applicant:

Thank you for applying to us for. _____

After carefully reviewing your application, we are sorry to advise you that we cannot (open an account for you/grant a loan to you/increase your credit limit) at this time.

If you would like a statement of specific reasons why your application was denied, please contact (our credit service manager) shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name

Address

Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and ►(toll-free)◄ telephone number is shown below. ►The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.◄ You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name

Address

►(Toll-free)◄ Telephone number

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 7, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–18097 Filed 7–10–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–04–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes. This proposal would require modification of the flight compartment door. This proposal is prompted by a report that the door lock mechanism of the flight compartment door jammed and it could not be opened using the alternate release mechanism. The actions specified by the proposed AD are intended to prevent failure of the alternate release mechanism of the flight compartment door, which could delay or impede the evacuation of the flightcrew during an emergency. Such failure also could result in the flightcrew not being able to assist passengers in the event of an emergency.

DATES: Comments must be received by August 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be 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 11581.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE–

172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7509; 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–04–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–04-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100, –200, and –300 series airplanes. Transport Canada Aviation advises it has received a report indicating that the door lock mechanism of the flight compartment door jammed and it could not be opened using the alternate release mechanism. Subsequent testing revealed that the flight compartment door could be opened, but more than reasonable force was required to pivot and open it into the passenger compartment. Such force damaged the flight compartment door and its surrounding structure. Failure of the alternate release method of the flight compartment door when the door becomes jammed could delay or impede the evacuation of the flightcrew during an emergency. Such failure also could result in the flightcrew not being able to assist passengers in the event of an emergency.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 8–52–39, Revision 'A,' dated October 31, 1996, which describes procedures for modification of the flight compartment door. The modification involves reworking the flight compartment door and its surrounding structure, drilling a new hole in the bottom of the hinge half, installing the reworked hinge half, and replacing hinges. Accomplishment of this modification ensures proper operation of the alternate release mechanism of the flight compartment door. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–96–20 R1, dated January 15, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, 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, the proposed AD would require modification of the flight compartment door. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 133 de Havilland Model DHC–8–100, –200, and –300 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $31,920, or $240 per 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:

De Havilland, Inc.: Docket 97–NM–04–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes having serial numbers 3 through 433 inclusive, excluding serial numbers 269, 408, and 413; 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 (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 failure of the alternate release mechanism of the flight compartment door, which could delay or impede the evacuation of the flightcrew during an emergency, accomplish the following:

(a) Within 9 months after the effective date of this AD, modify the flight compartment door (Modification 8/2337) in accordance with Bombardier Service Bulletin S.B. 8–52–39, Revision 'A,' dated October 31, 1996.

Note 2: Modification of the flight compartment door accomplished prior to the effective date of this AD, in accordance with Bombardier Service Bulletin S.B. 8–52–39, dated August 30, 1996, is considered acceptable for compliance with the modification required by paragraph (a) of this AD.

(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 3: 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 July 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–18151 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–9]

Proposed establishment of Class E Airspace; McLaughlin, SD.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed to establish a Class E airspace area at McLaughlin, SD, to accommodate a Global Positioning System (GPS) Runway 31 standard instrument approach procedures (SIAP) for McLaughlin Municipal Airport. The NPRM is being withdrawn because the number of operations at this airport no longer warrants a GPS SIAP.

DATES: This withdrawal is effective July 11, 1997.

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:

The Proposed Rule

On May 13, 1997, a Notice of Proposed Rulemaking was published in the **Federal Register** to establish Class E airspace at McLaughlin, SD, to accommodate a new GPS Runway 31 SIAP for McLaughlin Municipal Airport (62 FR 26263).

Summary of Comments

No comments were received.

Conclusion

In consideration of the operations at McLaughln Municipal Airport which no longer warrant a GPS SIAP, action is being taken to withdraw the proposed establishment of Class E airspace at McLaughlin, SD.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, the Airspace Docket No. 97–AGL–9, as published in the **Federal Register** on May 13, 1997 (62 FR 26263), is hereby withdrawn.

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

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–18153 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 193–0038; FRL–5856–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) to govern transportation conformity and decisions in the San Francisco Bay Area. The intended effect of proposing approval of these rules is to implement the transportation conformity provisions of the Clean Air Act, as amended in 1990 (CAA or the Act). The revisions concern rules from the following District: Bay Area Air Quality Management District (BAAQMD). The rules define the criteria and procedures for transportation conformity actions and consultation for the Bay Area.

DATES: Comments on this proposed rule must be received in writing by August 11, 1997.

ADDRESSES: Written comments on this action should be addressed to: Mark Brucker, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Ruth Verlar, (415) 744–1208.

California Air Resources Board, Transportation Strategies Group, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095, Eric Simon, (916) 322–2700.

Bay Area Air Quality Management District , 939 Ellis St., San Francisco, CA 94109, David Marshall, (415) 749–4678.

FOR FURTHER INFORMATION CONTACT:

Mark Brucker, Air Planning Office, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1231, email: brucker.mark@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the California SIP include: BAAQMD, ''The San Francisco Bay Area Transportation Air Quality Conformity Procedures,'' which includes §§ 93.100 through 93.104 and §§ 93.106 through 93.136 and ''The San Francisco Bay Area Transportation Air Quality Conformity Interagency Consultation Procedures''. These rules were submitted by the California Air Resources Board to EPA on December 16, 1996. These rules are found to be complete pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V.

II. Background

Section 176(c)(4) of the Clean Air Act requires EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal transportation actions to the applicable implementation plan developed pursuant to section 110 and part D of the Act. Conformity to an implementation plan is defined in the Act as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of the standards. The Act also stipulates that EPA's procedures must require that State Implementation Plans (SIPs) be revised to include conformity procedures and criteria for each nonattainment or maintenance area for one or more pollutant. EPA promulgated the federal transportation conformity criteria and procedures (referred to as the Transportation Conformity rule) on November 24, 1993. The rule established the process by which the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and metropolitan planning organizations (MPOs) determine conformity of transportation actions. It also established requirements applicable to recipients of federal highway and transit funds when implementing projects which do not need federal approval.

The Transportation Conformity rule also establishes the criteria for EPA approval of conformity SIPs (see 40 CFR 51.396). These criteria provide that the state provisions must address all requirements of the rule in a manner which makes them fully enforceable under state law, must incorporate certain provisions verbatim, and must be at least as stringent as the other requirements specified in the Transportation Conformity rule.

The San Francisco Bay Area includes a designated moderate nonattainment area for carbon monoxide (CO) and is a maintenance area for ozone. However, since redesignation of the area to attainment for ozone in 1995 the ozone standards have been exceeded many times.

III. EPA Evaluation and Action

On December 16, 1996, the state of California submitted a proposed revision to the SIP for Transportation Conformity for the Bay Area. The Bay Area's proposed revision to the SIP incorporates virtually all of the criteria and procedures mandated by the federal rule verbatim. One area of the proposed revision which cannot be incorporated verbatim is the consultation section. EPA's rule requires a state to develop, in coordination with other interested agencies, consultation procedures which meet the minimum federal requirements. EPA's regulations specify certain topics which must be consulted on, but not how that consultation shall occur. EPA finds that the consultation section is approvable. EPA finds that the full conformity submission meets the criteria set forth in § 51.396 of the Transportation Conformity rule. This includes full enforceability under state law. EPA has reviewed the submittal and determined that the adoption by the Bay Area Air Quality Management District makes the rules fully enforceable under state law.

On August 8, 1995, and November 14, 1995, EPA published revisions to the Transportation Conformity Rule. The revisions were developed in response to and through consultation with conformity stakeholders from throughout the country. The Bay Area proposal incorporates those changes. In addition, EPA has proposed to make further changes to the regulations to accommodate stakeholder requests (July 9, 1996). Those changes are expected to be made final in 1997. Once that occurs the Bay Area agencies will have a year to incorporate those changes. If these rules are approved, conformity in the Bay Area will be governed by the procedures being proposed for approval in this notice until EPA approves changes to the SIP to incorporate the 1997 changes to EPA's regulations.

The SIP submittal includes ''The San Francisco Bay Area Transportation Air Quality Conformity Procedures,'' which includes sections 93.100–93.104 and sections 93.106–93.136, and ''The San Francisco Bay Area Transportation Air Quality Conformity Interagency Consultation Procedures''. These rules were adopted by the Bay Area Air Quality Management District on November 6, 1996, after proper notice and a public hearing held October 11, 1996 by the Metropolitan Transportation Commission (MTC) on behalf of MTC, the Bay Area Air Quality Management District and the Association of Bay Area Governments. The procedures apply to all aspects of transportation conformity related to ozone and carbon monoxide in the Bay Area and provide for coverage of particulate matter less than 10 microns (PM–10) (with one exception described below) and Nitrogen Dioxide (NO2) in case the area is redesignated to nonattainment for PM–10 or NO2, as required by § 51.394 of the Transportation Conformity rule.

The conformity rules are verbatim copies of the federal regulations with two exceptions. Section 93.133(c) has been appropriately modified as described below to satisfy EPA's Transportation Conformity rule, and § 93.131(b) has been added to the EPA provisions to make CO hotspot requirements developed in the Bay Area enforceable under the Clean Air Act if approved by EPA. Section 93.133(c) is required by EPA to stipulate that any mitigation measures that are to be employed must be committed to in writing and must be implemented. The submitted version does so.

EPA's regulations allow Regional Administrators to approve CO hotspot analysis procedures different from EPA's if they are equally effective in protecting air quality and have been consulted on through the interagency consultation process in the relevant nonattainment and/or maintenance area (40 CFR 93.131(a)). They can be approved by EPA Regional Administrators outside the SIP revision process and without a **Federal Register** notice. EPA has received proposed CO hotspot requirements for the Bay Area that appear to be approvable as being as stringent as EPA's requirements. EPA is not taking any action on the hotspot

requirements in this notice because they were not submitted for and do not need to be included in the SIP. EPA cannot approve them in any case until after the Bay Area's rules are approved and make such procedures enforceable. If this approval becomes final, then enforceability will have been established for hotspot requirements developed for the Bay Area through the language in § 93.131(b) of the rules described above. EPA anticipates being able to approve the hotspot requirements if and when approval of the conformity procedures becomes final. However, we have informed the Bay Area that they should solicit and consider public comment on the Protocol before expecting EPA to consider giving approval.

The Preamble to the federal conformity regulations strongly encourages agencies to adopt a definition of ''adoption and approval'' for implementation of ''non-federal'' projects by recipients of federal surface transportation funds (58 FR 62205, November 24, 1993 **Federal Register**). It says: ''The SIP must designate what action by each affected recipient constitutes adoption or approval.'' The Bay Area's rules do not include this definition. Without such definition there may be some ambiguity and difficulty for agencies attempting to proceed with such projects. However, EPA does not consider this significant enough to interfere with approval.

Section 51.402 (§ 93.105) identifies a number of specific processes or decisions for which interagency or public consultation is required. For each of these, the Procedures must assign or identify a lead agency and specify the nature of the consultation process. Almost all of the consultation provisions that are required are included, but some of the topics in the federal rules are not included in the Bay Area's consultation procedures, as described in the Technical Support Document. The rules do not include provisions for identifying which projects should be subject to PM–10 hotspot analyses and do not provide a process to address projects outside the metropolitan planning area but within a nonattainment or maintenance area. Neither of these provisions is needed at this time; the area is not currently required to analyze the hotspot impacts of PM–10 projects and the planning area covers all air quality nonattainment and maintenance areas. If conditions change such that one or both of these provisions are needed, then EPA will have to issue a SIP call requiring that those provisions be added to the rules. However, EPA still considers the rules approvable.

The section of the Consultation Procedures which addresses development of SIPs provided that the three co-lead agencies can ''delegate authority to one of the three co-lead agencies to hold a public hearing * * *.'' This provision is acceptable, but the public notice must make it clear that the one hearing is for all three agencies and all of them must in fact take into account the public input from the hearing.

If these rules are approved it will not amend any existing SIP rules or requirements. Because no existing SIP provisions would be amended or deleted, this action does not need to address the provisions of sections 110(l) and 193 of the Act, which stipulate that certain tests must be met if SIP provisions are being revised, to ensure continued satisfaction of Act requirements and protection of National Ambient Air Quality Standards. However, it is possible that this approval will modify existing procedures being followed by MTC. MTC claims that if this approval becomes final it will result in lifting 1990 and 1991 U.S. District court orders that mandated specific conformity procedures currently embodied in MTC Resolution 2270. EPA offers no opinion on this claim.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, The San Francisco Bay Area Transportation Air Quality Conformity Procedures and The San Francisco Bay Area Transportation Air Quality Conformity Interagency Consultation Procedures are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and section 176(c)(4).

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

Through submission of this state implementation plan, the State has elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action will impose new requirements, affected parties are already subject to these regulations under State law. Accordingly, no additional costs to State or local governments, or to the private sector, result from this final action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State or local governments in the aggregate or to the private sector.

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

C. Unfunded Mandates

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 private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Oxides of nitrogen, Particulates, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 27, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–18252 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX80–1–7329; FRL–5856–4]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: 1990 Base Year Emissions Inventories, 15 Percent Rate of Progress Plans and Contingency Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional interim rule.

SUMMARY: The EPA is proposing a conditional interim approval of the 15 Percent Rate of Progress Plans and associated Motor Vehicle Emissions Budgets (MVEB) for the Dallas/Fort Worth, El Paso and Houston ozone nonattainment areas. In addition, the EPA is proposing to fully approve revisions to the 1990 base year emissions inventory and contingency plans for these three areas.

On January 29, 1996, the EPA published a proposed limited approval/limited disapproval of the 15 Percent Plans and contingency measures in the **Federal Register**. Also, on January 29, 1997, the EPA published a limited approval of the control measures contained in the 15 Percent Plans. Today's proposed action replaces the January 29, 1996, proposed limited approval/limited disapproval of the 15 Percent Plans and contingency measures. The proposed limited approval of the control measures is not affected by this proposal.

DATES: Comments must be received on or before August 11, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7242.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

Section 182(b)(1) of the Clean Air Act (the Act), as amended in 1990, requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide Volatile Organic Compound (VOC) emissions by 15 percent from a 1990 baseline. The plans were to be submitted by November 15, 1993, and the reductions were required to be achieved by November 15, 1996. The Clean Air Act also sets limitations on the creditability of certain types of reductions. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program measures (new car emissions standards) promulgated prior to 1990 or for reductions resulting from requirements to lower the Reid Vapor Pressure of gasoline promulgated prior to 1990. Furthermore, the Act does not allow credit for corrections to Vehicle Inspection and Maintenance Programs (I/M) or corrections to Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990.

In addition, section 172(c)(9) of the Clean Air Act requires that contingency measures be included in the plan revision to be implemented if reasonable further progress is not achieved or if the standard is not attained.

In Texas, four moderate and above ozone nonattainment areas are subject to the 15 Percent Rate of Progress requirements. These are the Beaumont/Port Arthur (moderate [1]), Dallas/Fort Worth (moderate), El Paso (serious), and the Houston/Galveston (severe) areas.

B. Previous 15 Percent Rate of Progress SIP Revisions

Texas first adopted measures for the 15 Percent Rate of Progress Plans and the required contingency measures in two phases. Phase I was submitted to the EPA on November 13, 1993, and contained measures achieving the bulk of the required reductions in each of the nonattainment areas. Phase II was submitted May 9, 1994. The Phase II submittal was to make up the shortfall in reductions not achieved by the Phase I measures. The combination of the Phase I and Phase II measures was ruled complete by the EPA on May 12, 1994.

The EPA analyzed the November 13, 1993, and May 9, 1994, submittal and determined that the measures included in the plan did not achieve the required amount of reductions. Among other reasons, there was a shortfall in reductions because the I/M program relied on in the plans had been repealed by the State. On January 29, 1996, the EPA published a proposed limited approval/limited disapproval of the 15 Percent Plans included in the November 13, 1993, and May 9, 1994, submittals (61 FR 2751). The EPA also proposed a limited approval of the measures that were included with the plans because they resulted in a strengthening of the SIP. For a complete discussion of the deficiencies in the State's plans, please see the January 29, 1996 **Federal Register** document.

[1] Previously classified Serious, on April 2, 1996, the EPA corrected the classification of Beaumont/Port Arthur to moderate (61 FR 14496).

C. Current 15 Percent SIP Revision

The Governor of Texas submitted in a letter dated August 9, 1996, revisions to the 15 Percent Rate of Progress Plans for Beaumont/Port Arthur, Dallas/Fort Worth, El Paso and Houston Areas. The SIP revision also included revisions to the 1990 Base Year Inventory, El Paso Section 818 analysis, the Post 96 Rate of Progress Plan for Houston and the Employee Commute Options SIP. In this **Federal Register**, the EPA is taking action on only the Emissions Inventories, 15 Percent Rate of Progress Plans and Contingency measures for the Dallas/Fort Worth, El Paso and Houston areas. The EPA is taking no action on the other portions of the August 9, 1996, submittal including the Beaumont/Port Arthur 15 Percent Rate of Progress Plan. The other portions of the SIP submittal will be acted on in separate **Federal Register** documents.

II. The EPA's Analysis of Texas's Submittal

A. General

Texas has made the following changes to address the shortfalls that were identified in the January 29, 1996, limited approval/limited disapproval. First, Texas made several revisions to its emissions estimates. These revisions were based on more recent information or source surveys. From these studies, Texas concluded that, in some instances, better estimates of emissions were available based on locally derived emission factors rather than defaults based on national data. Second, these same studies resulted, in some instances, in lower projections of emissions in 1996 resulting in less growth to be offset. Third, by better segregating the emission points that were subject to specific rules, Texas identified additional emission reductions from measures in the original 15 Percent Plan. Finally, Texas introduced a new tail pipe I/M program called Texas Motorist Choice to replace the previous vehicle I/M Program. The EPA is proposing that the combination of the Texas Motorist Choice Program and the revisions to the Emission Inventory and Growth Projections eliminate the shortfall identified in the January 29, 1996, limited disapproval/limited approval.

B. Emission Inventory Revisions

The EPA approved the Texas 1990 base year inventory on November 8, 1994 (59 FR 55586). In the August 23, 1996, SIP revision, Texas included revisions to the approved VOC inventory. The revisions have been made based on more recently available information from source surveys and other methods. Much of the information was developed as part of bottom up surveys of area source categories performed as part of the 1993 intensive ozone study in the Houston and Beaumont areas. This study, called the Coastal Oxidant Assessment for Southeast Texas (COAST), included a study of area source emissions. Traditional emission inventory techniques use national or state level statistics for the level of activity of a source category. For example, gallons of gasoline sold statewide might be used to determine emissions from Gasoline Stations. These emissions would be apportioned geographically using a surrogate such as population. In the bottom-up approach, surveys of actual facilities are used to determine emission levels. In addition to the data collected from bottom up surveys, other improvements were made to the 1990 inventory. A brief discussion of the changes made to the inventory follows.

Other Product Coatings, High Performance Maintenance and Other Special Purpose Coatings

These categories are all surface coating categories that were estimated for the 1990 inventory using per capita emission factors provided by the EPA. The per capita factors were developed from national level estimates of usage of a product divided by the 1989 population. The documentation of the coatings and emissions covered by these categories was not initially available. The Texas Natural Resource Conservation Commission (TNRCC), with EPA approval, removed these categories from the 1993 periodic emissions inventory. After further study, documentation of the specific categories and coatings was identified and the 1990 inventory has been adjusted appropriately. Once the categories had been accurately identified, overlap with the point source inventory could be accounted for and an improved area source estimate was obtained.

Marine Vessel Loading Losses

Area source emissions in this category were based on estimates of the total amount of VOCs loaded at Texas ports. Texas determined that individual point sources had under reported emissions from this category. When the revised point source emissions are considered, it was determined that all of the emissions from this category in the Houston area and the bulk of the emissions in the Beaumont area were covered in the point source emission inventory. Therefore, the area source estimate could be reduced in both areas.

Surface Cleaning

A contractor performed a bottom up survey of this category. This survey was later expanded by TNRCC staff. The results of the survey indicated that the national default estimate of emissions for this category should be revised for the nonattainment areas in Texas.

Architectural Coatings

Texas revised emissions estimate by using more recent information from the National Paint and Coatings Association combined with data from surveys on thinner usage.

Automobile Refinishing

Texas used more recent information from the National Paint and Coatings Association and source surveys to revise the emission estimates for this category. In addition, using data from the Department of Commerce on paint shipments, Texas projected a substantial decrease in emissions between 1990 and 1994.

Sheet, Strip and Coil

This category was estimated for the 1990 emission factor of 1.5 tons/employee. The number of employees related to this industry was obtained from the County Business Patterns for Standard Industrial Classification (SIC) 3479. This SIC code includes many businesses not engaged in coil coating operations. A list of companies involved in coil coating operations was obtained from the national coil coaters association. It was determined that all of the companies involved in these operations were outside the nonattainment areas or were reporting their emissions in the point source inventory. Therefore, including their emissions in the area source emissions would be double counting. Therefore, the area source emissions were removed from the inventory.

Vessels With Outboards

A telephone survey of pleasure craft owners in the Houston Galveston and Beaumont Port Arthur areas was conducted. The survey showed that 62 percent of boat usage occurs on weekends rather than on weekdays. Previous emission estimates had allocated pleasure craft emissions equally to each day of the week. It is important to know when emissions occur in developing control strategies. In this case, according to the EPA guidance, emissions are to be reduced from their 1990 summer time weekday levels. Therefore, Texas reduced the

expected weekday emissions based on the results of the survey. Correspondingly, the weekend emissions were increased. A similar adjustment had previously been made to the Dallas/Fort Worth inventory.

Commercial Vessels

This category of emission results from fuel combustion by ocean going vessels, harbor vessels and the fishing fleet. Emissions were originally estimated by using information from the Army Corps of Engineers on freight traffic at harbors and allocating national fuel usage to Texas. These emissions were revised based on a more recent study performed by an EPA funded contractor in 1992. The revised emission levels are based on estimates of activity levels for specific categories of vessels.

Generators <50 Horsepower

As part of the COAST project, local area-specific construction and recreational area information, and more current information about horsepower distributions and equipment/populations, were utilized to obtain a more refined estimate of emissions in this category.

Residential Lawnmowers

Similar to the survey performed of recreational boat users, a survey of homeowners was performed to determine when they actually cut their lawns. Of those survey respondents whose lawns are cut by the resident, friend or neighbor, fifty-nine percent of the surveyed respondents reported that they cut their lawns on the weekends. Texas reallocated the emissions based on the results of the survey. No adjustment was made to the emissions from commercial lawncare services.

Military Aircraft

This change reflects a change in the 1990 base year inventory for the Dallas/Fort Worth area based on a 1992 Environmental Impact Statement (EIS) for Carswell Air Force Base. This EIS more accurately reflected the actual aircraft used at the base when compared to the original emission estimate. This change resulted in a substantial increase in the 1990 emissions estimate. The base has undergone a substantial realignment since 1990 resulting in a significant decrease in emissions projected for 1996.

1994 Quality Assurance Efforts

During 1994, the TNRCC completed a thorough evaluation of the 1990 point source inventory and discovered that emissions from facilities in several SIC codes were misplaced under the wrong emissions category. This effort resulted in significant changes to some emissions categories. The realignment of emissions did not affect the total emissions. The realignment of emissions did have the effect of increasing the amount of reductions that were expected for certain control measures and decreasing the amount of emission reductions expected from other control measures.

The EPA is proposing to approve these revisions to the 1990 Base Year VOC inventory. The originally approved biogenic emissions are unchanged. A summary of the Revised 1990 emissions inventory for the three areas is included in Table 1.

TABLE 1.—1990 BASE YEAR EMISSIONS INVENTORY

	Point	Area	On-road	Non-road	Total
Dallas/Fort Worth	65.27	174.02	306.60	105.19	651.08
El Paso	9.45	24.94	38.27	10.99	83.65
Houston	481.95	200.07	251.72	129.98	1063.72

C. Calculation of the 1996 Target Level of Emissions

Texas subtracted the noncreditable reductions from the FMVCP and Reid Vapor Pressure program from the 1990 emissions inventory. This subtraction results in the 1990 adjusted inventory. The total required emission reduction required to meet the 15 Percent Plan requirement equals the sum of 15 percent of the adjusted inventory, plus reductions to offset any growth that takes place between 1990 and 1996, plus any reductions that result from corrections to the I/M or VOC RACT rules. Table 2 summarizes the calculations for the Dallas/Fort Worth, El Paso and Houston areas.

TABLE 2.—CALCULATION OF REQUIRED REDUCTIONS (TONS/DAY)

	Dallas/Fort Worth	El Paso	Houston/Galveston
1990 Emission Inventory	651.08	83.65	1063.72
1990 Adjusted	548.83	69.40	975.39
15% of adjusted	82.32	10.41	146.31
RACT and I/M Corr	.99	1.57	16.31
1996 Target	465.52	57.42	812.77
1996 [1] Projection	583.07	73.61	1026.27
Required Reduction	117.55	16.19	213.27

[1] 1996 forecasted emissions with growth and pre-1990 controls.

D. Projections of Growth

As can be seen from the calculations in Table 2, an important component of calculating the required emission reductions is to project the amount of growth in emissions that is expected between 1990 and 1996. Since the 1996 emissions are related to the 1990 emissions, the changes in the 1990 emission inventory resulted in changes to the 1996 projections. In addition, as discussed previously, Texas has projected reductions in the emissions from surface cleaning, auto refinishing and military aircraft emissions from 1990 levels.

E. Deficiencies Identified in the January 29, 1996, Federal Register

In the January 29, 1996, **Federal Register**, the EPA identified several areas where it was believed that Texas had projected too much emission reduction for particular control measures. The EPA has reviewed the

State's August 9, 1996, SIP revision and believes that it addresses the EPA's previously identified concerns. A brief discussion of the previously identified concerns and how they have been addressed follows:

El Paso Stage II

In the previous submittal, the EPA believed that for the El Paso area, too much emission benefit was projected for this control measure. Texas, in the August 23, 1996, SIP revision, corrects this problem by adjusting the projected control efficiency from 98 percent to 95 percent.

Architectural and Industrial Maintenance Rules

Texas projected emission reductions for this category based on past EPA guidance. The guidance, however, was changed in a memorandum dated March 22, 1995, (Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule). In the August 9, 1996, SIP revision, the emission reduction estimate is revised based on the more recent guidance.

Emission reductions from the AIM rule are based on the rule proposed by the EPA on June 25, 1995, which expected compliance by April 1997. Subsequently, the issuance of the rule has been delayed. The EPA has negotiated a compliance date of no earlier than January 1, 1998. The previous guidance allowed States to take emission reduction credit for the AIM rule even though the reductions were not expected to occur until April 1997. The EPA believes that even though the compliance date has been pushed back to January 1, 1998, the emission reduction from the national AIM rule is creditable in State 15 Percent Plans.

Industrial Wastewater

In the January 29, 1996, **Federal Register**, the EPA proposed that Texas had projected too high a control efficiency for this control measure. The EPA continues to believe that the control efficiency projected by Texas for this measure is too high. Texas, however, believes that the rule effectiveness originally used for this control measure was too low. The EPA agrees that this is likely the case. The combination of rule effectiveness and control efficiency determine the overall reductions. Therefore, the EPA believes that the overall reductions should be accurate. Texas has committed to study emissions from this category to determine actual control efficiency and rule effectiveness for the category. In light of the above, the EPA believes that it is appropriate to propose approval of these projected emission reductions. The EPA will work with Texas to further study the emissions from this source category as part of determining whether RACT has been instituted for this category of emissions.

Employee Commute Options (ECO)

In the Houston area, Texas previously relied on this program to provide emission reductions. The EPA approved the State ECO program on March 7, 1995 (60 FR 12442). Public Law 104–70, which was passed by Congress in December 1995, gave flexibility to the states in meeting the requirements of the ECO program. Specifically, the legislation allowed states, that prior to its enactment were required to implement ECO programs, to ''remove such provisions from the State Implementation Plan, or withdraw its submission, if the state notifies the Administrator, in writing, that the state has undertaken, or will undertake, one or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions.'' The State of Texas has removed the ECO emissions reduction credit from the Houston 15 Percent Plan and does not rely on the emission reduction of 1.81 ton/day which was projected under the ECO program. In addition, the Governor of Texas has notified EPA and requested removal of the Texas ECO rule from the SIP. For the purposes of the 15 Percent SIP, the State has satisfied the provisions of the 1995 legislation. The EPA will act on the Governor's request under a separate **Federal Register** action to address the specific requirements of the ECO program and its removal from the SIP.

Marine Vessel Loading

In the January 29, 1996 **Federal Register**, the EPA noted that Texas had projected reductions from their Marine Vessel Loading Rule for area sources (sources with less than 25 tons/year emissions) in this category. The rule, however, only covered facilities with emissions greater than 100 tons/year. Therefore, the emission reductions for area sources could not be credited. As discussed previously, in subsequent studies, Texas has learned that there are no area source emissions in this category in the Houston area. Therefore, Texas has revised its emission reduction estimates to remove the area source emission reductions.

Acetone Substitution

Texas had projected emission reductions for the rules to regulate the cultured (synthetic) marble and fiber reinforced plastic operations. The EPA, however, has added acetone to the list of non-reactive substances. Texas, in the August 9, 1996, submittal, has removed emission reduction credit for these rules.

Vehicle Inspection and Maintenance (I/M)

The January 29, 1996 proposed limited approval/limited disapproval did not agree with the emission reductions projected for Vehicle I/M because Texas had discontinued the program after submittal of the 15 Percent Plan. On June 27, 1996, the Region received the State's revised I/M plan. The plan contained provisions for the implementation of a decentralized two-speed idle testing program. Testing is required annually in the counties of Harris, Dallas, Tarrant, and El Paso. The plan was submitted under the provisions of the National Highway Systems Designations Act of 1995 (NHSDA). The plan also allows for, but does not require, loaded mode testing in which case the test would be biennial. There are no loaded mode testing commitments or credits contained in the I/M or 15% plan SIPs.

In the Houston area, this is largely a new program. In the El Paso and Dallas/Fort Worth areas the existing program is strengthened by provisions for remote sensing, a real time data link of test stations, auditing and enforcement, repair effectiveness support, performance monitoring and evaluation and gas cap pressure testing. The plan start dates were July 1, 1996, for Dallas/Fort Worth and January 1, 1997, for Houston and El Paso.

On October 3, 1996, the Region proposed conditional interim approval of the revised I/M plan (61 FR 51651). The proposal was conditional because the State needed additional legal authority to implement portions of its plan including, test on resale provisions, enforcement of remote sensing, and authority for re-registration denial. The approval was interim because under the provisions of the NHDSA the State's estimates regarding network type were to be based on good faith estimates with the credits to be evaluated at the end of an 18 month interim approval period.

The EPA has reviewed the modeling of the projected emission reductions for the revised I/M program provided by Texas. With the exception of the gas cap check, Texas has projected emissions

reductions that are consistent with EPA guidance.

However, it is the EPA's position that Texas projected more emission reductions than the EPA feels is appropriate for their gas cap check. The EPA has performed modeling to assess the amount of over estimation. For the Houston, Dallas/Fort Worth and El Paso areas, the amount of over estimation is estimated to be 0.5 tons/day, 0.8 tons/day, and 0.2 tons/day respectively. In each of these areas there are excess emission reductions that are sufficient to cover this over estimation.

The I/M Program was challenged in state court. The Court recently ruled that the two Senate Bills (19 and 178) challenged were an unconstitutional ''taking'' and an unconstitutional interference with contract, *Texas Testing Technologies I, et al.* v. *The State of Texas,* No. 95–1462 (126th Dist. Court, Travis County, Texas) (April 21, 1997). The suit is essentially a contract dispute with the State and is hence irrelevant to today's proposal to accept the State's projected emission reductions in the 15% SIP. The State has adequate legal authority without the two Senate Bills' language to implement and enforce an I/M program (except for the conditions noted in the October 1996 **Federal Register** proposal). Therefore, EPA is proposing to accept the State's projected emissions reductions with the exception of the projected emissions from the gas cap check.

F. Impact of Vehicle I/M Start Dates

Section 182(b)(1) of the Act requires that States containing ozone nonattainment areas classified as Moderate or above prepare SIPs that provide for a 15 percent VOC emissions reduction by November 15, 1996. Most of the 15 percent SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most States experienced substantial difficulties with these enhanced I/M programs, only a few States are currently actually testing cars using their original enhanced I/M protocols.

In September, 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs (60 FR 48029). Subsequently, Congress enacted the NHSDA, which provides States with more flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by States to re-design enhanced I/M programs in accordance with the guidance contained within the NHSDA, secure state legislative approval when necessary, and set up the infrastructure to perform the testing program precluded States that revise their I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many States upon enhanced I/M programs to help achieve the 15 Percent VOC emissions reduction required under section 182(b)(1) of the Act, and the recent NHSDA and regulatory changes regarding enhanced I/M programs, the EPA recognized that it was no longer possible for many states to achieve the portion of the 15 percent reductions that is attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15 percent SIPs would serve no purpose. Consequently, under certain circumstances, the EPA will propose to allow States that pursue redesign of enhanced I/M programs to receive emission reduction credit from these programs within their 15 Percent Plans, even though the emissions reductions from the I/M program will occur after November 15, 1996.

Specifically, the EPA will propose approval of 15 percent SIPs if the emissions reductions from the revised, enhanced I/M programs, as well as from the other 15 Percent Plan measures, will achieve the 15 Percent target level as soon after November 15, 1996, as practicable. To make this ''as soon as practicable'' determination, the EPA must determine that the 15 Percent SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. EPA does not believe that measures meaningfully accelerate the 15 Percent date if they provide only an insignificant amount of reductions.

G. Acceptability of Texas 15 Percent Plans

In the case of the Dallas/Fort Worth, El Paso and Houston areas, Texas has submitted 15 Percent SIP revisions that demonstrate they achieve the necessary 15 Percent reductions from I/M by the end of 1997. The Texas I/M program is an annual program which began in Dallas/Fort Worth on July 1, 1996, and in El Paso and Houston on January 1, 1997. Texas submitted 15 Percent SIPs for Dallas/Fort Worth, El Paso, and Houston that included creditable control measures. Emission reductions resulting from the implementation of the state adopted control measures in the 15 Percent Plans have already occurred. Texas has relied on reductions from the AIM rule. The AIM reductions are expected to occur by January 1, 1998. Therefore, the EPA believes that these plans will achieve the required reductions by January 1, 1998. The EPA believes that these SIPs contain measures, including I/M, that achieve the required reductions as soon as practicable for these nonattainment areas.

The EPA has examined other potentially available SIP measures to determine if they are practicable for the Dallas/Fort Worth, El Paso and Houston Areas and if they would meaningfully accelerate the date by which these areas reach the 15 Percent level of reductions. EPA proposes to determine that the SIPs for the Dallas/Fort Worth, El Paso and Houston Areas contain the appropriate measures. For the Dallas/Fort Worth, El Paso and Houston area no additional measures were identified that could be implemented to meaningfully accelerate the date by which the 15 Percent target level could be attained. For a complete discussion of the control measures considered, please see the Technical Support Document for this action.

Tables 3 through 5 summarize the control measures and the associated emission reductions used to achieve the 15 Percent targets.

TABLE 3.—SUMMARY OF EMISSION REDUCTIONS: DALLAS/FORT WORTH (TONS/DAY)

Required Reduction	117.55
Creditable Reductions:	
RACT Catch-up	4.03
Stage II	18.19
Aircraft Stage III	0.60
Other VOC storage, transport	0.05
I/M, FMVCP Tier I, Reformulated Gas	69.46
Bakeries	0.12
Municipal Landfills	3.49

TABLE 3.—SUMMARY OF EMISSION REDUCTIONS: DALLAS/FORT WORTH (TONS/DAY)—Continued

Carswell Fire Training Pit Closure	1.20
RE Improvements	4.86
Gas Utility Engines	7.76
Reform Off Road	4.23
TCMs	6.94
Consumer/Commercial Products	4.09
Gasoline Terminals	2.17
Fugitives	0.07
Wood Furniture	1.35
AIM	4.77
Traffic Markings	0.56
High Performance Maintenance	0.96
Other Special Purpose Coatings	1.18
Total	136.07

TABLE 4.—SUMMARY EMISSION REDUCTIONS: EL PASO (TONS/DAY)

Required Reduction	16.19
Creditable Reductions:	
RACT Catch-up	0.71
Stage II	1.87
Aircraft Stage III	0.02
FMVCP Tier I, I/M, Low RVP	7.37
Offset Printing	0.56
Vessel Loading	0.32
Fugitives	1.13
RE Improvements	1.63
Gas Utility Engines	0.88
TCMs	0.35
Architectural Coatings	0.80
Consumer/Commercial Products	0.70
Municipal Landfills	0.21
Industrial Wastewater	0.27
Bulk Gasoline Terminals	0.77
Outdoor Burning	0.40
Wood Furniture	0.04
RVP (off-road)	0.09
Traffic Markings	0.09
High Performance Maintenance	0.12
Total	18.32

TABLE 5.—SUMMARY EMISSION REDUCTIONS: HOUSTON/GALVESTON (TONS/DAY)

Required Reduction	213.27
Creditable Reductions:	
RACT Catch-up	27.81
TSDF	13.48
Stage II	16.89
General Vent Gas	13.97
Reform Gas, I/M, Tier I FMVCP	40.41
Reform (Off Road)	5.30
Vessel Cleaning/Degassing	3.01
Stage I	6.26
SOCMI Rct. & Dist.	1.68
Fugitive Controls	46.03
RE Improvements	12.82
Gas Utility Engines	8.47
TCMs	0.36
Consumer/Commercial Products	4.44
Marine Vessel loading	15.73
Gasoline Terminals	3.36
Wood Coating	0.37
Bakeries	0.22
Architectural Coatings	5.03
Industrial Wastewater	8.56
Traffic Markings	0.56
Other Special Purpose	1.24
High Performance Maintenance	0.99

TABLE 5.—SUMMARY EMISSION REDUCTIONS: HOUSTON/GALVESTON (TONS/DAY)—Continued

Total	237

III. Motor Vehicle Emissions Budgets

The Clean Air Act, section 176(c), and the transportation conformity rule require the states to establish motor vehicle emissions budgets (MVEB) in any control strategy SIP that is submitted for attainment and maintenance of the National Ambient Air Quality Standards. These budgets will be used to determine if future transportation plans conform with State air quality plans. The budget for each area has been calculated by projecting the 1996 Motor Vehicle emissions and subtracting the emission reductions from planned emission control programs. The State of Texas has established a MVEB for VOC for Dallas/Fort Worth, El Paso, and Houston. The EPA is proposing to give conditional interim approval of the following MVEB:

TABLE 6.—1996 VOC MOTOR VEHICLE EMISSIONS BUDGETS

Area	VOC (Tons per Day)
Dallas/Fort Worth	165.49
El Paso	21.63
Houston	152.12

IV. Contingency Measures

Ozone areas classified as moderate or above must include in their submittals, under section 172(c)(9) of the Act, contingency measures to be implemented if Reasonable Further Progress (RFP) is not achieved or if the standard is not attained by the applicable date. The General Preamble to Title I, (57 FR 13498) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the State is needed. Therefore, the EPA interprets the Act to require States with moderate and above ozone nonattainment areas to include sufficient contingency measures in the November 1993 submittal, so that upon implementation of such measures, additional emissions reductions of up to three percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review .

Analysis of Specific Contingency Measures

The following is a discussion of each of the contingency measures that have been included in the SIP submittals and an analysis of their acceptableness.

Degassing or Cleaning of Vessels

This measure was adopted as part of the 15 Percent Plans for the Houston area. It was also adopted as a contingency measure in the El Paso and Dallas/Fort Worth areas. The EPA believes the reductions that have been projected if this measure is needed as a contingency measure are appropriate.

Dry Cleaning Naphtha

This measure adopted at 30 TAC 115.552 as a contingency measure would call for control of dry cleaners that use petroleum naphtha. This rule was adopted as a contingency measure in the Dallas/Fort Worth, El Paso, and Houston areas. The EPA has evaluated this measure and believes that it will achieve the projected reductions in the event it must be implemented.

Offset Printing

Regulation of emissions from offset printing was adopted as a 15 Percent Plan measure in the El Paso area. It was also adopted as a contingency measure in the Houston and Dallas/Fort Worth areas. The EPA believes that the emission reductions that have been projected if it is necessary to implement these rules are appropriate.

Commercial Bakeries

Texas adopted control measures for major source bakeries in Dallas/Fort Worth and Houston as part of the 15 Percent Plans. Texas also adopted for Dallas and El Paso, a contingency measure for minor source bakeries to be controlled in the event a milestone demonstration or attainment date is missed. The EPA believes the reductions that are projected if these rules are implemented are appropriate.

Transportation Control Measures (TCM)

In Dallas/Fort Worth and El Paso, Texas has projected that additional emission reductions will come from transportation control measures that will be implemented in the 1997 time frame. TCMs are measures such as High Occupancy Vehicle lanes that reduce emissions by modifying the transportation system. The EPA believes the projected emission reductions have been quantified appropriately.

Gas Utility Engines

In all three areas, Texas has projected emission reductions that will occur from the small engine rule in the year following the required milestone demonstration or 1997. The EPA believes that these reductions have been quantified appropriately.

Vehicle Inspection and Maintenance and Tier I

All of the contingency plans rely to some extent on reductions from the inspection and maintenance program. As discussed previously, the planned I/M reductions are not expected to occur until the end of 1997. Additional reductions from I/M cannot be expected to occur in the time frame envisioned for contingency measures. Therefore, these reductions cannot be credited toward the contingency measures.

However, reductions in excess of the 15 percent plans and requirements achieved from measures enumerated above are sufficient to ensure that the contingency measure target of three percent is met. If Texas has to implement these measures for contingency purposes or for future plans then the State will have one year to backfill the contingency plan.

TABLE 7.—SUMMARY OF ACCEPTABLE CONTINGENCY MEASURES: DALLAS/FORT WORTH (TONS/DAY)

Required Contingency	16.46
Creditable Contingency Reductions:	
Vessel Cleaning	0.18
Dry Cleaning Naphtha	2.22
Offset Printing	0.85
Commercial Bakeries	0.15

TABLE 7.—SUMMARY OF ACCEPTABLE CONTINGENCY MEASURES: DALLAS/FORT WORTH (TONS/DAY)—Continued

TCMs	2.03
Gas Utility Engines 1997	0.73
Excess reductions from 15 Percent measures	18.52
Total	24.68

TABLE 8.—SUMMARY OF CONTINGENCY MEASURE REDUCTIONS: EL PASO (TONS/DAY)

Required Contingency	2.08
Creditable Contingency Reductions:	
Vessel Cleaning	0.09
Dry Cleaning Naphtha	0.30
Commercial Bakeries	0.05
TCMs	0.53
Gas Utility Engines 1997	0.08
Excess reductions from 15 percent measures	2.13
Total	1.74

TABLE 9.—SUMMARY OF CONTINGENCY MEASURE REDUCTIONS: HOUSTON/GALVESTON (TONS/DAY)

Required Contingency	29.26
Creditable Contingency Reductions:	
Municipal Landfills	3.99
Dry Cleaning-Naphtha	1.88
Offset Printing	2.20
Gas Utility Engines 1997	0.76
Excess Reductions from 15% measures	23.73
Total	32.56

V. Rulemaking Action

The EPA has evaluated the Emissions Inventory, 15 Percent Plans and contingency measures submitted as part of the August 23, 1996 SIP revision for Texas. The EPA has also reviewed the MVEB associated with these 15% plans. The EPA proposes to give full approval of the revisions to the 1990 base year inventory for Dallas/Fort Worth, El Paso and Houston/Galveston Areas. The EPA proposes to give Conditional Interim approval of the 15 Percent Plans and associated MVEB for the three areas. Finally, the EPA proposes to give full approval of the contingency plans for these three areas.

The 15 Percent Plans for the three areas can only receive a conditional interim approval because the plans all rely in part on emission reductions from the revised I/M program. The EPA proposed conditional interim approval of the I/M program for the three areas on October 3, 1996. Therefore, the 15 Percent Plans can only receive conditional interim approval.

Interim Approval

The NHSDA allows States to make a ''good faith'' estimate of the reductions that will be achieved by the I/M program. The I/M program can be given interim approval during an 18 month period during which the program is evaluated to validate the ''good faith'' estimate. At the end of the 18-month interim period, the interim approval status for the I/M program will automatically lapse pursuant to the NHSDA. It is expected that the State will, at that time, be able to make a demonstration of the program's effectiveness using an appropriate evaluation criteria. If the State fails to provide a demonstration of the program's effectiveness to EPA within 18 months of the final interim I/M rulemaking, the interim approval will lapse, and EPA will be forced to disapprove the State's permanent I/M SIP revision. An I/M disapproval will result in a 15 Percent Plan disapproval unless substitute emission reductions are submitted. Information from the I/M program evaluation showing the program achieves a lesser amount of reductions than originally projected will be used in the final action on the 15 Percent Plans. Further discussion of the requirements for final approval of the I/M program are discussed in the October 3, 1996, **Federal Register** (61 FR 51651).

Conditional Approval

The EPA is proposing a conditional approval of the 15 Percent Plans contingent upon the State meeting the conditions outlined in the proposed I/M conditional approval. These include the State obtaining the appropriate legislative authority as needed to implement the program outlined in the Governor's Executive Order. The EPA proposes that if the State fails to obtain the needed additional legal authority within 12 months of final conditional interim approval of the 15 Percent Plans, the 15 Percent Plan approval will convert to a disapproval after a letter is sent notifying the State of the conversion to disapproval.

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

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and

Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

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

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, 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 private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the conditional approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

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

Dated: July 1, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–18244 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, and 273

[SWH–FRL–5856–6]

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury-Containing Lamps

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is making available to the public a study containing information relating to its Proposed Rule addressing the management of mercury-containing lamps under the Resource Conservation and Recovery Act Subtitle C hazardous waste management system published in the **Federal Register** on July 27, 1994, 59 FR 39288. The study consists of an electronic model and report that provides an assessment of mercury emissions from the management of mercury-containing lamps under different approaches, including two that were discussed in the Proposed Rule: A conditional exclusion from hazardous waste regulations and adding lamps to Universal Waste regulations (May 11, 1995, 60 FR 25542). Readers should note that only comments about the study discussed in this Notice of Data Availability will be considered by the Agency during this comment period. The Agency is not reopening the comment period for the July 27, 1994 proposed rule through this Notice of Data Availability.

DATES: Comments on the study will be accepted through August 25, 1997.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–97–FLEA–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–97–FLEA–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. If comments are not submitted electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a common word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor,

1235 Jefferson Davis Highway, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. Copies of the electronic emissions model on compact disk will be available from the docket at no charge.

In addition to being available for public viewing in the docket, the electronic model and report discussed in this Notice will also be available in electronic format on the Internet. Access to documents on the Internet will begin in mid-July 1997. Follow these instructions to access these documents.

WWW: http://www.epa.gov/epaoswer/hazwaste/id

FTP: ftp.epa/gov

Login: anonymous

Password: your Internet address

Files are located in /pub/gopher/OSWRCRA.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information or to order paper copies of this Federal Register document, call the RCRA Hotline. Callers within the Washington, D.C. Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). Long distance callers may call 1–800–424–9346 or TDD 1–800–553-7672. The RCRA Hotline is open Monday-Friday, 9:00 a.m to 6:00 p.m., Eastern Standard Time. For other information on this notice, contact Mr. Lyn Luben (5307W), Office of Solid Waste, 401 M St. SW., Washington, DC 20460, phone 703–308–0508.

A telephone line and electronic address specifically dedicated to technical support for the Mercury Emissions electronic model have been established for the public comment period. For technical assistance on any aspect of the Mercury Emissions electronic model, call 1–888–272–8729. Requests for assistance may also be submitted electronically to mercurymodel@icfkaiser.com or may be faxed to 703–934–3740.

SUPPLEMENTARY INFORMATION: On July 27, 1994, the Environmental Protection Agency issued a proposed rule(59 FR 39288) proposing two alternative approaches for the management of mercury-containing lamps.

The amount of mercury released into the environment from spent fluorescent lamps was a key uncertainty identified in the 1994 proposed rule. Since the proposal, the Agency has continued to collect and analyze information from other sources on mercury emissions from the management of spent fluorescent lamps. Part of this ongoing effort included development of the Mercury Emissions study. This Notice announces the availability of this additional information and the mercury emissions study.

The purpose of the mercury emissions study is to provide a supplementary tool for the assessment of amounts and sources of mercury emissions potentially produced under alternative management scenarios for spent fluorescent lamps. The study examines three basic elements in the assessment of mercury emissions associated with the disposal of spent fluorescent lamps: mercury input into the waste management system, mercury emissions from the management of spent lamps, and mercury emissions avoided due to the installation of energy efficiency lighting and the corresponding reduction in power generation requirements.

The study is considered by EPA to be a qualitative study based partly on quantitative analyses. It is considered qualitative by EPA due to limitations of the data. The study should be used in combination with available scientific knowledge to help evaluate primary and secondary mercury emissions potentially associated with the management of spent lamps.

EPA believes the following observations may be derived from the study results. First, mercury emissions from municipal waste combustors are a major source of mercury emissions from lamps. Second, mercury emissions from lamps broken prior to recycling or disposal are a significant contributor to lamp mercury emissions. These two observations are derived from Table 3–2 in the report. Finally, as detailed in Table 3–4, energy savings from the use of fluorescent lamps and the resultant decrease in mercury emissions from coal-fired utility boilers appear to be independent of spent lamp management approach.

Data Available For Review and Comment

The Agency requests comment on the study described in this notice. Supporting documents used in the development of the study are listed below. Copies of reports and these supporting documents are available for inspection in the docket for this Notice.

1. Hinkley, William M., Bureau of Solid and Hazardous Waste Management, Department of Environmental Protection, State of Florida, Comments on EPA's Proposed Rule: Modification of the Hazardous Waste Program; Mercury Containing Lamps, November 23, 1994.

2. Howley, Joseph, GE Lighting: Letter to Ms. Kristina Meson and Ms. Yvette Hopkins of the U.S. Environmental Protection Agency, August 20, 1996.

3. McGaughey, James F., et al. Eastern Research Group, Inc. *Mercury and Other Metals Testing at the GSF Energy Inc. Landfill Gas Recovery Plant at the Fresh Kills Landfill*; *Final Report*, January 1997.

4. National Electrical Manufacturers Association, *Environmental Risk Analysis: Spent Mercury-Containing Lamps, A Summary of Current Studies*, (second edition) February 20, 1995.

5. National Electrical Manufacturers Association, E*nvironmental Risk Analysis: Spent Mercury-Containing Lamps, A Summary of Current Studies*, (third edition) March 18, 1996.

6. State of California—Department of Toxic Substances Control, letter submitted to Alec McBride of EPA, March 9, 1993.

7. State of Florida—Florida Department of Environmental Protection, *Managing Spent Fluorescent and High Intensity Discharge (HID) Lamps*, July 1996.

8. State of Florida, Florida Department of Environmental Protection, *1995 Florida Mercury-Containing Lamp Recycling* & *1996 Florida Mercury-Containing Lamp Recycling*, May 20, 1997.

9. State of Minnesota—Minnesota Pollution Control Agency, FAX submitted to Yvette Hopkins of EPA, August 23, 1996.

10. State of Wisconsin—Department of Natural Resources, Letter sent to David Layland of EPA, February 26, 1993.

11. Sylvania Corporation: Meeting notes and follow-up letter. Meeting between Ms. Kristina Meson, EPA technical staff, and personnel from Sylvania Corporation, August 21, 1996. Sylvania follow-up comments presented in letter dated September 18, 1996.

12. TetraTech Inc. and Frontier Geosciences Inc., *Information on Fate of Mercury From Mercury-Containing Lamps Disposed in Landfills,* November 1994.

13. Truesdale, Robert S., *et al.*, Research Triangle Institute, *Management of Used Fluorescent Lamps: Preliminary Risk Assessment*, (RTI Project No. 94U–5400–010), October 1992 (Revised May 14, 1993).

14. United States Department of Commerce, Economics and Statistics Administration, Bureau of the Census, *Current Industry Reports—Electric Lamps, Summary for 1992,* MQ36B(92)-5, September 1993.

15. United States Department of Commerce, Economics and Statistics Administration, Bureau of the Census, *Current Industry Reports—Electric Lamps, Summary for 1993,* (in: *Commerce News)* MQ36B(94)-1, November 1994.

16. United States Department of Commerce, Economics and Statistics Administration, Bureau of the Census, *Current Industry Reports—Electric Lamps, Summary for 1994,* (in: *Commerce News)* MQ36B(94)-1, July 1995.

17. United States Department of Energy, Energy Information Administration, *Commercial Buildings Energy Consumption and Expenditures—1992,* DOE/EIA–0318(92), April 1995.

18. United States Department of Energy, Energy Information Administration, *Commercial Buildings Characteristics—1992,* DOE/EIA–0246(92), April 1994.

19. United States Department of Energy, Energy Information Administration. *Electric Power Annual 1995*—Generating Capability, Net Generation, Fossil Fuel Statistics (consumption-stocks-receipts-costs), Estimated Retail Sales/Revenue, Volume I (DOE/EIA–0348(95), July 1996.

20. United States Environmental Protection Agency, *Mercury Study, Report To Congress: SAB Review Draft.* EPA–452/R–96–001. June 1996.

21. United States Environmental Protection Agency, Office of Air and Radiation, *Lighting Upgrade Technologies*, EPA 430-B–95–008, February 1997.

22. United States Environmental Protection Agency, Office of Air and Radiation, EPA Green Lights, FAXes from Geoffrey Brown to Gary Ballard. October 23, 1995 and October 25, 1995.

23. United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Control Technology Center, *Evaluation of Mercury Emissions From Fluorescent Lamp Crushing.* EPA–453/D–94–018. February 1994.

24. United States Environmental Protection Agency, Standards of Performance for Municipal Waste Combustors—Direct Final Rule, **Federal Register**, Vol. 60, No. 243, Tuesday, December 19, 1995. 25. Waltisky, Paul, Phillips Lighting Company: Letter to Ms. Kristina Meson, Environmental Protection Agency. September 30, 1996.

Dated: July 3, 1997.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 97–18246 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 245 and 252

[DFARS Case 92–D024]

Defense Federal Acquisition Regulation Supplement; Demilitarization

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: This extends the public comment period for the proposed rule concerning Demilitarization that the Department of Defense published on June 5, 1997 (62 FR 30832). The end of the comment period is extended from August 4, 1997 to August 15, 1997.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 15, 1997, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 92–D024 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602–0131.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 97–18219 Filed 7–10–97; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register

Vol. 62, No. 133

Friday, July 11, 1997

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

Animal and Plant Health Inspection Service

[Docket No. 97–049–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approved information collection extension; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of the National Poultry Improvement Plan.

DATES: Comments on this notice must be received by September 9, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–049–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–049–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the National Poultry Improvement Plan, contact Mr. Andrew Rhorer, National Poultry Improvement Plan Coordinator, Operational Support, VS, APHIS, 1500 Klondike Road, Suite A–102, Conyers, GA 30207, (770) 922–3496. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, Agency Support Service Specialist, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Poultry Improvement Plan.

OMB Number: 0579–0007.

Expiration Date of Approval: November 30, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: The National Poultry Improvement Plan (NPIP) is a voluntary Federal-State cooperative program for the improvement of poultry breeding flocks and products through disease control techniques. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for administering the NPIP, the primary purpose of which is to protect the health of the U.S. poultry population.

Administering the NPIP requires us to engage in a number of information collection activities, which are described below. We are asking the Office of Management and Budget (OMB) to approve the continued use of these information collection activities, which are critical to our ability to prevent the spread of contagious poultry diseases within the United States.

Flock Selecting and Testing Report (VS Form 9–2)

This form is used by authorized agents and State inspectors when breeding flocks are selected and tested. The form provides space for the number of birds tested and the results of the test. This form also identifies a given flock as to owner, hatchery affiliation, stock, type, purpose, classification, and most importantly, flock location. Since most of the flocks are supply flocks for the same hatchery, it is extremely important to know the location of the flock. The information on this form is of critical importance when an investigation must be conducted to determine the source of a hatchery-disseminated or egg-transmitted disease.

Report of Sales of Hatching Eggs, Chicks, and Poults (VS Form 9–3)

NPIP participants use this form to record any interstate sales of their hatching eggs, chicks, and poults. This document is used by both APHIS and the receiving State to monitor the movements of these items. This form also serves as a vital investigative aid when APHIS is attempting to track down the source of a poultry disease. These records must be maintained by producers for 3 years.

Summary of Breeding Flock Participation (VS Form 9–4)

This report form, which is completed by State animal health authorities, contains a summary of blood testing work and of flock participation by classes and breeding status. It is distributed to official State agencies from our offices at the end of the testing year in June and must be returned to us in July. With this information, we can publish our Tables on Hatchery and Flock Participation, which serve as an important tool in monitoring the health status of participating flocks.

Report of NPIP Hatchery Participation or Change (VS Form 9–5)

This form is completed by the official State Agency to record an NPIP participant's decision to withdraw from the program, or to record a producer's decision to join the program. This document is also used to record a change in disease program classification. This form allows us to effectively monitor participation in the NPIP, and to maintain an up-to-date list of program participants, their addresses, and other important information concerning their poultry operations.

Investigation of Salmonella and Arizona Isolations (VS Form 9–7)

If a multi-State disease outbreak occurs, the NPIP will conduct an investigation and share the resulting information with all the States involved. VS Form 9–7 is one of the tools used to complete this investigation; it provides the investigating State agency with a uniform method of compiling and analyzing information that can subsequently be used to study trends, economic importance, and other matters. This form is arranged in sections so that the disease investigations can be completed in

stages by different inspectors, depending upon the location of the flock, hatchery, and breeding flock. The inspector obtains some of the needed information by interviewing the appropriate poultry producers. When several States are involved in a pullorum-typhoid infection, the completed form will be sent to each of the States involved so that all of them will be aware of the investigation's outcome.

Sentinel Birds Banded for Identification Prior to Flock Vaccination

When a Federally licensed *Salmonella enteritidis* bacterin is used to vaccinate a flock, 350 birds must remain unvaccinated so that they can be used to conduct the necessary serological tests for *Salmonella pullorum* and *Salmonella gallinarum*. These test birds must be banded so that they can be recognized as sentinel birds. A report is submitted annually to APHIS, from the various States, with information from their participants and data required by the various disease control programs of the NPIP.

Request for Salmonella Serotyping (VS Form 10–3)

This is a National Veterinary Services Laboratory (NVSL) form that must be completed by State or APHIS personnel who are submitting samples for salmonella serotyping. If samples were sent to NVSL without this form, lab personnel would have no way of identifying any given sample as to the flock from which it came, or even the disease for which the sample is to be tested.

Printing and Mailing Computerized Printouts

These printouts are constructed by hatchery operators who ship large numbers of small chick orders all across the United States. These computerized lists contain all the information found on a VS 9–3, but reduce the paperwork load substantially because they are computer generated. These printouts are sent every month to those States that request them. The States use these printouts to monitor the number of small chicks they are receiving.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(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 our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .165 hours per response.

Respondents: Flock owners, breeders, hatchery operators, and State veterinary medical officers.

Estimated Number of Respondents: 9,075.

Estimated Number of Responses per Respondent: 5.139.

Estimated Total Annual Burden on Respondents: 7,695 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of July 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–18204 Filed 7–10–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–066–1]

Genetically Engineered Virus Resistant Plants; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service will hold a meeting to discuss several issues related to the use of transgenes from plant viruses in the development of genetically engineered plants. The meeting will be operated as a workshop, and we request that interested persons register 2 weeks before the meeting date.

DATES: The meeting will be held in Riverdale, MD, on Tuesday, August 5, 1997, from 8 a.m. until 5 p.m.

ADDRESSES: The meeting will be held in Training Room 4 at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: For information about the agenda and to register for the meeting, contact Dr. James White, Biotechnology and Scientific Services, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236, (301) 734–5940; or e-mail: jwhite@aphis.usda.gov. Information about the meeting is also available on the Internet at the APHIS World Wide Web site: http://www.aphis.usda.gov/biotech.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' Before introducing a regulated article, a person is required under § 340.0 of the regulations to either (1) notify the Animal and Plant Health Inspection Service (APHIS) in accordance with § 340.3 or (2) obtain a permit in accordance with § 340.4. The regulations in § 340.6 provide that any person may submit a petition to APHIS seeking a determination that an article should not be regulated under 7 CFR part 340. In this regard, APHIS believes it appropriate to review any new scientific issues associated with the release of certain genetically engineered organisms when questions arise concerning the use of such organisms in the environment.

To provide an opportunity for a discussion of the scientific issues surrounding the development of certain virus resistant plants, APHIS has scheduled a workshop to be held in Riverdale, MD, on August 5, 1997. Three issues will be addressed in the meeting.

(1) Some plant viruses replicate in a limited number of plant cells. If a plant is engineered to be resistant using one of the genes from these viruses and the transgene is produced in all the plant cells, does this raise the likelihood of a new virus appearing via recombination?

(2) The next generation of genetically engineered virus resistant plants may contain several transgenes derived from one virus, e.g., replicase and coat protein. Does the presence of a larger

proportion of the genome of a virus in a plant raise the likelihood of a new virus appearing?

(3) Most scientific discussions of the risks associated with the use of transgenes focus on transgenes derived from RNA viruses. Are there any additional concerns with use of transgenes derived from single stranded DNA plant viruses, e.g., geminiviruses?

APHIS has invited a group of scientists with recognized expertise in viral recombination to explore these subject areas. The public is invited to attend and to participate in the discussions. We expect to provide a summary of the discussions, which will be made available on the APHIS World Wide web site, or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

We request that interested persons submit registrations, which should include name, address, and telephone number, by July 22, 1997, to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 2nd day of July 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–18144 Filed 7–10–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

[3410–11]

Ramshorn Forest Vegetation Management, Shoshone National Forest, Fremont County, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest will prepare an environmental impact statement on a proposal to manage forest vegetation in the upper Brent Creek and Tappen Creek drainages located on the Wind River District of the Shoshone National Forest within Fremont County, Wyoming. The area adopted for analysis in the EIS corresponds to the Ramshorn Analysis Area delineated in the 1986 Forest Land and Resource Management Plan.

The proposal includes the use of prescribed fire, timber harvest, fuelwood sales, aspen stand enhancement measures, and other practices designed to improve the long term health and diversity of forest vegetation throughout the analysis area. Optimum use would be made of small timber sales for the benefit of local businesses and operators. About 700 acres would be treated in the forest's suited timber base to partially meet the forest health and diversity objective. About 300 acres would be treated in the forested area outside the suited base to assist in meeting the vegetation health and diversity goal. High priority for treatment would include areas where aspen stands are in danger of being lost, where there is a high degree of wildfire risk, where there is increased mortality due to insect and disease infestation and in large stands lacking in species and structural diversity.

Approximately two miles of new road construction and three miles of road reconstruction would be necessary to access the suited base portion of the analysis area. The proposal includes closing all new roads and existing closed roads opened for the purpose of this project following completion of the project.

The scope of this analysis offers the possibility of a number of alternatives that vary the mix of treatment measures for improving forest vegetation health and diversity within a discrete area.

The primary underlying purpose for this proposal is to improve the health and diversity of forest vegetation within the Ramshorn analysis area. The need for doing this is indicated by the imbalance of current forest conditions and trends with respect to diversity standards in the forest plan, and by the risks associated with extensive fuel buildups and insect and disease infestations. THe purpose and need focuses on the forest plan goal of: Improving tree age class and species diversity to benefit forest health, recreation experiences, visual quality, and wildlife habitat (Forest Plan page III–8). Forest vegetation diversity standards to be exercised in meeting this goal are found in Forest Plan direction on pages III–19 through 21.

In meeting the primary goal, a number of secondary goals are addressed. These include: (1) Managing vegetation types to provide multiple benefits commensurate with land capability and resource demand (Forest Plan page III–6); (2) Improve the health and vigor of vegetation types outside wilderness and selected types in wilderness where necessary (Forest Plan page III–6; (3) Integrate vegetation management with resource management in functional areas (Plan page III–7); (4) Adopt visual quality objectives that will maintain or enhance the characteristic landscapes of the Forest (Plan page III–7); (5) Improve habitats where vegetation conditions are significantly below biological potential (Plan page III–8); (6) Maintain or improve habitat for threatened or endangered species (Plan page III–8); (7) Rehabilitate lands in declining and unsatisfactory watershed condition (Plan page III–9); (8) Reduce the accumulation of natural fuels (Plan page III–8); (9) Reduce damages by insect, disease, and other Forest pests to acceptable levels through integrated management of vegetation (Plan page III–10); (10) Provide timber sales of sufficient quantity and quality to attract investment by the timber industry to accomplish desired vegetation management (Plan page III–8).

In order to achieve the primary goal in the Ramshorn area, identified impacts will need to be addressed through mitigation and application of forest plan standards and guidelines. This includes attention to cumulative impacts, including roads, and the need to meet forest plan direction for ''no net increase'' in roads (Forest Plan Allowable Sale Quantity Record of Decision, pages 5–6, and Amendment No. 94–001). The area analysis being implemented through this action is supported by direction to take an ''ecosystem'' or ''landscape'' approach to management (Forest Plan Allowable Sale Quantity Record of Decision, page 5).

The decision to be made involves the selection of an appropriate mix of treatment types where the primary goal is improving forest health and diversity, and where consideration is made within that context for meeting secondary goals through treatment type, timing, and design. The decision will also include other specific mitigation measures where needed to meet resource needs determined through the analysis of impacts. The area analysis could surface the necessity for making a nonsignificant amendment to the forest plan, and the decision would address whether or not to do so. A significant forest plan amendment is beyond the scope of this analysis.

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by August 8, 1997.

ADDRESSES: Send written comments to Bob Rossman, ID Team Leader, Wind

River Ranger District, P.O. Box 186, Dubois, Wyoming 82513.

FOR FURTHER INFORMATION CONTACT: Bob Rossman, Project Interdisciplinary Team Leader, (307) 455–2466.

Field trip: In response to requests received during earlier scoping, a field trip to the proposed project area was conducted for the public on June 24, 1997. Materials developed for participants are available upon request. Informal public meetings will be scheduled as needed throughout the analysis process.

SUPPLEMENTARY INFORMATION: Over the last ten years there has been a significant amount of effort devoted to developing a consensus on conducting timber harvest in the Brent Creek area. Public comments were solicited in 1987 and 1991. Many comments were received from concerned citizens, environmental groups, and other governmental agencies as a result of these scoping efforts. Comments received in 1991 were refined into issues by a Forest Service Interdisciplinary Team, representatives of other agencies, and several individuals. An alternative formulation process was begun at this time, but was discontinued due to concern about violating the Federal Advisory Committee Act.

Scoping of a timber sale proposal was reinitiated in 1997. The period ended on May 5, 1997. An Interdisciplinary Team of Forest Service resource specialists reviewed comments raised during this period.

Based in part on these comments, on the history of difficult issues in the Brent Creek area, and on the controversiality of proposed timber sales, the district ranger reevaluated the purpose and need for action and concluded that an environmental impact statement should be prepared. Although scoping is reinitiated through this Notice of Intent, most comments received during earlier scoping efforts are considered applicable and will be retained. People who wish to update their earlier comments, based on the revised purpose and need, are encouraged to do so. The Forest Service particularly welcomes any assistance from commenters in identifying sources of impact on and off the Forest to include in its cumulative effects analysis.

The Deciding Official will be Bob Lee, Wind River District Ranger, 1403 West Ramshorn, PO Box 186, Dubois, Wyoming, 82513, unless the need for a nonsignificant forest plan amendment is indicated. In that event, the Forest Supervisor will be the Deciding Official.

The expected publication date of a draft environmental impact statement is during February of 1998. Following this, a 45 day period will be allowed for public comment on the draft. This comment period will commence on the day the Environmental Protection Agency publishes a ''Notice of Availability'' in the **Federal Register**. A completed final environmental impact statement is anticipated in July of 1998.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.) Please note that comments you make on the draft environmental impact statement will be regarded as public information.

Note further that comments will be available for public inspection during the analysis process, and that in most cases the name of the commenter will not remain confidential. Those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

Dated: July 1, 1997.

Rebecca Aus,

Forest Supervisor.

[FR Doc. 97–18129 Filed 7–10–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of State Foresters

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Committee of State Foresters will meet in Washington, DC, on August 6, 1997, from 10 a.m. to 12 noon. The Committee is comprised of seven members of the Executive Committee of the National Association of State Foresters. The meeting provides an opportunity for Committee members to consult with the Secretary of Agriculture regarding the administration and application of agency programs, administered under Cooperative Forestry Assistance Act of 1978. The Under Secretary for Natural Resources and Environment will chair the meeting. The meeting is open to the public; however, participation is limited to Department of Agriculture personnel and Committee members. Members of the public who wish to attend must register in advance with the person listed under **FOR FURTHER INFORMATION CONTACT**. Persons who wish to bring cooperative forestry matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

DATES: The meeting will be held August 6, 1997.

ADDRESSES: The meeting will be held in the Williamsburg Room, 104–A Jamie L. Whitten Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250.

Send written comments to Joan M. Comanor, Executive Secretary, Committee of State Foresters, c/o Forest Service, MAIL STOP 1109, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT:

Jerilyn Levi, Staff Assistant, State of Private Forestry, Forest Service (202) 205–1041.

Dated: July 8, 1997.

Joan M. Comanor,

Deputy Chief, State and Private Forestry.

[FR Doc. 97–18283 Filed 7–10–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Arkansas

AGENCY: Natural Resources Conservation Service (NRCS) Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Arkansas for review and comment.

SUMMARY: It is the intention of NRCS in Arkansas to issue a new conservation practice standard Prescribed Grazing (Code 528A); and revised conservation practice standards Fish Stream Improvement (Code 395) and Forest Site Preparation (Code 490) and Fence (Code 382) and Streambank and Shoreline Protection (Code 580) in section IV of the FOTG.

DATES: Comments will be received until August 11, 1997.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Kalven L. Trice, State Conservationist, Natural Resources Conservation Service (NRCS), Room 5404 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225. Copies of the practice standards will be made available upon written request. Phone 501–324–5445.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Arkansas will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Arkansas regarding disposition of those comments and a final determination of change will be made.

Dated: June 23, 1997.

Jerry L. Mitchell,

Acting State Conservationist, USDA, Natural Resources Conservation Service, Little Rock, Arkansas.

[FR Doc. 97–17652 Filed 7–10–96; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

National Commission on Small Farms

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to establish a Federal Advisory Committee with a request for comments. Notice of public meeting.

SUMMARY: The U. S. Department of Agriculture (USDA) proposes to establish the National Commission on Small Farms (Commission). The purpose of the Commission is to gather and analyze information regarding small farms and ranches and recommend to the Secretary of Agriculture a national policy and strategy to ensure their continued viability. This notice seeks comments on concerns and issues that the Commission should address. The Commission members will be appointed at a later time. The first public meeting of the Commission is July 28, 1997.

DATES: Written comments must be received on or before August 11, 1997. These comments will be summarized and presented to the Commission prior to their next meeting.

PLACE, DATE AND TIME OF MEETING: The Commission will meet from 9:30 a.m. to 5:00 p.m. on July 28 at the Agricenter International, Banquet Room, C Wing, 7777 Walnut Grove Road, Memphis, TN 38120. The first part of the meeting will be devoted to getting the Commission organized and the remainder of the meeting will be dedicated to listening to oral statements that will be limited to seven (7) minutes. Interested parties wishing to provide oral or written statements should contact Jennifer Yezak Molen, Director, National Commission on Small Farms, prior to the meeting.

ADDRESSES: Comments and statements should be sent to National Commission on Small Farms, U.S. Department of Agriculture, P.O. Box 2890, Room 5239, South Building, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Jennifer Yezak Molen, Director, National Commission on Small Farms, at the address above or at (202) 690–0648.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to establish the National Commission on Small Farms, hereinafter referred to as the Commission. The purpose of the Commission is to gather and evaluate background information, studies, and data pertinent to small farms and ranches, including limited-resource farmers. On the basis of the review, the Commission shall analyze all relevant issues and make findings, develop strategies, and make recommendations for consideration by the Secretary of Agriculture toward a national strategy on small farms. The national strategy shall include, but not be limited to: changes in existing policies, programs, regulations, training, and program delivery and outreach systems; approaches that assist beginning farmers and involve the private sectors and government, including assurances that the needs of minorities, women, and persons with disabilities are addressed; areas where new partnerships and collaborations are needed; and other approaches that it would deem advisable or which the Secretary of Agriculture or the Chief of the Natural Resources Conservation Service may request the Commission to consider.

The Secretary of Agriculture has determined that the work of the Commission is in the public interest and within the duties and responsibilities of USDA. Establishment of the Commission also implements a recommendation of the USDA Civil Rights Action Report to appoint a diverse commission to develop a national policy on small farms.

The Commission will be headed by a Chairperson and two Vice-Chairpersons. In the absence of the Chairperson, one of the Vice-Chairpersons, as designated by the Chairperson, will act in his/her stead. Administrative Staff support essential to the execution of the Commission's responsibilities shall be provided by the Natural Resources Conservation Service.

Commission members shall be appointed by the Secretary of Agriculture. The Commission may have as many as thirty (30) members representing a mix of perspectives, experience, and ethnic and geographic diversity. Members will represent small farms and ranches, finance, commerce, rural communities, nonprofit organizations, academia, state and local governments, Native Americans, farmworkers, and other interests as the Secretary determines.

Equal opportunity practices, consistent with USDA policies, will be

followed in appointments to the Commission. To ensure that a national strategy for small farms takes into account the needs of diverse groups served by USDA programs, membership shall include to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Pearlie S. Reed,

Acting Assistant Secretary for Administration.

[FR Doc. 97–18438 Filed 7–10–97; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 11, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 16 and 23, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 27011 and 28443) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies (Requirements for Fort Dix, New Jersey)

Services

Grounds Maintenance, Wheeler Army Airfield (improved grounds and landscaped areas), Oahu, Hawaii

Grounds Maintenance, Anthony F. Eafrati USARC, Weirton, West Virginia

Linen Management Service, Fleet and Industrial Supply Center (premium grade linen) Norfolk, Virginia.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–18270 Filed 7–10–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 11, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Bag, Vacuum Cleaner, Disposable
M.R. 1000 thru 1008
NPA: New York City Industries for the Blind, Long Island City, New York

Folder, File
7530–00–990–8884
(Requirements for GSA Fort Worth, Texas depot only)
NPA: Georgia Industries for the Blind Bainbridge, Georgia

Short Run, Short Schedule Duplicating (Program 2979–S)

7690–00–NSH–0087

(Requirements for the Government Printing Office, San Francisco, CA)

NPA: Service Disabled Veterans Business Association, Stanford, California

Books and Pamphlets (Program 1995–S)

7690–00–NSH–0088

(Requirements for the Government Printing Office, San Francisco, CA)

NPA: Service Disabled Veterans Business Association, Stanford, California

Services

Janitorial/Custodial

Picatinny Arsenal Buildings 1, 2, 3, 6, 9, 10, 171, 172, 173, 174, 176, 178 and 183

Picatinny, New Jersey

NPA: Occupational Training Center of Morris County, Cedar Knolls, New Jersey

Mailing Service

USDA, Farm Service Agency

Phoenix, Arizona

NPA: Goodwill Community Services, Inc., Phoenix, Arizona

Operation of Postal Service Center

Building 337

Goodfellow Air Force Base, Texas

NPA: MHMR Services for the Concho Valley, San Angelo, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–18271 Filed 7–10–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 33585, F.R. Doc. 97–16210, in the issue of June 20, 1997, in the first column, following the listing for Janitorial/Custodial, Puget Sound Naval Shipyard, Bremerton, Washington should read Janitorial/Custodial, Puget Sound Naval Shipyard, Manchester Fuel Depot and Olympic View Industrial Park, Bremerton, Washington.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–18272 Filed 7–10–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) in response to requests submitted by the petitioner, Shakeproof Industrial Products Division of Illinois Tool Works (SIP), and by the respondent, Zhejiang Wanxin Group Co., Ltd., (ZWG). This review covers shipments of the subject merchandise to the United States during the period October 1, 1995 through September 30, 1996.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the export price and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Tamara Underwood, Donald Little, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective dated of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On October 19, 1993, the Department published the antidumping duty order on HSLWs from the PRC in the **Federal Register** (58 FR 53914). On October 1, 1996, the Department published a notice in the **Federal Register** (61 FR 51259) notifying interested parties of the opportunity to request an administrative review of the antidumping duty order on HSLWs from the PRC. On October 30 and 31, 1996, in accordance with 19 CFR 353.22 (a), the petitioner and ZWG, respectively, requested that the Department conduct an administrative review of ZWG, also known as Hangzhou Spring Washer Plant. The notice of initiation of this administrative review was published on November 15, 1996 in the **Federal Register** (61 FR 58513). The Department is conducting this administrative review in accordance with Section 751 of the Act.

Scope of Review

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface.

The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS subheading is provided for convenience and Customs purposes, the written description of the scope of this proceeding is dispositive.

This review covers the period October 1, 1995 through September 30, 1996.

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under this policy,

exporters in the non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

In the first and second administrative reviews covering the periods October 15, 1993 through September 30, 1994 and October 1, 1994 through September 30, 1995, respectively, we determined that ZWG merited a separate rate. We have found that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to ZWG's exports according to the criteria identified in *Sparklers,* and an absence of government control with respect to the additional criteria identified in *Silicon Carbide.* Because we determined that ZWG merited a separate rate under the criteria set forth in *Sparklers* and *Silicon Carbide,* and because no evidence was put on the record of this review demonstrating that ZWG does not merit a separate rate for this review, we continue to assign ZWG a separate rate.

Export Price

For sales made by ZWG we used export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States.

We calculated export price based on the price to unrelated purchasers. We deducted an amount, when appropriate, for foreign inland freight, brokerage and handling, ocean freight, and marine insurance. We valued foreign inland freight, brokerage and handling, ocean freight, and marine insurance using surrogate data based on Indian costs. We selected India as the surrogate country for the reasons explained in the ''Normal Value'' section of this notice.

Normal Value

For companies located in NME countries, section 773(c) (1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 353.52(c) of our regulations. We determined that India is comparable to the PRC in terms of (1) per capita gross national product (GNP), (2) the growth rate in per capita GNP, and (3) the national distribution of labor. In addition, India is a significant producer of comparable merchandise. Therefore, for this review, we chose India as a comparable surrogate on the basis of the above criteria, and have used publicly available information relating to India to value the various factors of production. (See memorandum to Maureen Flannery from David Mueller, dated January 29, 1997, ''Certain Helical Spring Lock Washers from the PRC: Nonmarket Economy Status and Surrogate Country Selection,'' and memorandum to the file from Tamara Underwood, dated July 3, 1997, ''India Selected as Surrogate Country for Factors Valuation in the Third Administrative Review of the Antidumping Order on Certain Helical Spring Lock Washers from the People's Republic of China,'' which are in the file in the Central Records Unit (room B099 of the Main Commerce building).)

We valued the factors of production as follows:

- For carbon steel wire rod values, we used the average cost per metric ton of carbon steel wire rods imported from the United Kingdom by ZWG during the period of review. We made further adjustments to account for the freight costs incurred between the port and ZWG.
- For the value of chemicals used in the production and plating process of HSLWs, we used per kilogram values obtained from the Indian publication *Chemical Weekly* and from the *Monthly Statistics of the Foreign Trade of India-Imports (MFTI).* We adjusted to account for freight costs incurred between the supplier and ZWG.
- For labor values, we used data from the *Yearbook of Labor Statistics (YLS)* published by the United Nations. Data from the YLS is not differentiated by skill level, or by whether the labor is direct or indirect. Thus, following the method established in *Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China,* (60 FR 52647, October 10, 1995), we applied a single labor value to all reported labor factors, including indirect labor. We adjusted these rates to reflect the average inflation throughout the POR using the consumer price indices (CPI) published by the IMF.
- For factory overhead, selling, general, and administrative expenses, and profit values, we used information from the April 1995 *Reserve Bank of India Bulletin* for the Indian industry group ''Processing and Manufacturing: Metals, Chemicals, and Products Thereof.'' From this information, we were able to determine factory overhead as a percentage of the total cost of manufacturing, SG&A as a percentage of the total cost of manufacturing, and the profit rate as a percentage of the cost of manufacturing plus SG&A.
- For packing materials values, we used the per kilogram values obtained from the *MFTI.* Where necessary, we adjusted these values to reflect inflation through the POR using WPI published by the IMF. We made further adjustments to account for freight costs incurred between the PRC supplier and ZWG.
- To value coal, we used a per kilogram value obtained from the *MFTI.* We adjusted this value to reflect inflation through the POR using WPI published by the IMF. We made further adjustments to account for freight costs incurred between the supplier and ZWG.
- To value electricity, we used the price of electricity for 1995 reported in the *Confederation of Indian Industries Handbook of Statistics.* We adjusted the value to reflect inflation through the POR using WPI published by the IMF.
- To value water, we used the November 1993 *Water Utilities Data Book for the Asian and Pacific Region* published by the Asian Development Bank. We adjusted the value to reflect inflation through the POR using WPI published by the IMF.
- To value truck freight rates, we used a rate derived from April 20, 1994 issue of *The Times of India.* We adjusted the rate to reflect inflation through the POR using WPI published by the IMF.

• To value shipping freight, we used a rate reported to the Department in the August 1993 cable from the U.S. Embassy in India which was submitted for and used in the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China* (58 FR 48833, September 20, 1993). We adjusted the rate to reflect inflation through the POR using WPI published by the IMF.

Currency Conversion

We made currency conversions pursuant to section 353.60 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Zhejiang Wanxin Group Co., Ltd.	10/01/95–09/30/96	13.64

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 353.28. Any interested party may request a hearing within 10 days of publication in accordance with 19 CFR 353.38 (b). Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 353.38 (c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries.

Individual differences between export price and NV may vary from the percentage stated above for ZWG. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse for consumption on or after the publication date, as provided for by section 751 (a) (2) (C) of the Act: (1) For ZWG, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rate will be the PRC rate, which is 128.63; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751 (a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 3, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18287 Filed 7–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–602]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Romania: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 11, 1996, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, (TRBs) from Romania (62 FR 11152–55). The review covers one exporter and two producers of subject merchandise for the period June 1, 1995 through May 31, 1996.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

We received no comments from interested parties with regard to the Department's preliminary determination to grant Tehnoimportexport a separate rate for this review. Therefore, for the final results of review, we reaffirm our determination that TIE is entitled to a separate rate.

EFFECTIVE DATE: July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Carrie Blozy, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to Part 353 of 19 CFR, as amended by the regulations published in the **Federal Register** on May 19, 1997 (62 Fed. Reg. 27296).

Background

On March 11, 1996, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on TRBs from Romania. We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act), and 19 C.F.R. 355.22. As a result of changes made to the preliminary results based on interested party comments, the calculated margin for imports from TIE, the only company with sales covered by this review, has changed to 2.70%.

Scope of Review

Imports covered by this review are shipments of TRBs from Romania. These products include flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered

rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00, 8482.99.30, 8483.20.40, 8483.30.40, and 8483.90.20. Although the HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

This review covers 28 companies and the period June 1, 1995 through May 31, 1996. Of the 28 companies for which petitioner requested a review, only TIE made shipments of the subject merchandise to the United States during the period of review (POR). S.C. Rulmenti Alexandria and S.C. Rulmental S.A. Brasov produced the merchandise sold by TIE to the United States, but have stated that they did not ship TRBs directly to the United States. The Department has received information from the Government of Romania and other respondents stating that the other manufacturers/exporters covered by this review did not produce or sell TRBs subject to this review.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from respondent, TIE; petitioner, the Timken Company; and Universal Automotive Trading Company, Ltd. (Universal), an interested party. Comments submitted consisted of petitioner's case brief of April 10, 1997 and rebuttal brief of April 17, 1997; respondent's case brief of April 10, 1997 and rebuttal brief of April 24, 1997; and Universal's rebuttal brief of April 17, 1997.

Comment 1: Petitioner asserts that, in valuing material inputs, the Department improperly considered two types of imports into Indonesia: (1) Materials from non-market economy countries; and (2) small quantities of materials from individual countries. Petitioner also contends that, when deriving values for bearing-quality steel inputs based on Indonesian six-digit categories, the Department must exclude imports from countries that are known not to produce bearing quality steel.

Respondent argues that the Department should include data from all countries except for those countries which exported *de minimis* amounts to Indonesia. Respondent asserts that the Department should reject petitioner's proposal to exclude data from countries which are not listed in the 1994 edition of *Iron and Steel Works of the World* as producers of bearing-quality steel because there is no evidence that this source, which it presumes contains 1993 data, contains a comprehensive list of all bearing steel producers. Respondent adds that petitioner's contention that data from these same countries should be included for the purposes of scrap calculations is inconsistent and would lead to skewed results.

Further, respondent argues that among the countries petitioner said must be excluded are some highly industrialized countries which have bearing producers, such as the Netherlands. According to respondent, this fact makes petitioner's proposed methodology suspect.

Department's Position: We agree with petitioner that it is Departmental practice to exclude imports from countries we have previously determined to be non-market economies (NMEs) in calculating surrogate values for material inputs, where such exclusions are possible based on record information. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews (''1990–93 TRBs from the PRC'')*, 61 FR 65527, 65532 (December 13, 1996). Therefore, for the final results, we have adjusted the surrogate values accordingly for hot-rolled steel bars used for inner and outer races (cups and cones). *See* Attachment 1 of the *Analysis Memorandum for the Final Results of Review* (July 7, 1997), which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

With regard to the exclusion of data pertaining to small quantities of imports from individual countries, we agree that the inclusion of such data potentially may be distortive. However, the Department will only disregard small-quantity import data when the per-unit value in fact is at variance with other information on the record. *See, e.g., Heavy Forged Hand Tools from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews*, 11814, 11815 (Comment 2) (March 13, 1997), in which the Department utilized 1995 Indian import data from Saudi Arabia because it was comparable to other data on the record. Thus, the Department will reject data from countries with small quantities of imports only when the per unit value of those imports is substantially different from the per unit values of the larger-quantity imports of that product from other countries.

With respect to the exclusion of material input data from countries which allegedly do not produce bearing-quality steel, we agree with petitioner that such information should be excluded from our calculation of surrogate values for bearing-quality steel. We note that the only information on the record of this review regarding which countries produce bearing steel is from the 1994 edition of *Iron and Steel Works of the World*. Thus, respondent's assertion that some of the countries which petitioner has identified as not producing bearing-quality steel do in fact have bearing producers is not supported by any record evidence. Finally, we agree with petitioner's argument that countries not producing bearing quality steel nevertheless can produce bearing-quality scrap. While respondent has asserted that a failure to adjust the surrogate value for alloy scrap when making such an adjustment for bearing-quality steel would lead to ''skewed results,'' respondent has not explained how such an adjustment is distortive. In fact, consistently adjusting values only when record evidence indicates that a country does not produce that material results in the most reliable calculation of surrogate values.

There is country-specific information on the record of this review for four material inputs. Based on this information, we have adjusted the surrogate value for hot-rolled steel bars for inner and outer races (cups and cones) to exclude small-quantity exports, and exports from countries not known to produce bearing-quality steel, to Indonesia. Additionally, we have adjusted the surrogate value for hot-rolled alloy steel bar in coils for rollers to exclude exports to Indonesia from countries not known to produce bearing-quality steel. *See* Attachment 1 of the *Analysis Memorandum for the Final Results of Review*.

Comment 2: Petitioner claims that the value for non-alloy scrap is anomalous, as it allegedly amounts to almost 47 percent of the value of the cold-rolled sheet from which it would be produced. Instead, petitioner asserts that the Department should use a ''reasonable'' ratio between the value of scrap and the value of the steel from which it originates, such as the 20 percent ratio that was used in the redetermination on remand in *TRBs from the PRC*. Moreover, petitioner argues that the ratio should not be higher than the ratio between alloy scrap and alloy bar for cups and cones used by the Department in the preliminary results.

Respondent did not comment on this issue.

Department's Position: We disagree with petitioner. We note that, in the 1993–94 segment of this proceeding, petitioner put forward a similar

argument with respect to the value used for Polish hot-rolled scrap in comparison with the value of the finished product. In *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Romania: Final Results of Review* (1993–94) ''*Final Results of Review*''), 62 FR 31075, 31077 (June 6, 1997) for that review period, we disagreed with petitioner, noting that petitioner appeared to object to the use of the Polish hot-rolled scrap price based solely on the fact that the price was, in petitioner's opinion, too high. We noted that petitioner offered no evidentiary support to their claim that the scrap price was aberrant, or in any way out of line with hot-rolled scrap prices for that time period. Petitioner also cited *Timken Co.* v. *United States*, 699 F. Supp. 300 (CIT 1988) in that review, claiming that the Court of International Trade's (CIT) decision upheld the proposition that the Department must correct unreasonably high scrap values. However, for the 1993–94 final results, we rejected petitioner's interpretation of the CIT ruling, noting that the basis of the CIT ruling was due to the unexplained inconsistency with regard to information presented in two embassy telexes. Thus, the Department found in the 1993–94 final results that ''if all the information in the two telexes had indicated that a high scrap value relative to material cost was appropriate, no inconsistency would have existed.''

For this review, petitioner has cited to the Federal Circuit appeal 894 F.2d 385 (Fed. Circ. 1990) in the above referenced *Timkin* case. The Court of Appeals agreed with the CIT's finding that Commerce erred in failing to reconcile the calculated ratio with other ratios in the record:

> these values must be contrasted not only with the 20 percent ratio mentioned in the second telex, but also with evidence in the record that the scrap steel/raw steel ratio in other countries is also much lower * * *

See Timken Co. v. *United States* at 894 F.2d at 388.

By contrast, in this review, petitioner has not identified any such differing record evidence with regard to non-alloy scrap/cold-rolled sheet ratios. Thus, the Federal Circuit's ruling in *Timken* does not require the Department to reject the scrap ratio used in the preliminary results of this review.

We note that petitioner has proposed that the ratio should not be higher than the ratio of almost 26 percent between alloy scrap and alloy bar for cups and cones used by the Department in the preliminary results. However, petitioner has provided no justification for the proposition that using the alloy scrap to alloy bar ratio is in any way representative of the non-alloy scrap to cold-rolled sheet ratio. Furthermore, contrary to petitioner's assertion, we do not find that the 20 percent value used in the redetermination on remand in *TRBs from the PRC* would be a reasonable alternative, because that figure applies to 1987 data from India.

Comment 3: Petitioner argues that the Department has applied minimum labor wages to value labor, and therefore has not accounted for the full cost to the employer, as petitioner states is required by Departmental practice. Second, petitioner contends that the Department applied wages from the wrong industry because wages for ''laborers in the iron and steel basic industries'' are not within the same industry category as laborers in the industry producing bearings. Third, petitioner asserts that the same shortcoming exists for the surrogate value used for wages for indirect labor, since the Department used data for supervisors and general foremen from the ''crude petroleum and natural gas production industry.'' Petitioner also argues that the Department should not use this data because it is from the year 1992. Petitioner contends that the Department's preference is to use data concurrent with the period of review whenever possible.

Finally, petitioner argues that the Department was mistaken to assume an eight-hour workday for Indonesian labor. Petitioner notes that, according to two publications, *Investing, Licensing & Trade Conditions Abroad: Indonesia* and *Doing Business in Indonesia,* a seven-hour working day is the norm for Indonesia.

In light of the alleged deficiencies of the data used by the Department, petitioner proposes that the Department utilize data for unskilled and skilled labor and factory supervisors in Indonesia based on data from *Investing, Licensing & Trade Conditions Abroad: Indonesia*.

Respondent contends that petitioner's proposed labor wage calculation is flawed. First, respondent argues that the wage rates reported by petitioner are for generic classifications and, thus, are inherently less accurate or reliable than those relied upon by the Department (which were for the iron and steel industry). Respondent notes that the Department has rejected, in its *Final Antidumping Duty Determination: Disposable Pocket Lighters from the People's Republic of China* (1995) wage rates from *Doing Business in Indonesia* ''because these wages were specific to Jakarta.'' *See Calculation Memorandum* at page 3.

Second, respondent contends that the unskilled labor rate put forward by petitioner is the rate for Jakarta, ''the most expensive city in Indonesia.'' Respondent states that there are ''several'' bearing producers in Indonesia, not all of whom are located in or near Jakarta. Further, respondent claims that petitioner has acknowledged that ''the only Indonesian bearing producer known to the Department * * * is located close to Jakarta,'' and thus is not in Jakarta.

Respondent notes that petitioner's calculation of labor assumes 4.15 working weeks per month. Respondent claims that it is Department practice to use 4.33 weeks/month in its surrogate labor calculations. Respondent notes that the Department applied a 4.33 weeks per month and 42 hour work week to calculate labor costs for the 1994–95 review of this proceeding. Therefore, if the Department chooses to use the labor data provided by petitioner, respondent claims that 4.33 weeks per month should be employed.

Respondent disputes petitioner's statement that there is a maximum of seven working hours per day in Indonesia, noting that the Price Waterhouse report states that the labor law provides for a six-day, 40 hour week. Respondent notes that the Department applied an eight hour per day wage in *Disposable Pocket Lighters from the PRC*.

In response to petitioner's criticism of the rates used by the Department in the preliminary results of review as minimum rates, respondent notes that the Department has relied on this data in previous cases, such as in the *Final Antidumping Duty Determination: Disposable Pocket Lighters from the PRC,* Calculation Memorandum at Exhibits B–1 and B–4 (1995). Respondent argues that it is unclear whether added benefits such as accident, health and retirement insurance, as well as a ''bonus'' wage, are appropriate for application to unskilled laborers. Even if they are, respondent argues that petitioner has overstated the appropriate allotment for such benefits.

Department's Position: We agree with petitioner that the source from which the Department took the labor values indicates that these values are ''minimum'' daily wage or salary rates. However, the unskilled labor value is the only labor value on the record of this review pertaining to an industry in Indonesia comparable to the bearings industry, and petitioner has suggested no methodology for adjusting this

figure. Moreover, there is no indication on the record that the ''minimum'' rate for the industry excludes any employee benefit costs normally considered by the Department.

With regard to the utilization of wage rates for laborers in the iron and steel basic industries, we agree with petitioner's argument that the iron and basic steel industry is not the same as the bearings industry. The Department's clear preference is to use data from the same industry, when that is possible from the information placed on the record. However, we note that, for this review, there is no information on the record which pertains specifically to the bearings industry. Furthermore, as the Department indicated in its surrogate country selection memorandum (at attachment 4), when the Department cannot locate information from the same industry, the Department attempts to find producers of ''comparable'' products in selecting surrogate countries. In the surrogate country selection memorandum, the Department noted that countries with ''significant producers of *any steel products*'' may enable the Department to choose that country as a surrogate (emphasis added). *See Memorandum to the File: Antidumping Administrative Review of Tapered Roller Bearings from Romania: Selection of a Surrogate Country in the 1995/96 Review,* February 25, 1997. Therefore, we find that applying labor rates from the iron and basic steel industry as a surrogate value for the bearings industry is appropriate.

Finally, we agree with respondent that the data proposed by petitioner from the publications *Investing, Licensing & Trade Conditions Abroad: Indonesia* and *Doing Business in Indonesia* are in fact less preferable than the information used by the Department in the preliminary results with respect to valuing unskilled labor, since those data are not specific to any industry, but instead are generic classifications. In fact, the guide for *Doing Business in Indonesia* specifically notes that ''wages vary significantly according to industry and location within Indonesia.'' *See* Attachment 8, page 104 of petitioner's April 2, 1997 submission of factual information.

The Department recognizes that the use of indirect labor costs and wages and salaries for non-production workers from the ''crude petroleum and natural gas production industry'' suffers from the limitation of not being derived from either the bearings industry or an industry comparable to the bearings industry. However, we note that none of the information on this issue placed on the record by petitioner (or respondent) is applicable to an industry equivalent or comparable to the bearing industry. Section 776(a)(1) of the Act stipulates that if the ''necessary information is not available on the record * * * the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' In this case, in determining facts otherwise available, we have no reason to employ an adverse inference under Section 776(b). Therefore, for the final results of review, we determined the ratio between the average wage rate for unskilled laborers and the average wage rate for factory supervisors reported in the 1996 publication of *Investing, Licensing & Trade Conditions Abroad: Indonesia.* Then, we used this ratio to calculate an estimated indirect labor rate by applying this ratio to the direct labor rate for the iron and basic steel industry. Thus, the resulting figure estimates the wage rates for non-production workers in the iron and basic steel industry, which we determine to be comparable to the bearing industry. *See* Attachment 2 of the *Analysis Memorandum for the Final Results of Review.*

With regard to petitioner's statement that the Department's ''clear preference'' is to use data concurrent with the period of review whenever possible, we agree. However, in this case we do not have any useable labor data that is concurrent with the period of review. Moreover, as we discuss in response to Comment 6 below in agreeing with petitioner regarding the use of data from the dinnerware industry, when data derives from an industry not comparable to the industry under review, the time period from which the data is derived is a moot issue.

We note that respondent's discussion of the appropriate figure to use for the number of weeks per month is moot, as we have calculated labor rates based on daily rates, and not based on monthly figures.

With regard to the appropriate number of hours in a work day in Indonesia, we agree with petitioner that record evidence indicates that the maximum number of hours in each work day, according to Indonesian labor law, is seven hours. *See* petitioner's April 2, 1997 submission of factual information, Attachment 8, page 105. Since the figure utilized by the Department for the preliminary results is a daily rate, respondent's comment that a 40 hour work week is spread over six days may become relevant only if it can be proven that the daily wage rate reported by the Bulletin of Labor Statistics is derived from a weekly wage rate. While the document reporting the daily wage rate also indicates that a 40 hour work week is the norm in Indonesia, there is no evidence that the daily rate is derived from the number of hours worked each week. Absent such record evidence, the Department finds no basis for assuming an 8 hour work day for Indonesia. Therefore, for the final results of review, we have recalculated the labor values based on a 40 hour, six day work week. *See* Attachment 2 of the *Analysis Memorandum for the Final Results of Review.*

Finally, with regard to information provided by *Investing, Licensing & Trade Conditions Abroad: Indonesia* and *Doing Business in Indonesia* concerning bonus payments, insurance and other contributions paid by the employer, vacations, etc., as we discuss above, there is no indication that the values employed by the Department for the preliminary results do not already represent these amounts. Thus, it would not be appropriate to apply any additional values to these wage rates, since it may result in double-counting.

Comment 4: Petitioner argues that the Department should use SG&A and profit data from the financial statements of a manufacturer of industrial and commercial machinery and service equipment, instead of data pertaining to the pipe fitting industry. Petitioner claims that the industrial and commercial machinery and service equipment industry is more closely related to the bearing industry.

Petitioner also argues against using the information on SG&A, profit, and factory overhead placed on the record by respondent, because that information pertains to products that are more remote from the bearing industry than the pipe fitting industry used by the Department in the preliminary results.

Respondent notes that petitioner has argued for the use of SG&A and profit data from another source, while asserting at the same time that the factory overhead rate from the embassy cable should continue to be used for the final results. However, respondent claims that the Department has traditionally tried to utilize overhead, SG&A, and profit information from a single source. Respondent states that the issue has been specifically addressed in the *Notice of Proposed Rulemaking and Request for Public Comment,* 61 FR 7308, 7374 (February 27, 1996), in which the Department stated that ''particularly for manufacturing overhead, general expenses and profit, the Department prefers to use a single surrogate.'' Further, respondent argues that petitioners has advocated the use of

a single source in another proceeding (*TRBs from the PRC*, 61 FR 65527, 65528 (December 13, 1996).

Respondent argues that the company information provided by petitioner is flawed, as parties do not know the components which comprise SG&A, and some elements, such as ''distribution costs'' and petitioner's proposed calculation of interest expense, are of doubtful use.

Respondent also claims that petitioner's characterization of the company as a manufacturer of machinery and equipment and from the industry most closely related to the bearings industry is misleading. Respondent notes that the company in question is a manufacturer of office and hospital equipment and high security products. As such, respondent contends that there is no indication that its distribution costs and administrative expenses resemble those of a bearing company.

Respondent concludes by noting that, using petitioner's proposed surrogates, raw material and labor would constitute only 43 percent of the constructed value of TRBs. Respondent argues that such a result is contradicted by evidence from other cases before the Department, in which raw materials and labor constitute greater percentages of the constructed value of TRBs.

Department's Position: For the preliminary results of review, the Department used factory overhead, SG&A, and profit percentages provided in 1991 by the U.S. Embassy in Jakarta from the pipe fitting industry, a similar metal manufacturing industry. Because interested parties first learned of the Department's choice of primary surrogate country for this review at the time of publication of the preliminary results, we sent letters to interested parties after publication of the preliminary results allowing parties the opportunity to place further information regarding Indonesian factors of production on the record of this review. See letters from the Department to interested parties The Timken Company, Tehnoimportexport, and Universal Automotive Trading Company Ltd., dated March 25, 1997, soliciting information on Indonesian factors of production. See also Comment 6 below.

In response to our request for information, Timken submitted financial information for the year 1995 from PT Lion Metal Works, an Indonesian manufacturer of office equipment, ''C'' channel, building construction equipment, hospital equipment, and high security products. PT Lion Metal Works is classified in the *International Standard Industrial Classification of All Economic Activities* (ISIC) Major group 382, which is the same major group as subject merchandise (''ball and roller bearings''). The pipe fitting industry falls in the ISIC category 381. Additionally, under the Harmonized Tariff Schedule of the United States (1995), pipe fittings fall within Section XV (Base Metals and Articles of Base Metal), in the category 7307; roller bearings are in Section XVI (Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and parts and Accessories of Such Articles), in the categories 8482 and 8483; and ''industrial and commercial machinery and service equipment'' appears to fall within Section XVI. Therefore, the record evidence suggests that PT Lion Metal Works produces products which more closely approximate the bearing industry than the pipe fitting industry.

Additionally, we note that the PT Lion Metal Works data is from 1995, which partially coincides with the period of review. The pipe fitting industry data, in contrast, was provided in a 1991 Embassy cable. As the Department noted in final results notice of *1990–93 TRBs from the PRC* (at 65530), ''it is preferable, for the sake of accuracy, to apply surrogate values coincident with the POR whenever possible.''

With regard to respondent's comment that the Department prefers to use a single surrogate, particularly for manufacturing overhead, general expenses and profit, we agree with respondent that, *ceteris paribus*, single-sourcing is desirable. However, as respondent itself has noted in its case brief, the Department has stated that, compared with cable data obtained from various embassies and consulates, ''it is more appropriate in any NME cases to rely, to the extent possible, on public, published statistics from the first choice surrogate country * * * Thus, for the factors for which public statistical information is not available (typically, SG&A, factory overhead and profit), the Department will continue to rely on information from U.S. embassies and consulates from the first choice country *when necessary*.'' *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR 21058, 21062 (May 18, 1992) (emphasis added).

Section 773(c)(1) of the Act states that, for purposes of determining normal value in a non-market economy, ''the valuation of the factors of production shall be based on the best available information regarding the values of such factors.'' Therefore, for the purposes of the final results of review, we believe it is more appropriate to utilize the PT Lion Metal Works data because: 1) it is coincident with the POR; 2) it relates to an industry which appears to more closely relate to the bearings industry; and 3) as a source of data, it is preferable to U.S. Embassy cable information. Such factors supporting the use of the PT Lion Metal Works information outweigh the benefit of extracting overhead, profit, and SG&A data from a single source.

With regard to the actual calculation of SG&A and profit from the PT Lion Metal Works data, we agree with respondent that the inclusion of the amount associated with ''distribution costs'' would double-count movement expenses. Therefore, we have calculated SG&A without including ''distribution costs.'' Additionally, we agree with respondent that interest income, as well as interest expenses, should be included in the calculation of SG&A. We do not agree with respondent that the inclusion of ''interest payable'' for interest expense is inappropriate, since it is highly improbable from the financial figures that interest expenses would be reported anywhere else in these financial reports. For the exact calculations of SG&A and profit, please see Attachment 3 of the *Analysis Memorandum for the Final Results of Review*.

Comment 5: Petitioner asserts that the Department improperly based freight costs on the net weight of bearings packed for shipment, instead of basing freight costs on gross weight. Petitioner asserts that, as packaging does not ''travel free of charge,'' the Department should make an allowance for the weight of packaging materials in calculating freight rates. Petitioner suggests that the Department should employ the same adjustment in this case as it made in certain administrative reviews of *TRBs from the PRC*.

Petitioner also states that the same adjustment may apply for ocean freight, but that the record is not clear regarding whether the Department accepted rates based on weight or number of bearings.

Respondent did not comment on this issue.

Department's Position: We agree with petitioner that a cost is incurred with respect to shipment of packing materials. Therefore, to account for the additional packing weight, we have calculated foreign inland freight by multiplying the net weights by 1.08. The Department used this figure, based on

its determination that it was an independent and reliable source of information, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review* (1993-94), 62 FR 6189, 6203 (February 11, 1997), and the 1994–95 segment of the same proceeding (62 FR 6173, 6184 (February 11, 1997)).

With regard to TIE's reported ocean freight, we noted in the verification report that TIE calculated its international freight values by dividing ''Total Shipping Expense (from freight invoice)'' by ''Total Invoice Value (from invoice),'' and then multiplying that figure by the unit price. Additionally, the TIE verification sales trace exhibits support the conclusion that ocean freight expenses have not been reported on a per weight basis. Thus, TIE accurately reported its actual ocean freight expense, and no adjustment for packing materials is warranted.

Comment 6: Respondent argues that the Department should not have used a 1991 cable from the U.S. Embassy in Jakarta as the source of factory overhead, SG&A, and profit data in this case. Specifically, respondent argues that the information is not substantiated in any respect, and is six years old.

Respondent argues that the Department has established a preference for the use of publicly-available information over cable data obtained from U.S. embassies, citing *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China.* For this review, respondent contends that it would be more appropriate to use information from *Melamine Institutional Dinnerware from the People's Republic of China* (''*Dinnerware*''). While respondent acknowledges that the industry is different than bearings, respondent notes that they are both manufactured products which involve a basic raw material. Furthermore, according to respondent, there is no other data on the record which would allow the Department to obtain overhead, SG&A, and profit data from a single source. Because this data is transparent, verified, and pertains to a more recent period, respondent maintains that it is superior to the data used in the preliminary results.

Petitioner argues that, while it believes there are problems with the use of the pipe fittings data (*see* Comment 4), respondent has proposed the utilization of information from proceedings involving products which petitioner argues bear ''no relationship at all'' to the TRBs under review. While petitioner notes that the degree of specificity acceptable in surrogate value selection depends to a ''considerable'' extent upon what information is available on the record, petitioner argues that there is no reason to accept the data proposed by TIE on the basis of the record in this review.

First, petitioner claims that while the *Dinnerware* information is more recent and closer in time to the review period than the information used by the Department, that is irrelevant. Specifically, petitioner claims that the timeliness of data only becomes relevant when the data themselves are relevant. In this case, no matter how contemporaneous, petitioner asserts that plastic dishes are not comparable to bearings. Additionally, as the figures used by the Department are percentage rates, petitioner argues that, while actual prices may vary considerably over time, it is less likely that the overall cost structure of an industry would change drastically over a few years. Petitioner concludes that it is reasonable to assume that an industry's cost structure, and its overhead, SG&A, and profit ratios, would remain basically the same between 1991 and 1995–96.

Finally, petitioner claims that the materials and production process for pipe fittings are more similar to bearing production than the melamine dinnerware materials and production process. Pipe fittings are made of steel, like bearings, and the production process involves heating and forging, or cold-forming, and machining to final size.

Department's Position: We disagree with respondent that it would be more appropriate to utilize overhead, SG&A, and profit data from *Dinnerware.* Most importantly, we note that the statute, at 19 U.S.C. 1677b(c) (1)(B) and (2)(A), requires use of surrogate values for production of comparable merchandise. As the Department noted in Comment One of the final results of review of the 1993–94 segment of this proceeding, in defending the use of data from the Turkish pipe and tube industry, ''the term 'comparable' encompasses a larger set of products than 'such or similar.' '' Thus, we have supported the use of pipe industry data in earlier reviews of this proceeding as being sufficiently ''comparable'' to tapered roller bearings.

In contrast, there is no Departmental precedent for the application of data pertaining to the production of melamine dinnerware to the tapered roller bearing industry. This is not surprising, based on the fact that, other than respondent's observation that they are both manufactured products which involve a basic raw material, there is nothing comparable about these two types of merchandise. Additionally, the Department offered guidance in determining the potential universe of comparable products for this review period. Specifically, in Attachment 4 of the Department's surrogate country selection memorandum, the Department stated that ''if any of the listed possible surrogates are significant producers of any steel products they may be appropriate surrogates.'' *See* February 25, 1997 *Memorandum to the File: Antidumping Administrative Review of Tapered Roller Bearings from Romania: Selection of a Surrogate Country in the 1995/96 Review. Dinnerware,* of course, does not fall within this category.

Because the melamine dinnerware data pertains to an industry which is not comparable to the merchandise under review, we agree with petitioner that the time period for which the dinnerware data is applicable is a moot issue.

Comment 7: Respondent contends that the SG&A rate used in the preliminary results is unreasonably high, both compared to rates used in other bearings reviews, as well as compared to any other instances in which the Department has used actual data.

Petitioner responds that the SG&A rate is not abnormally high. For example, petitioner notes that the SG&A rate from the only Indonesian company on the record in this review that petitioner believes can be regarded as a producer of merchandise reasonably similar to bearings is higher than the rate used by the Department in the preliminary results.

Department's Position: Respondent's contention that the SG&A rate used in the preliminary results is unreasonably high, both compared to rates used in other bearings reviews, as well as compared to any other instances in which the Department has used actual data, is not sufficient grounds to lower the SG&A figure for the final results of review in the absence of preferable data. As discussed above in Comment 6, respondent's suggested use of data from the *Dinnerware* case is unacceptable, as dinnerware is not comparable to tapered roller bearings. Therefore, the only possible alternative data on the record of this review for use as surrogate SG&A data is the PT Lion Metal Works data. As petitioner has suggested, this data supports the conclusion that the SG&A figure from the embassy cable is not aberrational compared to the SG&A expenses of an industry comparable to the bearing industry.

Comment 8: Respondent argues that, while it believes that the Department should employ overhead data from *Dinnerware*, it has provided additional information on the record which it contends is ''clearly as reasonable'' as the embassy cable used in the preliminary results.

Department's Position: Respondent's proposals to employ overhead data from *Notice of Final Determination of Sales at Less than Fair Value: Disposable Pocket Lighters from the People's Republic of China,* 60 FR 22359 (May 5, 1995) and *Notice of Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544 (May 8, 1995) antidumping duty investigations suffer the same limitation as respondent's proposal to utilize data from *Dinnerware.* That is, the data from these cases pertain to industries that are not comparable to the bearing industry and therefore, we are not using them in these final results.

Comment 9: Respondent objects to the Department's utilization of a foreign inland freight rate based on information from *Dinnerware.* First, respondent argues that the rate used by the Department results in a deduction of 2 percent to 8 percent from gross unit price for most models, when the rate used in the previous review resulted in a deduction of far less than 1 percent from gross unit price. Second, respondent notes that the rate is almost 20 times more than the rate used the 1994–95 *TRBs from the PRC* review. Third, respondent states that the Department's selection of this rate suggests that it is three times more expensive to ship bearings from Brasov to Constanta, Romania than to send the bearings from Constanta to Baltimore, USA.

Respondent alleges that the reason for this high price is either a mathematical error on the Department's part, or the fact that the short distance between the factory and the port (40 km) make the cost per kilometer abnormally high. Respondent asserts that the Department has taken the position in *Final Determination of Sales at Less than Fair Value: Certain Cased Pencils from the People's Republic of China (''Pencils from the PRC''),* 59 FR 55625, 55629 (November 8, 1994) that it will examine surrogate values for reasonableness. Where the Department find that the surrogate values are unreasonable or aberrational, respondent maintains that the Department has stated it will compare the questionable data with other data to determine its reliability and to use other more reliable data, if necessary.

Petitioner argues that respondent has made no attempt to demonstrate that the rate used by the Department in the preliminary results is objectively too high. In the absence of such demonstration, petitioner claims that there is no evidence that the rate is actually too high and, in fact, petitioner suggests that it can be argued just as persuasively that the rates used in the other instances were too low.

Furthermore, petitioner maintains that the lack of an objective basis for TIE's complaint is highlighted by its use of a hypothetical example (in which respondent argues that, if the bearing factories were 1500 km from the port, the freight cost would be 27 percent of the cost of the bearings). In fact, according to petitioner, the factories are not 1500 km from the port. The actual distances (350 and 380 km), according to petitioner, are more comparable to the 40 km used as the basis for the Department's calculation.

Department's Position: In the preliminary results of review, the Department used information submitted on the record for the 1995 antidumping investigation on *Dinnerware.* However, as we noted above in Comment 4, interested parties were provided the opportunity to submit information regarding Indonesian factors of production after publication of the preliminary results of review notice. In response to the Department's letter, TIE submitted freight data used in *Disposable Pocket Lighters from the PRC.* We note that this data, which includes freight values for truck and rail separately, is based on the same U.S. Embassy cable from which the Department took the SG&A, profit, and overhead values.

Because the cable data pertains to the pipe fitting industry (an industry comparable to the bearing industry), it is inherently preferable to the *Dinnerware* data. Additionally, in comparison with actual data used in other cases involving tapered roller bearings, the cable data appears to more reasonably approximate the true cost of freight for producers of tapered roller bearings. We agree with respondent that the Department has taken the position in *Pencils from the PRC* that it will examine surrogate values for reasonableness. Thus, the rate used in the preliminary results of review, when contrasted with rates from the Romanian TRBs cases for 1993–94 and 1994–95, and the Chinese TRB case for 1994–95, does not appear to reasonably approximate the true cost of freight.

Therefore, for the final results of review, we have revised freight based on the values for truck and rail appearing in the 1991 Embassy cable. *See Analysis Memorandum for the Final Results of Review (July 7, 1997).*

Comment 10: Respondent argues that the Department should utilize the former statutory minimum of 8 percent or rely upon the rate in *Dinnerware* to calculate profit.

Petitioner claims that the Department has rejected the use of the former statutory minimum for profit as contrary to law, for example, in the 1994–95 segment of this proceeding. Furthermore, use of the rate in *Dinnerware* should be rejected as not applying to an industry producing similar merchandise, as discussed by petitioner in Comment 6 above.

Department's Position: We disagree with respondent. Under the controlling statute, the statutory minimum of 8 percent for profit is invalid, and the Department must use actual rates when possible. *See* 19 U.S.C. 1677b(e)(2). Additionally, as discussed above, *Dinnerware* is not comparable merchandise to the merchandise under review. Therefore, the Department cannot consider the profit rate from that case. Hence, the Department has continued to use the actual profit rate reported for the Indonesian pipe fitting industry, as this rate applies to producers of comparable merchandise from a qualifying surrogate country.

Comment 11: Respondent alleges ministerial errors for certain observations in the database, caused by incorrect labor costs, which should be corrected for the final results of review.

Petitioner argues that the reporting errors were made by TIE, not the Department. Thus, petitioner notes that it is ''just as possible'' that the error, if one exists, lies in the values used for the other observations TIE alleges are correct, or that the labor costs for the observation cited are correct and the model number listed is incorrect. Petitioner argues that post hoc changes in data submitted ''long ago'' cannot reasonably be accepted now.

In the event the Department changes these values, petitioner asserts that, under the adverse inference rule, the Department should use, as facts otherwise available, the highest normal value information for that part number in all cases.

Department's Position: We agree with respondent. The Department has corrected these ministerial errors, which were cell referencing errors in the spreadsheet program written by the Department, for the final results of review.

Final Results of the Review

As a result of our review, we determine that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
TIE	6/1/95–5/31/96	2.70

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of this merchandise, entered or withdrawn from warehouse for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for TIE will be the rate stated above (except that if the rate is *de minimis, i.e.,* less than 0.5 percent, a cash deposit rate of zero will be required); (2) the cash deposit rate for all other Romanian exporters will be the Romania-wide rate made effective by the amended final results of the 1994–95 administrative review. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Amendment of Final Results of Antidumping Duty Administrative Review,* 61 FR 59416 (November 22, 1996); (3) for non-Romanian exporters of subject merchandise from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 7, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18286 Filed 7–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the ''Committee'') advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on July 22, 1997 from 10:30 a.m. to 3:00 p.m. at the U.S. Department of Commerce in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, Office of Automotive Affairs, Trade Development, Room 4036, Washington, D.C. 20230, telephone: (202) 482–1418.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on July 5, 1994, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: July 2, 1997.

Albert Warner,

Acting Director, Office of Automotive Affairs.

[FR Doc. 97–18243 Filed 7–10–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Conference on Using Voluntary Standards in the Federal Government

AGENCY: National Institute of Standards and Technology (NIST).

ACTION: Notice.

SUMMARY: This notice announces a conference to focus on how Federal agencies are successfully using voluntary standards to meet the goals of the National Technology Transfer and Advancement Act (Pub. L. 104–113), which was signed into law on March 7, 1996. In part, the Act directs the National Institute of Standards and Technology (NIST) to coordinate with other Federal Government agencies to achieve greater reliance on voluntary standards and conformity assessment bodies, and lessened dependence on standards developed in-house. The Act contains specific provisions for standards-related activities, requiring Federal agencies to compare the standards used in scientific investigations, engineering, manufacturing, commerce, industry, and educational institutions with the standards developed by the Federal Government, and to coordinate greater use by Federal agencies of private sector standards emphasizing, where possible, the use of standards developed by private, consensus organizations.

DATES: The conference will take place on Monday, September 8, 1997, at 8:00 a.m.

ADDRESSES: The meeting will be held in the Red Auditorium at the National

Institute of Standards and Technology, Gaithersburg, Maryland.

To register or to attend the conference, interested parties may contact Ms. Shirley Walters, Standards Conformity Program Office, NIST, (301) 975–5120, fax: (301) 963–2871, e-mail: shirley.walters@nist.gov. There is a registration/training fee of $25.00.

FOR FURTHER INFORMATION CONTACT: Belinda Collins, Ph.D., Director, Office of Standards Services, (301) 975–4000, fax: (301) 963–2871, e-mail: bcollins@nist.gov; or Joan Tyler, Standards Conformity Program (301) 975–5555, fax: (301) 975–2183, e-mail: joan.tyler@nist.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Institute of Standards and Technology, several principal Standards Development Organizations (SDOs), and the American National Standards Institute (ANSI) are organizing a one-day conference to focus on how Federal agencies have successfully worked with SDOs in their use of voluntary consensus standards. This conference will present examples of private consensus organizations' or Standards Development Organizations' work with Federal agencies to achieve more efficiency through successful utilization of private sector standards. Agencies and SDOs will discuss success stories based on voluntary standards used for procurements, regulations, and for meeting future national needs. Several panels of experts will explain the impact of particular standards on agency goals, as well as the process of developing the standards and any problems which had to be overcome. NIST will provide background information on the National Technology Transfer and Advancement Act and the Implementation Plan. ANSI will discuss the generic standards development process and its role in coordinating with and accrediting SDOS in the United States.

Federal entities which wish to learn how other agencies have worked with the private sector to develop mutually beneficial standards, resolve policy issues, and use standards in both Federal procurements and regulations, as well as other interested parties, are invited to attend the conference. Attendees may participate in the question and answer sessions and talk directly with representatives from the Standards Development Organizations. Participating SDOs include: the American Society of Mechanical Engineers (ASME), the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), the Society of Automotive Engineers (SAE), the Institute of Electrical and Electronics Engineers (IEEE), the Aerospace Industry Association (AIA), the Information Technology Industry Council (ITI), Underwriters Laboratories (UL), and other professional bodies.

Dated: July 8, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–18284 Filed 7–10–97; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation and Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

July 7, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs consolidating and amending visa requirements.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of notes dated May 23, 1997 and June 23, 1997, the Governments of the United States and Indonesia agreed to amend the existing visa arrangement for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported on and after August 1, 1997. The amended arrangement consolidates existing provisions and new provisions for the Electronic Visa Information System (ELVIS). In addition to the ELVIS requirements, shipments will continue to be accompanied by an original visa stamped on the front of the original commercial invoice issued by the Government of Indonesia.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the existing visa requirements for textile products, produced or manufactured in Indonesia and exported on and after August 1, 1997.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66263, published on December 17, 1996). Also see 52 FR 20134, published on May 29, 1987.

Interested persons are advised to take all necessary steps to ensure that textile products entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 7, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia for which the Government of Indonesia has not issued an appropriate export visa.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to a the Export Visa Arrangement, effected by exchange of notes dated May 23, 1997 and June 23, 1997, between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 1, 1997, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670 and 800–899, including part categories and merged categories; but not Categories 353/354 and 653/654, produced or manufactured in Indonesia and exported on and after August 1, 1997 for which the Government of Indonesia has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission

fully described below. Should additional categories, part categories or merged categories be added to or changed from those subject to import quotas under the Bilateral Agreement and notified in accordance with the Uruguay Round Agreement on Textiles and Clothing, the entire category or categories shall be automatically included in the coverage of the Visa Arrangement. Merchandise exported on or after the date the category is added to, or changed in, the Agreement, or becomes subject to import quotas, shall require a visa and ELVIS transmission.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original textile export commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Indonesia is ''ID''), and a six digit numeric serial number identifying the shipment; e.g., 7ID123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature of the issuing official of the Government of Indonesia.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedules of the United States Annotated (HTSUSA) shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 340–510 DOZ''; ''Cat. 369–S510KG''; ''Cat. 331/631–510DPR''; ''Cat.317/617/326–510M2''; ''Cat.443–510NO'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Category 347/348 may be visaed as ''Category 347/348'' or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as ''Category 347,'' but not as ''Category 348'').

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect, illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the Indonesian Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Indonesian Government and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement. Visa waivers will only be issued for classification purposes or for one time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry or attempted entry, but will provide the importer a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice or a visa waiver.

If a shipment from Indonesia has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or visa waiver is provided.

ELVIS Requirements:

A. Each ELVIS message will include the following information:

i. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Indonesia is ''ID''), and a six digit numerical serial number identifying the shipment; e.g., 7ID123456.

ii. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

iii. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, Annotated, or successor documents.

iv. The manufacturer ID number (MID). The MID shall begin with ''ID,'' followed by the first three characters from each of the first two words of the name of the manufacturers, followed by the largest number on the address line up to the first four digits, followed by three letters from the city name.

B. Entry of a shipment shall not be permitted:

i. if an ELVIS transmission has not been received for the shipment from Indonesia;

ii. if the ELVIS transmission for that shipment is missing any of the following:

a. visa number
b. category or part category
c. quantity
d. unit of measure
e. date of issuance
f. manufacturer ID number;

iii. if the ELVIS transmission for the shipment does not match the information supplied by the importer, or the Customs broker acting as an agent on behalf of the importer, with regard to any of the following:

a. visa number
b. category or part category
c. unit of measure;

iv. if the quantity being entered is greater than the quantity transmitted; or,

v. if the visa number has previously been used, except in the case of a split shipment.

C. A new, correct ELVIS transmission from the country of origin is required before a shipment that has been denied entry for one of the circumstances in B.i-v will be released.

D. A new, correct ELVIS transmission from the country of origin is required for entries made using a visa waiver under the procedure described above. Visa waivers will only be considered for classification purposes or for one time special purpose shipments that are not part of an ongoing commercial enterprise.

E. Shipments will not be released for forty-eight hours in the event of a system failure. If system failure exceeds forty-eight hours, for the remaining period of the system failure the U.S. Customs Service will release shipments on the basis of the paper visaed document.

F. If a shipment from Indonesia is allowed entry into the commerce of the United States with an incorrect visa, no visa, an incorrect ELVIS transmission, or no ELVIS transmission, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided or a new ELVIS message is transmitted.

G. The Indonesian Government authorities may request a report containing information on visa utilization from the U.S. Customs Service as frequently as needed. This report will contain:

a. visa number
b. category number
c. quantity charged to quota
d. unit of measure
e. entry number
f. entry line number.

Shipments Not Requiring Visas:

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa or an ELVIS transmission for entry and shall not be charged to Agreement levels.

Other Provisions:

Except as provided in the paragraph above, any shipment which requires a visa but which is not accompanied by a valid and correct visa and ELVIS transmission in accordance with the foregoing provisions, shall be denied entry by the Government of the United States of America unless the Government of Indonesia authorizes the entry and any charges to the Agreement levels.

The visa stamp remains unchanged.

The actions taken concerning the Government of Indonesia with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the

implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–18207 Filed 7–10–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

June 25, 1997.

AGENCY: Defense Information System Agency, DOD.

ACTION: Notice of membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency (DISA). The publication of membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Ms. Carrie K. Bazemore, SES Program Manager, Civilian Personnel Division, Personnel and Manpower Directorate, Defense Information Systems Agency (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the SES Performance Review Board. They will serve a one-year renewable term, effective July 1, 1997.

John W. Meincke, Brigadier General, USAF Vice Director, DISA

Mr. Joseph Insinga, Acting Deputy Director for Operations

Ms. Diann McCoy, Deputy Director for C4I Programs Directorate

Mr. Robert Hutten, Deputy Director for Strategic Plans and Policy

Jack Penkoske,

Chief, Civilian Personnel Division.

[FR Doc. 97–18237 Filed 7–10–97; 8:45 am]

BILLING CODE 3610–05–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 9, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 7, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Financial and Performance Report, Library Services and Construction Act (LSCA), Titles I, II, and III.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 55.

Burden Hours: 2,409.

Abstract: The State Library Administrative Agency submits the Financial and Performance Report reflecting project expenditures and completion data, the relationship of the projects to the LSCA Long-range Plan, and evaluation project data for Title I (Public Library Services); Title II (Public Library Construction and Technology Enhancement); and Title III (Interlibrary Cooperation and Resource Sharing).

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Local Educational Agency Application Under Part B of the Individuals with Disabilities Education Act.

Frequency: Amendments to Application on File with the State.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 15,376.

Burden Hours: 30,752.

Abstract: Local educational agencies and eligible State agencies must have an application on file with the State educational agency in order to be eligible for assistance under Part B of the Individuals with Disabilities Education Act.

[FR Doc. 97–18131 Filed 7–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 11, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 7, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Status Report on Homeless Children and Youth from State Educational Agencies under the Stewart B.McKinney Homeless Assistance Act.

Frequency: Triennially.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 4,590.

Abstract: State educational agencies will submit information to the Department regarding numbers and allocations of homeless children and youth, problems relating to the access of appropriate public education and the difficulties in identifying their special needs. The Department will use this information to report to Congress.

[FR Doc. 97–18130 Filed 7–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

School-to-Work Opportunities Act: Leadership Development Application Procedures

AGENCIES: Employment and Training Administration, Labor. Office of Vocational and Adult Education, Education.

ACTION: Notice of availability of funds and solicitation for Leadership Development Grant Applications (SGA).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. The Departments of Labor and Education jointly invite proposals for one new award in FY 1997, as authorized under section 403 of the School-to-Work Opportunities Act of 1994 (the Act). This award will be used to provide seed capital to support research and policy exchanges between State and local School-to-Work leaders and government and business leaders from other countries. The intent is to provide a grant to an organization that has the demonstrated capability to undertake these activities and to use these funds to leverage support for the maintenance of this effort once the Federal investment had ended.

DATES: Applications for grant awards will be accepted commencing July 11, 1997. The closing date for receipt of applications is August 11, 1997, at 4 p.m. (Eastern Time) at the address below. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Laura Cesario, Reference: SGA/DAA 97–018, 200 Constitution Avenue, N.W., Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Division of Acquisition and Assistance, telephone: (202) 219–8694 (this is not a toll free number). This solicitation will also be published on the Internet, on the Employment and Training Administration's Home Page at http://www.doleta.gov.

Leadership Development Solicitation

I. Purpose

To invite proposals to establish a leadership program for State and local School-to-Work leaders to support international research and policy exchanges with a focus on youth education and employment development, including skill standards and qualifications and portable credential systems; institutional and social partnerships; integrated curriculum; and policy development within the context of globalization, technological and economic change.

II. Background

The School-to-Work Opportunities Act was signed into law by the President on May 4, 1994. Jointly

administered by the Departments of Labor and Education, this Act is a new approach to education that seeks to better prepare all American youth for careers in high skill, high wage jobs and to strengthen the linkages between what is learned in school with work. Under the Act, venture capital grants are provided to States and local communities to undertake systemic reform. Grants are for a limited duration with the Federal investment declining over time. These investments are intended to support the one-time costs of States and local communities to restructure learning experiences for all students. The Act also provides a set-aside of funds for national activities to support School-to-Work system-building nationwide. These funds are used for technical assistance and capacity building, for outreach, and for research and evaluation.

III. Statement of Work

The focus on global competitiveness, rapidly changing technology and its impact on work force preparedness of individuals is not unique to the United States. Both U.S. and policy leader from other countries have struggled to address the ''skills gap'' among its youth and the need to prepare students to succeed in the rapidly changing workplace. Policy leaders have long benefitted from international exchange and policy learning. The enactment of the National School-to-Work Opportunities Act was preceded by almost a decade of study and experimentation by national, State and local policy leaders. National and State leaders in particular were heavily influenced by the European models. Many of the early State initiatives were modeled after the European apprenticeship and training programs. The Competitiveness and Human Resources program of the German Marshall Fund has served community, state and federal policy makers and the research community. This program has been phased-out. The Departments believe that there is a need to continue this capability if the School-to-Work initiative is to reach scale and sustainability. The School-to-Work movement is approaching year three in its design and implementation strategy and funding. Much has been accomplished, but just as our colleagues abroad are faced with evaluating their education and training systems' ability to respond and prepare individuals for careers in the new global economy, so too must STW leaders evaluate their progress to date. School-to-Work leaders need to understand how systems work and how to build them. Policy makers on both sides of the Atlantic recognize the need to find more cost-effective ways of providing high quality initial and continuing education and work force training for all. Trans-Atlantic networks can and do assist in devising new policies and programs promoting effective approaches benchmarked to best practice.

The Departments are interested in capacity-building and leadership support activities that are specifically targeted to State and local STW leaders, with the intent to:

- Facilitate communications and partnerships among lead agencies, programs, Ministries and policy research communities addressing issues of transitions from school-to-work education reform, and work force training in the U.S. and Europe and focusing on such areas as: skill standards and certifications, innovations in curriculum development, partnerships between public and private institutions, integration of school-based and work-based learning; organization and recruitment of the business and labor communities; and strategies for serving the needs of out-of-school youth.
- Disseminate information, analysis and technical assistance on best practices, promising innovations and programs evaluations relevant to the needs of national, state and local policy makers, researchers and education/training program practitioners and directors.
- Develop strategic trans-Atlantic networks to promote new forms of partnerships centered on related initiatives;
- Provide a forum for continuing international policy exchange with National, State and local STW leaders, through multi-year activities, organized by policy domain areas and based on a planned calendar of research, conferences and site visits.

Over the past decade the German Marshall Fund has promoted increased trans-Atlantic understanding and collaboration on employment and training issues. The Departments are seeking an organization to assume this type work which is no longer being supported by the German Marshall Fund. The Departments' intent is to award funds under this solicitation to an organization that has demonstrated the capability to undertake these activities and to use these funds to leverage support for the maintenance of this effort once the Federal investment has ended. Further, the Department intends that the funds available under this grant will be used to support activities, but will not be used to cover international travel expenses. Organizations submitting a proposal under this solicitation must demonstrate how such international travel expenses will be financed.

IV. Application Process

Eligible Applicants

Non-profit organizations that can demonstrate the capability to undertake this project, including requirements for leveraging funds. In preparing the proposal, please use the following headings and respond to the information requested in each of the following categories.

i. Project Title. Identify the title of the proposed policy exchange program.

ii. Project Proposal. Provide a description of the proposed project. This description should include information on the capability of the offeror to undertake this project and should specifically address the prior experience and current capability of the offeror to establish these international policy exchanges. The proposal must describe the approach and methodologies the offeror will employ in establishing these international research and policy exchanges and should be specific as to activities, with time lines, that are proposed including how these activities will build the capacity of State and local leaders to implement School-to-Work systems. The proposal should also detail specific products that will be developed and how these products will be disseminated.

iii. Staff Involved. Provide information about the staff proposed for this project, including their background and qualifications as well as percentage of time committed to the project.

iv. Support and Sustainability. Provide information on how the organization intends to use the funds under this award to leverage additional funding to support the continuation of this project once the federal funds have ended. The offeror must provide specific information on how international travel expenses will be financed since federal funds may not be used for this project.

V. Application Submittal

Applicants must submit an original and three (3) copies of their proposal. The applications shall be divided into two distinct parts: Part I—which contains Standard Form (SF 424, ''Application for Federal Assistance,'' (Appendix A) and ''Budget Information Sheet'' (Appendix B). All copies of the

SF 424 must have original signatures of the designated fiscal agent. Applicants shall indicate on the SF–424 the organization's IRS status. The Catalog of Federal Domestic Assistance number is 17.249. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with evaluation criteria contained in this notice. Applicants must describe their plan in light of each of the Evaluation Criteria. No cost data or reference to price shall be included in this part of the application. Applicants must limit the program narrative section to no more than 25 double-spaced pages, on one side only. This includes any attachments. Applications that fail to meet the page limitation requirements will not be considered.

VI. Late Applications

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) Was sent by the U.S. Postal service Express Mail next Day Service to addresses not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and Federal holidays.

The term ''post marked'' means a printed, stamped or other wise place impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

VII. Hand Delivered Applications

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 p.m., (Eastern Time), on the closing date. Telegraphed and/or faxed applications will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

VIII. Funding Availability and Period of Performance

The Departments' expected to make one award, not to exceed $500,000. The period of performance will be for 12 months from the date the grant is awarded. The Departments may, at their option, provide additional funds for a second year, depending upon availability of funds, and performance of the awardee.

IX. Review Process

A careful evaluation of applications will be made by a technical review panel, who will evaluate the applications against the criteria listed below. The government may elect to award the grant without discussions with the offeror. In such situations, an award based on the offeror's signature on the SF 424 constitutes a binding offer.

Evaluation Criteria

1. The innovation and soundness of the plan. (30 Points)

- Does the plan address the activities identified in the work statement?
- Does the plan indicate how it will identify and bring together international leaders?
- Is the plan specific as to the products that will be developed and how these products will be disseminated?
- Are the goals and objectives of the plan clearly identified?
- Is the target audience clearly identified?
- Is the plan specific as to methodology and approach?

2. The capability and experience of the offeror in establishing international exchange programs. (20 Points)

- Has the offeror clearly identified prior experience in establishing international exchanges in related fields?
- Does the offeror demonstrate the capability to identify and bring together appropriate leaders both in the U.S. and internationally?

3. The knowledge and experience of the offeror in school-to-work transition and related education and training fields. (20 Points)

- Does the offeror cite specific examples of prior experience in school-to-work transition and related fields?
- Does the proposed staff have background and experience in working in areas related to school-to-work transition?
- Does the proposal reflect an understanding of issues and effective strategies relating to transitioning young people from school to careers?

4. The demonstrated capability of the offeror to commit and leverage resources for this project. (30 Points)

- Has the offeror identified the amount and sources of resources to be committed to this project?
- Is the plan specific as to how proposed international travel will be financed?
- Does the offeror make a compelling case for being able to sustain these efforts once federal funds are no longer available?

The grant will be awarded based on applicant response to the above mentioned criteria and what is otherwise most advantageous to the Departments. The panel results are advisory in nature and not binding on the Grant Officer.

Signed at Washington, D.C., this 8th day of July 1997.

Janice E. Perry,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance, SF Form 424

Appendix B: Budget Information Sheet

BILLING CODE 4510–30–M

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 the 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:

1 7 - 2 4 9

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

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

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 ave 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:	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 this 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) as 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 title of the program under which assistance is required.
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 the 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 disallowances, 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.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 97–18258 Filed 7–10–97; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

DATE AND TIME: Tuesday, July 22, 1997: 10:00 a.m.–2:30 p.m.

ADDRESSES: Boatmen's National Bank, Centennial Room, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:

10:00 a.m. Welcome—Agenda Review—Approval of Minutes
10:10 a.m. Co-Chair Comments
10:20 a.m. Task Force Reports
10:50 a.m. Subcommittee Reports
11:00 a.m. Ex-Officio Reports
12:00 p.m. Lunch
1:00 p.m. Presentation or Panel Discussion on Health
2:00 p.m. Updates—Occurrence Reports—DOE
5:00 p.m. Closing Remarks/Adjourn

Public Participation: The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10:00 p.m., Monday through Thursday; 7:45 a.m. to 5:00 p.m. on Friday; 8:30 a.m. to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 a.m. to 7:00 p.m. on Monday; 9:00 a.m. to 5:00 p.m., Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on July 8, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–18216 Filed 7–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, July 16, 1997: 5:30 p.m.–9:30 p.m. (Mountain Daylight Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th Street NW., Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

5:30 p.m. Accelerating Cleanup: Focus on 2006 Workshop
7:30 p.m. Public Comments
7:40 p.m. Approval of Agenda; Approval of 6/18/97 Minutes
7:50 p.m. Chair's Report—Jesse D. Dompreh
8:00 p.m. Break
8:10 p.m. Discussion of Process for Meeting Minutes
8:15 p.m. Selection of Board Vice President
8:25 p.m. Interim Committee for Administrator Criteria/Assessment
8:35 p.m. Procedures for Action Request Form
8:40 p.m. Staff Report
8:45 p.m. Membership and Nominating Committee Report
8:55 p.m. Budget and Planning Committee Report
9:05 p.m. New/Other Business
9:10 p.m. Public Comment Period
9:15 p.m. Agenda Items for 8/20/97 Meeting
9:20 p.m. Agenda Items for 7/22/97 Executive Committee Meeting
9:25 p.m. Announcement of Next Meeting/Adjourn
A final agenda will be available at the meeting Wednesday, July 16, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on July 8, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–18217 Filed 7–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulator Commission

[Docket No. RP94–43–000]

ANR Pipeline Company; Notice of Informal Settlement Conference

July 7, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, July 17, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulator Commission, 888 First Street, N.E., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact William J. Collins at (202) 208–0248.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18183 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–66–006]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective May, 1, 1997, August 1, 1997 and November 1, 1997.

Canyon states that the purpose of the filing is to comply with the Commission's letter order issued on June 16, 1997 in Docket No. RP97–66–004.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective on the proposed effective dates.

Canyon states that copies of the filing are being mailed to its transportation customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP97–66.

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 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 proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18174 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–139–004]

Caprock Pipeline Company; Notice of Tariff Filing

July 7, 1997.

Take notice that on July 1, 1997, Caprock Pipeline Company (Caprock) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet, to be effective August 1, 1997:

First Revised Sheet No. 29A

Caprock states that this tariff sheet is being filed to comply with the Commission's letter order in Docket No. RP97–139–002, issued June 6, 1997.

Caprock states that copies of the filing were served upon Caprock's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests 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 the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18168 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2869–000]

Central Hudson Enterprise Corporation; Notice of Issuance of Order

July 8, 1997.

Central Hudson Enterprise Corporation (Enterprise), a wholly-owned subsidiary of Central Hudson Gas & Electric Corporation, filed with the Commission proposed market-based power sales rates, and for certain waivers and authorizations. In particular, Enterprise requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Enterprise. On June 26, 1997, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates, and Announcing Policy With Respect To New Power Sales That Do Not Reflect Unbundling Of Transmission And Ancillary Services (Order), in the above-docketed proceeding.

The Commission's June 26, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Enterprise 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.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Enterprise is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or

assumption is for some lawful object within the corporate purposes of Enterprise, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Enterprise's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 28, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18269 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–412–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date August 1, 1997:

Twenty-Eighth Revised Sheet No. 32
Twenty-Eighth Revised Sheet No. 33

CNG states that the purpose of this filing is to submit CNG's quarterly revision of the Section 18.2.B. Surcharge, effective for the three-month period commencing August 1, 1997. The charge for the quarter ending June 30, 1997 has been $0.0210 per Dt, as authorized by Commission order dated April 21, 1997 in Docket No. RP97–302. CNG's proposed Section 18.2.B. surcharge for the next quarterly period is $0.0094 per Dt. The revised surcharge is designed to recover $57,059 in Standard Account No. 858 Costs, which CNG incurred for the period of March, 1997, through May, 1997.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state 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 Sections 385.214 and 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.

Linwood A.Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18158 Filed 7–10–96; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–610–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

July 7, 1997.

Take notice that on June 27, 1997, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944 filed in Docket No. CP97–610–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct a new meter station at an existing delivery point in Douglas County, Colorado, under CIG's blanket certificate issued in Docket No. CP83–21–000, pursuant to Section 7(c) 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.

CIG proposes to construct a new meter station at its existing Bayou Gulch delivery point, located near Castle Rock, in Douglas County, Colorado where gas is delivered to UtiliCorp United Incorporated (UtiliCorp). CIG states that the existing delivery point to UtiliCorp is a 2 inch side tap delivery facility on its 20-inch main transmission line that was constructed pursuant to a Prior Notice filing in Docket No. CP84–762–000. CIG explains that currently UtiliCorp owns and maintains the measurement equipment at the Bayou Gulch delivery point. CIG claims that by installing CIG owned and operated measurement facilities at this point, it will be possible to accurately measure volumes being supplied to this no-noticed customer. CIG proposes to install a Roots Gas Meter, a solar powered remote operating controler, and telemetry so it will know promptly if there are problems with gas flow at this point that serves a housing development.

CIG states that the estimated cost of the propposed facilities is approximately $36,300. Additionally, CIG indicates that it has obtained all required environmental clearances.

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 pursaunt to § 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18185 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–004]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective July 1, 1997:

Sixth Revised Sheet No. 30

El Paso states that the above tariff sheet is being filed to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at

Docket Nos. RM95–6–000 and RM96–7–000.

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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18164 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–20–009]

El Paso Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective August 1, 1997:

(First Revised Sheet No. 202A)

El Paso states that the above tariff sheet is being filed to implement the Order No. 587–C Gas Industry Standards Board Internet Web site standard pursuant to the Commission's letter order issued June 9, 1997 at Docket No. RP97–20–005.

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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18179 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–141–005]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

July 7, 1997.

Take notice that on July 1, 1997, Great Lake Gas Transmission Limited Partnership (Great Lakes) tendered for consideration as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective as stated below:

To Be Effective August 1, 1997

Second Revised Sheet No. 29
Original Sheet No. 29A

To Be Effective November 1, 1997

Third Revised Sheet No. 8
First Revised Sheet No. 10A
Second Revised Sheet No. 35
Fifth Revised Sheet No. 40
Third Revised Sheet No. 50C

Great Lakes states that the above-referenced tariff sheets are being filed in compliance with a Letter Order of the Commission's issued June 2, 1997, in Docket No. RP97–141–003.

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 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 proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18167 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–114–004]

K.N. Watterberg Transmission Ltd. Liability Co. Notice of Tariff Filing

July 7, 1987.

Take notice that on July 7, 1997, K N Wattenberg Transportation Ltd. Liability Co. (Wattenberg) tendered for filing as part of its FERC GAs Tariff, Original Volume No. 1, the Following revised tariff sheets, to be effective August 1, 1997:

First Revised Sheet No. 66A

Wattanberg states that this tariff sheet is being filed to comply with the Commission's letter order in Docket No. RP97–114–002, issued June 2, 1997.

Wattenberg states that copies of the filing were served upon Wattenberg's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests filed with the Commission will be considered by it in determining the appropriate action to be take, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18166 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–310–003]

Louisiana-Nevada Transit Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, Louisiana-Nevada Transit Company (LNT), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed below to be effective as indicated:

Sheet to be effective for the period January 9, 1997 to May 31, 1997:

1st Rev. First Revised Sheet No. 4
1st Rev. First Revised Sheet No. 11
1st Rev. Original Sheet No. 28
1st Rev. Original Sheet No. 29
Original Sheet No. 29A
1st Rev. First Revised Sheet No. 60
Original Sheet No. 61
Original Sheet Nos. 62–64

Sheets to be effective June 1, 1997:

Second Revised Sheet No. 4
Third Revised Sheet No. 11
Second Revised Sheet No. 29
First Revised Sheet No. 29A
Second Revised Sheet No. 30
First Revised Sheet No. 30A

LNT asserts that the purpose of the filing is to implement the settlement approved by the Commission on June 19, 1997, 79 FERC ¶ 61,360, in the captioned proceeding.

LNT 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18182 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–59–006]

Midwestern Gas Transmission Company; Notice of Compliance Filing

July 7, 1997.

Take notice that on July 1 1997, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERS Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 85
1st Rev. Second Revised Sheet No. 110A

Midwestern states that the tariff sheets implement the Gas Industry Standards Board's (GISB) Internet Web page standards in accordance with the Commission's June 16, 1997 Order on Compliance Filing in the above-referenced dockets. Midwestern Gas Transmission Company, 79 FERC ¶ 61,350 (1997). In accordance with the June 16 Order, Midwestern requests that these tariff sheets be deemed effective August 1, 1997.

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 18 CFR 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 this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

LInwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18177 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–19–007]

Mojave Pipeline Company; Notice of Tariff filing

July 7, 1997.

Take notice that on July 1, 1997, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective August 1, 1997:

Second Revised Sheet No. 103
First Revised Sheet No. 103A

Mojave states that the above tariff sheets are being filed to implement the Order No. 587–C Gas Industry Standards Board Internet Web site standard pursuant to the Commission's letter order issued June 16, 1997 at Docket No. RP97–19–005.

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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18180 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–64–007]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective May 1, 1997, August 1, 1997 and November 1, 1997.

Natural states that the purpose of the filing is to: (1) Comply with the Commission's letter order issued on June 16, 1997 in Docket No. RP97–64–005; and (2) make conforming changes in Natural's tariff pursuant to the Commission's letter order issued June 25, 1997 in Docket No. RP95–326–011.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective on the proposed effective dates.

Natural states that copies of the filing are being mailed to its customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP97–64.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulations 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 proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18175 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM97–2–59–000 and RP97–275–000]

Northern Natural Gas Company; Notice of Technical Conference

July 7, 1997.

In the Commission's orders issued May 30, 1997, (79 FERC ¶61,005) and July 1, 1997, (80 FERC ¶61,007) the Commission held that the filing in the above captioned proceedings raise issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Wednesday, July 30, 1997, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426. All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18268 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–131–004]

Overthrust Pipeline Company; Notice of Tariff Filing

July 7, 1997.

Take notice that on July 1, 1997, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, to be effective August 1, 1997.

Overthrust states that the proposed tariff sheets, which are listed below, implement the requirements of Standard 4.3.6, which requires natural-gas pipeline companies to establish HTML pages accessible via the Internet's World Wide Web and to publish certain information on the Internet web pages by August 1, 1997.

Proposed Revised Tariff Sheets

First Revised Sheet Nos. 35A and 37A
Second Revised Sheet No. 36
Third Revised Sheet No. 37

Overthrust states that a copy of this filing has been served upon its customers and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18170 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–136–006]

Paiute Pipeline Company; Notice of Compliance Filing

July 7, 1997.

Take notice that on July 1, 1997, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective August 1, 1997:

First Revised Sheet No. 56B
First Revised Sheet No. 58B
First Revised Sheet No. 63C
First Revised Sheet No. 98A
Second Revised Sheet No. 114

In the event that the Commission does not consider the above sheets to be appropriate compliance tariff sheets, Paiute also tendered for filing the following alternate tariff sheets, to become effective August 1, 1997:

Alternate First Revised Sheet No. 56B
Alternate First Revised Sheet No. 58B
Alternate First Revised Sheet No. 63C
Alternate First Revised Sheet No. 98A
Alternate Second Revised Sheet No. 114

Paiute indicates that the purpose of the instant filing is (1) to formally effectuate changes to the General Terms and Conditions of Paiute's tariff that are necessary to comply with Order No. 587–C, which changes were proposed by Paiute in a pro forma tariff sheet filing submitted on May 1, 1997 in Docket No. RP97–136–002 and approved in a letter order issued June 10, 1997, and (2) to comply with the June 10 letter order which required certain revisions to Paiute's pro forma tariff sheets filed on May 1, 1997.

Paiute further indicates that as a result of a letter order issued May 7, 1997 in Docket No. RP97–136–001, certain revisions are required to the pro forma tariff sheets filed on May 1, 1997 that were not addressed in the June 10 letter order. Paiute asserts that the tendered primary tariff sheets reflect revisions that are in compliance with both the June 10 and the May 7 letter orders, while the tendered alternate tariff sheets reflect only revisions that are specifically directed in the June 10 letter order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulator 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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18169 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–413–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 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 August 1, 1997.

Panhandle states that this filing removes from its currently effective rates the Initial GSR Settlement Rate Component applicable to Rate Schedules IT and EIT, and the GSR volumetric Surcharge applicable to Rate Schedule SCT customers that are members of the Municipal Gas

Commission of Missouri (MGCM). Accordingly, Panhandle proposes to remove (1) 0.25¢ from the current 0.29¢ GSR Rate Component applicable to Rate Schedules IT and EIT, and (2) 1.06¢ GSR Volumetric Surcharge applicable to the members of MGCM under Rate Schedule SCT.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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, D.C. 20426, in accordance with Sections 385.214 and 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18157 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–129–006]

Questar Pipeline Company; Notice of Tariff Filing

July 7, 1997.

Take notice that on July 1, 1997, Questar Pipeline Company (Quester) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the filing, to be effective August 1, 1997.

Questar states that the tariff sheets are being filed to implement the requirements of Standards 4.3.6, which requires natural-gas pipeline companies to establish HTML pages accessible via the Internet's World Wide Web and to publish certain information on the Internet web pages by August 1, 1997.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 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 determination 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18171 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–109–006]

Sabine Pipe Line Company; Notice of Compliance Filing

July 7, 1997.

Take notice that on July 1, 1997, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1997:

First Revised Sheet No. 286
Original Sheet No. 286A
Second Revised Sheet No. 297

Sabine states that the instant filing is being made to comply with the provisions of Order No. 587–C issued March 4, 1997, in Docket No. RM96–1–004, and the Commission's order issued June 18, 1997 in Docket No. RP97–109.004. The filing, to be effective August 1, 1997, incorporates GISB Standard 4.3.6 adopted by the Commission in Order No. 587–C.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18172 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–411–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the original and revised Tariff sheets set forth on Appendix A to the filing, pursuant to Section 4 of the Natural Gas Act to become effective August 1, 1997.

Sea Robin states that the tariff sheets filed by Sea Robin set forth the terms and conditions under which Sea Robin proposes to implement a new, flexible firm service on its system. Such flexible firm service will be generally available to all eligible shippers under the new, proposed Rate Schedule FTS–2. The filing contains the new Rate Schedule FTS–2, the Service Agreement under Rate Schedule FTS–2, and the Reserve Commitment Agreement. Shippers eligible for service under Rate Schedule FTS–2 will commit their reserves to Sea Robin under a Reserve Commitment Agreement.

To be eligible for service under Rate Schedule FTS–2, Shippers must dedicate committed leases with at least 40 Bcf of proven, recoverable reserves to Sea Robin for transportation. Shippers with committed leases that are connected to Sea Robin's system as of August 1, 1997, will be eligible for this service even through the proven recoverable reserves from those committed leases are less than 40 Bcf.

Under the proposed Rate Schedule FTS–2, Sea Robin proposes to charge a volumetric rate equal to the 100% load factor derivative of this currently effective firm transportation rate. Such volumetric rates will be applied provided that shippers maintain a throughput level of 80% of MDQ on a three month rolling average. Shippers that do not meet the 80% throughput threshold will pay the currently effective firm reservation charge. Shippers will have the flexibility to

have different levels of MDQ, which can vary as often as every three months, in order to accommodate their production schedules and to change their MDQs annually based on updated production information. In addition, Shippers will have an opportunity to change their MDQs once per year, upon six months notice to Sea Robin, for any reason.

Sea Robin submits that it has modeled the proposed Rate Schedule FTS–2 after the flexible firm rate schedules approved by the Commission in Shell Gas Pipeline Co., 76 FERC ¶ 61,126 (1996); and Destin Pipeline Company, L.L.C., 79 FERC ¶ 61,395 (1997). Sea Robin believes that implementation of such a Rate Schedule on its system is necessary to remain competitive with the newer pipelines offering this type of firm service for the connection of natural gas supplies.

In conjunction with the new Rate Schedule, Sea Robin proposes to make some clarifications to its existing tariff in order to implement the new service. Specifically, Sea Robin proposes to allocate capacity under both Rate Schedules FTS and FTS–2, if necessary, on a net present value basis. In addition, Sea Robin's capacity release provisions will be applicable to Rate Schedule FTS–2, for those months when shippers are paying the Reservation Charge component of Rate Schedule FTS–2.

Sea Robin has requested to place the new Rate Schedule FTS–2 into effect August 1, 1997. It proposes to post an open season for initial requests for service under the new rate schedule; and, upon review of any valid requests, Sea Robin proposes to implement service under Rate Schedule FTS–2 on October 1, 1997.

Any person desiring to be heard or to protest this filing should file a motions 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 Procedures (18 CFR Sections 385.211 and 385.214). All such motions and protests must be filed on or 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18159 Filed 7–10–96; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–68–005]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective August 1, 1997 and November 1, 1997.

Stingray states that the purpose of the filing is to comply with the Commission's letter order issued on June 13, 1997 in Docket No. RP97–68–003.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective on the proposed effective dates.

Stingray states that copies of the filing are being mailed to its transportation customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP97–68.

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 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 proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18173 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–60–006]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

July 7, 1997.

Take notice that on July 1, 1997, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 1997:

Second Revised Sheet No. 400
Third Revised Sheet No. 412

Tennessee states that the tariff sheets implement the Gas Industry Standards Board's (GISB) Internet Web page standards in accordance with the Commission's June 25, 1997 Order on Compliance Filing in the above-referenced docket. Tennessee Gas Pipeline Company, 79 FERC ¶61,381 (1997).

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 18 CFR 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 this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18176 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–3–17–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed

on Appendix A to the filing to become effective August 1, 1997.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each August 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers.

Texas Eastern states that these revised tariff sheets are being filed to reflect changes in Texas Eastern's projected costs for the use of electric power for the twelve month period beginning August 1, 1997.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current interruptible shippers and interested state commissioners.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 97–18156 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–650–002]

The Toledo Edison Company; Notice of Filing

July 7, 1997.

Take notice that on June 2, 1997, The Toledo Edison Company (Toledo Edison) tendered for filing revisions to its Electric Power Sales Tariff, filed originally on November 27, 1996 and completed on February 26, 1997 in Docket No. ER97–650–000, and other supplementary materials. Toledo Edison states that its filing is in compliance with the Commission's order dated April 25, 1997 in Docket No. ER97–650–000.

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 July 16, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18184 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–408–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, Trailblazer Pipeline Company (Trailblazer) tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, to become effective August 1, 1997.

Trailblazer states that this filing is a general rate case under Section 4(e) of the Natural Gas Act and is consistent with the terms of Trailblazer's last rate case settlement at Docket No. RP93–55. The proposed rate changes would increase revenue from transportation customers by approximately $3.3 million based on the twelve-month period ending February 28, 1997, as adjusted for known and measurable changes through November 30, 1997. Trailblazer states that the increase in transportation rates is necessary to permit Trailblazer the opportunity to recover its revenue requirement.

Trailblazer requests whatever waivers may be necessary to permit the tariff sheets as submitted herein to become effective August 1, 1997.

Trailblazer states that copies of the filing are being mailed to Trailblazer's transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18162 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–54–006]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Certain tariff sheets to be effective August 1, 1997 an November 1, 1997.

Trailblazer states that the purpose of the filing is to: (1) comply with the Commission's letter order issued on June 16, 1997 in Docket No. RP97–54–003; and (2) make conforming changes to Trailblazer's tariff with Trailblazer's negotiated rate filing in Docket No. RP97–336.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective on the proposed effective dates.

Trailblazer states that copies of the filing are being mailed to its transportation customers, interested state regulatory agencies, and all parties

set out on the official service list at Docket No. RP97–54

Any persons 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 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 the 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.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–18178 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–331–000]

Transcontinental Gas Pipe Line Corporation; Notice of Site Visit

July 7, 1997.

On July 14, 1997, the Office of Pipeline Regulation (OPR) staff will inspect, on the ground, locations related to the facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) and alternatives in Marengo County, Alabama and Coweta, Walton and Gwinnett Counties, Georgia for the Cherokee Expansion Project.

All interested parties may attend. OPR staff will depart from the existing Transco valve setting on County Road No. 39, near Dayton, Marengo County, Alabama at 12:00 noon CDT. Inspection of the proposed and alternate sites for Compressor Station 115 in Coweta County, Georgia will also occur during the afternoon of July 14, 1997. OPR staff will also inspect Compressor Station 125 and the Georgia Uprating facilities starting at 8:00 AM EDT, July 15, 1997. On that date OPR staff will depart from Compressor Station 125 in Walton County, Georgia. Interested parties planning to attend the July 14, 1997 site inspection must provide their own transportation.

For further information, call Paul McKee, Office of External Affairs, at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18187 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP91–1794–002]

Trunkline Gas Company, Koch Gateway Pipeline Company; Notice of Application

July 7, 1997.

Take notice that on June 23, 1997, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, and Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251, filed jointly in Docket no. CP91–1794–002 pursuant to Sections 7(b) and 7(c) of the NGA for an order authorizing the implementation of an amendment to the existing capacity lease authorization wherein Koch, under the terms of the amendment to the operating lease agreement, will continue to lease capacity on its Louisiana System to Trunkline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 28, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18188 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–407–000 and RP89–183–074]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of August 1, 1997:

Twenty First Revised Sheet No. 6A
First Revised Sheet Nos. 8E and 8F

WNG states that this filing is being made pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. WNG hereby submits its third quarter, 1997, report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations.

All such motions or 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18163 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–608–000]

Williams Natural Gas Company; Notice of Request under Blanket Authorization

July 7, 1997.

Take notice that on June 27, 1997, Williams Natural Gas Company (WNG), One Williams Center, Tulsa, Oklahoma 74101, filed in Docket No. CP97–608–000, 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, and 157.216) for authorization (1) to construct approximately 3,631 feet of 6-inch lateral pipeline and appurtenant facilities to deliver gas to the Western Resources, Inc. (WRI), Monticello West town border,[1] and (2) to construct approximately 58 feet of 6-inch tie-over pipeline and appurtenant facilities to the adjacent Bonner Springs 10-inch pipeline and to convert the storage lateral currently serving the WRI Whispering Hills town border to a delivery lateral, all in Johnson County, Kansas, under its blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG explains that the town borders are presently served from lateral lines within the Craig storage field. WNG states that due to significant residential and commercial encroachment into the storage field, as well as casing corrosion in several storage wells, it has lowered the pressure in the storage field. By connecting these two town border deliveries to adjacent pipelines, WNG says it will be able to insure uninterrupted service. WNG asserts that there will be no change in either of the town border facilities nor the location of the town borders. WNG relates that the projected volume of delivery to the town borders is not expected to exceed current deliveries. WNG indicates that the estimated cost of construction is approximately $199,688, which will be paid from available funds.

WNG states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its 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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18186 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

[1] WNG is also seeking authorization to abandon service from the storage line presently serving the town border, after the pipeline is constructed and the town border connected to the new line.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–4–49–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

July 7, 1997.

Take notice that on July 1, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets, with an effective date of August 1, 1997:

Second Revised Volume No. 1
Twenty-sixth Revised Sheet No. 15
Tenth Revised Sheet No. 15A
Twenty-ninth Revised Sheet No. 16
Tenth Revised Sheet No. 16A
Twenty-fifth Revised Sheet No. 18
Tenth Revised Sheet No. 18A
Tenth Revised Sheet No. 19
Tenth Revised Sheet No. 20
Twenty-second Revised Sheet No. 21
Original Volume No. 2
Seventieth Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume 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 Sections 385.214 and 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 the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18155 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–410–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

July 7, 1997.

Take notice that on July 1, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheet listed on Appendix A to the filing, to become effective August 1, 1997.

Williston Basin states that it has identified certain tariff modifications which it believes are necessary to enhance its service to its customers and certain tariff modifications which are necessary to clarify existing services and that the proposed tariff sheets reflect

such modifications, as all more fully set forth in the instant tariff filing which is on file with the Commission and open for public inspection.

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 Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18160 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–148–004]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 7, 1997.

Take notice that on July 1, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised pro forma tariff sheets to become effective August 1, 1997 and November 1, 1997:

Pro Forma Second Revised Volume No. 1	Effective date
Second Revised Sheet No. 371.	August 1, 1997.
First Revised Sheet No. 372.	August 1, 1997.
Sheet Nos. 273–499	August 1, 1997.
Third Revised Sheet No. 371.	November 1, 1997.

Williston Basin states that the pro forma tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Order No. 587–C issued March 4, 1997, in Docket No. RM96–1–004. The pro forma tariff sheets reflect the Gas Industry Standards Board (GISB) definitions and standards adopted by the Commission in such order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. 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 the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18165 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–409–000]

Wyoming Interstate Company Ltd.; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1997.

Take notice that on July 1, 1997, Wyoming Interstate Company Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 14C and First Revised Sheet No. 51A to be effective August 1, 1997.

WIC states the purposes of this filing is to conform WIC's Volume No. 1 tariff (individually certificated services) to the changes made to WIC's Volume No. 2 Tariff (open access) to comply with Order No. 587–C requirements.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

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, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Regulations. All such motions or 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18161 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–73–000, et al.]

Zond Windsystem Partners, Ltd., et al.; Electric Rate and Corporate Regulation Filings

July 3, 1997.

Take notice that the following filings have been made with the Commission:

1. Zond Windsystem Partners, Ltd. Series 85–B, a California Limited Partnership

[Docket No. EG97–73–000]

On June 27, 1997, Zond Windsystem Partners, Ltd. Series 85–B, a California Limited Partnership (Series 85–B Partnership), 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Series 85–B Partnership owns wind-powered eligible facilities (along with certain appurtenant interconnected transmission facilities), located in or near Tehachapi, California.

Comment date: July 23, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Zond-PanAero Windsystem Partners a California Limited Partnership

[Docket No. EG97–74–000]

On June 27, 1997, Zond-PanAero Windsystem Partners I, a California limited partnership (ZPW I), 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

ZPW I owns wind-powered eligible facilities (along with certain appurtenant interconnected transmission facilities), located in or near Palm Springs California.

Comment date: July 23, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Zond-PanAero Windsystem Partners II, a California Limited Partnership

[Docket No. EG97–75–000]

On June 27, 1997, Zond-PanAero Windsystem Partners II, a California limited partnership (ZPW II), 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

ZPW II owns wind-powered eligible facilities (along with certain appurtenant interconnected transmission facilities), located in or near Palm Springs, California.

Comment date: July 23, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Zond Systems, Inc.

[Docket No. EG97–76–000]

On June 27, 1997, Zond Systems, Inc. (Zond Systems), 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Zond Systems has direct and indirect ownership interests in and operates wind-powered eligible facilities (along with certain appurtenant interconnecting transmission facilities), located in or near Tehachapi, Palm Springs, and Santa Clara, California. Zond Systems also operates wind-powered eligible facilities, located in or near Tehachapi, Palm Springs, and Santa Clara California, on behalf of third-party owners.

Comment date: July 23, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Zond Windsystem Partners, Ltd. Series 85–A, a California Limited Partnership

[Docket No. EG97–77–000]

On June 27, 1997, Zond Windsystem Partners, Ltd. Series 85–A, a California Limited Partnership (Series 85–A Partnership), 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Series 85–A Partnership owns wind-powered eligible facilities (along with certain appurtenant interconnected transmission facilities), located in or near Tehachapi, California.

Comment date: July 23, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Zond Windsystem Partners, Ltd. Series 85–C, a California Limited Partnership

[Docket No. EG97–78–000]

On June 27, 1997, Zond Windsystem Partners, Ltd. Series 85–C, a California Limited Partnership (Series 85–C Partnership), 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Series 85–C Partnership owns wind-powered eligible facilities (along with certain appurtenant interconnected transmission facilities), located in or near Santa Clara California.

Comment date: July 23, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration to those that concern the adequacy or accuracy of the application.

7. Virginia Electric and Power Company

[Docket No. ER97–2275–000]

Take notice that on June 23, 1997, Virginia Electric and Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER97–2696–000]

Take notice that on June 13, 1997, Wisconsin Electric Power Company tendered for filing additional information in the above-referenced docket.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power & Light Company

[Docket No. ER97–2936–000]

Take notice that on June 20, 1997, Wisconsin Power & Light Company (WP&L) tendered for filing a temporary revision to its Emergency Service Schedules in its Bulk Power Sales Tariff and its Interconnection/Interchange Agreements with Wisconsin Electric Power Company, Madison Gas and Electric, and Wisconsin Public Power Inc. SYSTEM. This change will allow WP&L to recover costs incurred in the Share the Pain program. WP&L is requesting an effective date of May 15, 1997, and a termination date of September 30, 1997.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corporation

[Docket No. ER97–3251–000]

Take notice that on June 25, 1997, Florida Power Corporation tendered for filing a notice of withdrawal of its filing made on June 5, 1997, in the above-referenced docket. The filing contained a service agreement providing for service to Morgan Stanley Capital Group, Inc., pursuant to Florida Power's Cost-Based Wholesale Power Sales Tariff (CR–1)(Tariff). The Commission rejected Florida Power's CR–1 Tariff. Florida Power therefore, wishes to withdraw its filing made in the above-referenced docket.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Co.

[Docket No. ER97–3360–000]

Take notice that on June 18, 1997, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies) submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services to Aquila Power Corporation (Aquila), PacifiCorp Power Marketing, Inc. (PacifiCorp), PanEnergy Trading and Market Services, L.L.C. (PanEnergy Trading), PECO Energy Company-Power Team (PECO), Southern Energy Trading and Marketing, Inc. (Southern), Tenaska Power Services Co. (Tenaska), Williams Energy Services Company (Williams) and Wisconsin Electric Power Company (Wisconsin), in accordance with the

CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of this filing has been served on PacifiCorp, Southern, Wisconsin, PanEnergy Trading, PECO, Tenaska, Williams and Aquila.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Indianapolis Power & Light Company

[Docket No. ER97–3361–000]

Take notice that on June 18, 1997, Indianapolis Power & Light Company (IPL), tendered for filing a power sales agreement executed between IPL and Commonwealth Edison Company.

Copies of this filing were sent to the Indiana Utility Regulatory Commission and Commonwealth Edison Company.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. The Washington Water Power Company

[Docket No. ER97–3362–000]

Take notice that on June 17, 1997, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a revision to its Rate Schedule FERC No. 155. WWP requests an effective date of September 1, 1997.

Copies of this filing have been served upon Puget Sound Energy, the City of Spokane, and the Washington Utilities and Transportation Commission.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Union Electric Company

[Docket No. ER97–3363–000]

Take notice that on June 17, 1997, Union Electric Company, tendered for filing a Notice of Cancellation of the Firm Point-to-Point Transmission Service Agreement dated April 8, 1997 between Union Electric Company and Illinois Power Company.

Union requests that this cancellation become effective April 9, 1997.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Union Electric Company

[Docket No. ER97–3364–000]

Take notice that on June 17, 1997, Union Electric Company, tendered for filing a Notice of Cancellation of the Firm Point-to-Point Transmission Service Agreement between Union Electric Company and Illinois Power Company.

Union requests that this cancellation become effective April 10, 1997.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Union Electric Company

[Docket No. ER97–3365–000]

Take notice that on June 17, 1997, Union Electric Company, tendered for filing a Notice of Cancellation of the Firm Point-to-Point Transmission Service Agreement between Union Electric Company and Rainbow Energy Marketing Corporation.

Union requests that this cancellation become effective April 22, 1997.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Union Electric Company

[Docket No. ER97–3366–000]

Take notice that on June 17, 1997, Union Electric Company, tendered for filing a Notice of Cancellation of the firm Point-to-Point Transmission Service Agreement between Union Electric Company and Koch Energy Trading, Inc.

Union requests that this cancellation become effective April 29, 1997.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Union Electric Company

[Docket No. ER97–3367–000]

Take notice that on June 17, 1997, Union Electric Company, tendered for filing a Notice of Cancellation of the Firm Point-to-Point Transmission Service Agreement between Union Electric Company and Illinois Power Company.

Union requests that this cancellation become effective June 1, 1997.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Central Louisiana Electric Company, Inc.

[Docket No. ER97–3368–000]

Take notice that on June 18, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing a service agreement under CLECO's Market-Based Rate MR–1 Power Sales Tariff with Progress Power Marketing, Inc. CLECO states that the service agreement will enable CLECO to engage in market-based rate transactions with Progress Power Marketing, Inc.

CLECO states that a copy of the filing has been served on Progress Power Marketing, Inc.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Central Illinois Public Service Company

[Docket No. ER97–3369–000]

Take notice that on June 18, 1997, Central Illinois Public Service Company (CIPS) submitted a service agreement, dated June 9, 1997, establishing NP Energy, Inc. as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of June 9, 1997 for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon NP Energy, Inc. and the Illinois Commerce Commission.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Arizona Public Service Company

[Docket No. ER97–3370–000]

Take notice that on June 19, 1997, Arizona Public Service Company (APS), tendered for filing a revised Contract Demand Exhibit for the Bureau of Indian Affairs (BIA) on behalf of the San Carlos Irrigation Project applicable under the FERC Rate Schedule No. 201.

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on the BIA and the Arizona Corporation Commission.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Rochester Gas and Electric Corporation

[Docket No. ER97–3371–000]

Take notice that on June 18, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the PECO Energy Company-Power Team (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 9, 1997 for the PECO Energy Company-Power Team Service

Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Eastern Edison Company

[Docket No. ER97–3372–000]

Take notice that on June 18, 1997, Eastern Edison Company (Eastern Edison), filed an Interconnection Agreement between itself and the Massachusetts Bay Transportation Authority (MBTA) in order for the MBTA to take delivery at locations within Eastern Edison's service territory of power purchased by the MBTA from Boston Edison Company. The Agreement provides for Eastern Edison to construct interconnection facilities and for the MBTA to make a contribution-in-aid-of-construction (CIAC).

Eastern Edison requests that this filing be accepted to become effective 60 days from today, on August 18, 1997.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ER97–3373–000]

Take notice that on June 19, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Non-Firm Transmission Service Agreement with E Prime, Inc. and PECO Energy Company under PacifiCorp's FERC Electric Tariff, Original Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Ohio Edison Company, Ohio Power Company

[Docket No. ER97–3374–000]

Take notice that on June 18, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Ohio Power Company, an amendment to an Agreement dated June 20, 1968, between the companies related to electric service to Buckeye Power Inc. The amendment provides for changes to their Agreement as a result of the merger of two members of Buckeye Power Inc. (Delaware Rural Electric Cooperative, Inc. and Morrow Electric Cooperative, Inc.) to become Consolidated Electric Cooperative, Inc.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97–3375–000]

Take notice that on June 18, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Southern Energy Trading and Marketing, Inc. under Ohio Edison's Power Sales Tariff. This filing is made pursuant to § 205 of the Federal Power Act.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Central Illinois Public Service Company

[Docket No. ER97–3376–000]

Take notice that on June 18, 1997, Central Illinois Public Service Company (CIPS), submitted an umbrella short-term firm transmission service agreement, dated April 9, 1997, establishing CIPS Generation Resources as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of May 19, 1997 for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the Illinois Commerce Commission.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER97–3377–000]

Take notice that on June 18, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 25 to add one (1) new Customer to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of June 17, 1997, to Southern Energy Trading and Marketing, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Kentucky Utilities Company

[Docket No. ER97–3378–000]

Take notice that on June 18, 1997, Kentucky Utilities Company (KU), tendered for filing five (5) Supplements to FERC Rate Schedule 203, the Interconnection Agreement between KU and East Kentucky Power Cooperative.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Carolina Power & Light Company

[Docket No. ER97–3379–000]

Take notice that on June 19, 1997, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: NorAm Energy Services, Inc.; and NP Energy, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Carolina Power & Light Company

[Docket No. ER97–3380–000]

Take notice that on June 19, 1997, Carolina Power & Light Company (Carolina), tendered for filing executed Service Agreements between Carolina and the following Eligible Entities: NP Energy Inc.; and Consumers Power Company and the Detroit Edison Company referred to collectively as the Michigan Companies. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. New England Power Company

[Docket No. ER97–3381–000]

Take notice that on June 19, 1997, New England Power Company (NEP) filed a Service Agreement with Edison Source for non-firm, point-to-point transmission service under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. New England Power Company

[Docket No. ER97–3382–000]

Take notice that on June 19, 1997, New England Power Company (NEP) filed a supplement to its Network Integration Service Agreement with Holden (Mass.) Municipal Light Department under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Kansas City Power & Light Company

[Docket No. ER97–3383–000]

Take notice that on June 19, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 19, 1997, between KCPL and PECO Energy Company—Power Team. KCPL proposes an effective date of June 4, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Kansas City Power & Light Company

[Docket No. ER97–3384–000]

Take notice that on June 19, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 14, 1997, between KCPL and Williams Energy Services Company. KCPL proposes an effective date of June 2, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER97–3385–000]

Take notice that on June 17, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, membership applications of Camden Cogen, L.P. and Williams Energy Services Company. PJM requests an effective date of June 18, 1997.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Central Maine Power Company

[Docket No. ER97–3390–000]

Take notice that on June 20, 1997, Central Maine Power Company (Central Maine) tendered for filing with the Federal Energy Regulatory Commission its Wholesale Market Tariff, FERC Electric Tariff. Under the tariff, Central Maine may enter into service agreements for the sale at wholesale of electric capacity and/or energy at negotiated rates and may conduct transactions pursuant to such service agreements.

Central Maine requests an effective of August 9, 1997, or the date of approval by the Commission, whichever comes earlier.

Central Maine has served copies of the filing upon the Maine Public Utilities Commission and the Maine Office of the Public Advocate.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Paul M. Anderson

[Docket No. ID–3055–000]

Take notice that on June 18, 1997, Paul M. Anderson filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director: Duke Energy Corporation

Director: Temple-Inland, Inc.

39. Orlando Utilities Commission

[Docket No. NJ97–13–000]

Take notice that on June 26, 1997, Orlando Utilities Commission tendered for filing for an order declaring that voluntary tariff meets requirements of Order No. 888.

Comment date: August 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Lordsburg Limited Partnership

[Docket No. EG97–72–000]

On June 26, 1997, Lordsburg Limited Partnership, 820 Gessner, Suite 930, Houston, Texas, 77024–4258 (Lordsburg) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Lordsburg owns a natural gas-fired eligible facility under development with a capacity of approximately 110 megawatts (along with certain appurtenant interconnected transmission facilities), to be located near Lordsburg, New Mexico. Construction of the facility has not yet commenced.

Comment date: July 23, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18189 Filed 7–10–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5856–9]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of public review and comment period.

SUMMARY: Nelson Industries, Inc., Nelson Division (Nelson) has submitted to the Agency a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, subpart O. The notification describes equipment consisting of an oxidation catalyst combined with a noise muffler which replaces the original muffler unit installed on the engine. The equipment is intended for use on all petroleum-fueled Detroit Diesel Corporation (DDC) two-stroke cycle urban bus engines from 1979 through 1993 model year, exclusive of the 1990 model year DDC 6L71TA. In addition, Nelson requests certification of this equipment for use on engines rebuilt using the DDC 6V92TA mechanical unit injector (MUI) and electronic control (DDEC II) engine upgrade kits previously certified by EPA under the retrofit/rebuild program.[1] Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XIX of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located at the address listed below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category XIX, at the address below, and an identical copy should be submitted to Tom Stricker, also at the address below.

DATES: Comments must be submitted on or before August 25, 1997.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XIX), Room M–1500, 401 M Street SW, Washington, DC 20460.
2. Tom Stricker, Engine Programs and Compliance Division (6403J), 401 ''M'' Street SW, Washington, DC 20460.

The Nelson notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Stricker, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 233–9322.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by the Agency. Emissions requirements under either of the two compliance options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving at least a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification of Intent To Certify

By a notification of intent to certify dated March 11, 1997, Nelson has applied for certification of equipment applicable to all Detroit Diesel Corporation (DDC) two-stroke cycle urban bus engines from 1979 through 1993 model year, exclusive of the 1990 model year DDC 6L71TA. In addition, Nelson requests certification of this equipment for use on engines rebuilt using the DDC 6V92TA mechanical unit injector (MUI) and electronic control (DDEC II) engine upgrade kits previously certified by EPA under the retrofit/rebuild program. The notification of intent to certify states that the candidate equipment will reduce PM emissions 25 percent or more relative to the original PM level of the engine. Nelson provides criteria for determining whether or not the engine needs to be rebuilt prior to installing the candidate equipment. Further, transit pricing level has been submitted with the notification, along with a guarantee that the equipment will be offered to all affected operators for less than the incremental life cycle cost ceiling for a 25 percent reduction technology. EPA notes that the program requirement, applicable to operators choosing to comply with program 1, to reduce PM levels by at least 25 percent when these engines are rebuilt or replaced, has already been triggered, for the engine models covered by Nelson's request, by Englehard Corporation with certification

[1] The DDC MUI upgrade kit was certified by EPA on October 2, 1995 (60 FR 51472). The DDC DDEC II upgrade kit was certified by EPA on June 28, 1996 (61 FR 37738).

of their catalytic-converter muffler (CCM).[2] In addition, for certain engine models covered by Nelson's request, the 0.10 grams per brake horsepower-hour (g/bhp-hr) PM standard has already been triggered.[3] Nevertheless, EPA plans to review available information and comments related to the cost of the Nelson equipment and, if appropriate, to certify the Nelson equipment on the basis of being available to all affected operators for less than the life-cycle cost ceiling of $2,000 (1992 dollars). Any equipment certified as meeting the both the emission and cost requirements can be considered by EPA when updating the post-rebuild PM levels used by transit operators choosing to comply with program 2.[4]

To determine particulate matter (PM) reduction of the candidate equipment under the urban bus retrofit/rebuild program, Nelson presents exhaust emission data from a 1983 DDC 6V92TA with mechanical unit fuel injection (MUI), which was rebuilt by Detroit Diesel Remanufacturing—Central, Inc. prior to baseline testing. The engine was retested with the candidate equipment installed. The data show a 53 percent reduction in PM emissions between the baseline engine and the engine with the candidate equipment installed. In addition, the test data indicate that the emissions of hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NOx) with the candidate equipment installed are less than applicable standards. Fuel consumption measurements indicate a fuel economy penalty of less than 1 percent with the candidate equipment installed. Nelson presents smoke emission measurements for the engine which indicate compliance with applicable standards.

Consistent with previous catalyst certifications for 25 percent reduction, EPA believes that the Nelson test engine meets the criteria for worse-case test engine, described at § 85.1406 (a), for all two-stroke cycle engines (exclusive of the 1990 model year DDC 6L71TA), including both mechanically and electronically fuel injected engines. As further described in that section, EPA reserves the right to request additional information showing that PM reduction does not vary significantly among engine families. However, because the Nelson test data indicate over a 50 percent PM reduction on the DDC 6V92TA MUI test engine, EPA believes it reasonable to expect that electronically-controlled engines, with the Nelson catalyst installed, will be capable of meeting the 25 percent reduction standard for which Nelson is requesting certification.

Nelson states that the candidate equipment will be offered to all affected operators for less than a life cycle cost of $2,000 (1992 dollars), and has submitted life cycle cost information. Nelson states that the purchase price of the catalytic muffler unit will not exceed $2,069 (in January 1997 dollars). In addition, Nelson states that equipment installation time will not exceed 5 hours, resulting in an installation cost of $199 (in January 1997 dollars). Finally, Nelson states that there is no incremental maintenance required of the catalyst unit, and no fuel economy impact.

Certification of the candidate Nelson equipment would affect operators as follows. For the 1979 through 1989 6V92TA MUI engine models, EPA has previously certified equipment which triggered the requirement to use equipment certified to the 0.10 g/bhp-hr level beginning September 15, 1997. Therefore, under Program 1, operators who rebuild or replace 1979 through 1989 model year DDC 6V92TA MUI engines after this date will be required to use equipment certified to meet the 0.10 g/bhp-hr PM level. For all other engine models to which this certification would apply, EPA has previously certified equipment which triggered the requirement to use equipment certified as providing a minimum 25 percent reduction in PM beginning December 1, 1995. If the candidate Nelson equipment is certified to reduce PM by at least 25 percent, then its use under program 1 will meet this requirement for these other engine models. This requirement will continue for the applicable engines until such time that equipment is certified to trigger the 0.10 g/bhp-hr emission standard for these engines for less than a life cycle cost of $7,940 (in 1992 dollars). If the Agency certifies the candidate Nelson equipment, then operators who choose to comply with Program 2 and install this equipment, will use the PM emission level(s) established during the certification review process, in their calculations for target or fleet level as specified in the program regulations.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify, including whether the data provided by Nelson complies with the life cycle cost requirements.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment described in the DDC notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45 day period.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–18253 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–P

[2] 60 FR 28402, May 31, 1995.

[3] 62 FR 12166, March 14, 1997.

[4] See 40 CFR 85.1403 (c)(1).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5482–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed June 30, 1997 Through July 3, 1997.

Pursuant to 40 CFR 1506.9.

EIS No. 970247, Draft EIS, SFW, ID, MT, Grizzly Bear (Ursus arctos horribilus) Recovery Plan in the Bitterroot Ecosystem, Implementation, Endangered Species Act, Proposed Special Rule 10(j) Establishment of a Nonessential Experimental Population of Grizzly Bears in the

Bitterroot Area, Rocky Mountain, Blaine, Camas, Boise, Clearwater, Custer, Elmore, Idaho, Lemhi, Shoshone and Valley Counties, ID and Mineral, Missoula, Ravalli and Sanders Counties, MT, Due: September 30, 1997, Contact: Dr. Christopher Servheen (406) 243–4903.

EIS No. 970248, Final EIS, FHW, NY, I–287 Cross Westchester Expressway (CWE) Transportation Improvements, New York State Thruway Route 303 to Route 120, Funding, Right-of-Way Acquisition, COE Section 10 and 404 Permits, Rockland and Westchester Counties, NY, Due: August 11, 1997, Contact: Robert Arnold (518) 431–4125.

EIS No. 970249, Final EIS, FAA, NC, Initial Development of the North Carolina Global TransPark (NCGTP) Complex, Implementation, Airport Layout Plan Approval, COE Section 404 Permit, Kinston, Lenoir County, NC, Due: August 11, 1997, Contact: Tommy Roberts (404) 305–7150.

EIS No. 970250, Drate EIS, FHW, CA, Marin 101 High Occupancy Vehicle (HOV) Gap Closure Project, Construction from US 101/ I–580 on US 101 from Lucky Drive to North San Pedro Road and I–580 from Irene Street to US 101, Funding, COE Section 404 and Bridge Permits, Marin County, CA, Due: August 25, 1997, Contact: Brett Jackson (916) 498–5852.

EIS No. 970251, Draft EIS, USN, NV, Fallon Naval Air Station (NAS) Range Training Complex, Withdrawal of Federally Administered Public Lands for Range Safety and Training Purposes, Great Basin, City of Fallon, Churchill County, NV, Due: October 09, 1997, Contact: Sam Dennis (415) 244–3007.

EIS No. 970252, Final EIS, BLM, MT, Cooke City Area Mineral Withdrawal, Implementation, Gallatin and Custer National Forests, Cooke City, Park County, MT, Due: August 11, 1997, Contact: Larry Timchak (406) 255–0322.

EIS No. 970253, Draft EIS, COE, NC, Randleman Lake and Dam Project, Construction, Piedmont Triad Regional Water Authority (PTRWA), Deep River Guilford and Randolph Counties, NC, Due: August 25, 1997, Contact: John C. Meshaw (910) 251–4175.

EIS No. 970254, Final EIS, AFS, CA, Snowcreek Golf Course Expansion, Construction and Operation, Special Use Permit, Inyo National Forest System Lands, Mono County, CA, Due: August 11, 1997, Contact: Robert H. Hawkins (760) 873–2400.

EIS No. 970255, Final EIS, AFS, CA, Canyons Analysis Area, Implementation, Tahoe National Forest, Trucker Ranger District, Sierra and Nevada Counties, CA, Due: August 11, 1997, Contact: Karen Jones (916) 587–3558.

EIS No. 970256, Final EIS, FRC, WA, Upriver FERC No. 3074 Hydroelectric Project, Amendment of the Existing License, Spokane River, Spokane County, WA, Due: August 11, 1997, Contact: Jim Hastreiter (503) 326–5858.

EIS No. 970257, Final EIS, AFS, CA, Lake of the Sky Interpretive Center, Site Selection with the Sixty-Four Acres Tract, Tahoe City, Lake Tahoe, Placer County, CA, Due: August 11, 1997, Contact: Jacke Faike (916) 573–2600.

EIS No. 970258, Final EIS, AFS, PR, Caribbean National Forest Land and Resource Management Plan, Implementation, PR, Due: August 11, 1997, Contact: Lizzette Velez (787) 888–5609.

Amended Notices

EIS No. 970228, Second Final EIS (T, FHW, CA, A–58—Mojave Freeway Project, Construction from 0.1 mile east of the Cache Creek Bridge to 5.0 miles east of the town of Mojave, Funding, COE Section 404 Permit and Right-of-Way Acquisition, Kern County, CA, Due: July 21, 1997, Contact: John R. Schultz (916) 498–5041. Published FR–06–20–97—Correction to Telephone Number.

Dated: July 8, 1997.

Ken Mittelholtz,

Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–18238 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–5482–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 09, 1997 Through June 13, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISA) was published in FR dated April 04, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–E65049–FL Rating EC1, Florida National Forests, Revised Land and Resource Management Plan, Implementation, Apalachicola, Choctowhatchee, Ocala and Osceola National Forests, Several Counties, FL.

Summary: EPA expressed environmental concerns about impacts to water quality from the preferred alternative which emphasizes greater forest harvesting activities than the current management plan.

ERP No. D–AFS–K65270–CA Rating LO, Damon Fire Salvage and Restoration Project, Implementation, Modoc National Forest, Modoc County, CA.

Summary: EPA expressed a lack of objections.

ERP No. D–AFS–L65288–ID Rating EC2, Deadwood Ecosystem Analysis '96 Project, Implementation, Boise National Forest, Lowman Ranger District, Boise and Valley Counties, ID.

Summary: EPA expressed environmental concerns that implementing of best management practices and associated mitigation measures may not ensure protection of beneficial uses of streams and rivers within and downstream of the project area.

ERP No. DS–COE–D32033–PA Rating EC2, Lower Monongahela River Navigation System, Locks and Dam Nos. 2, 3, and 4 Improvements, Updated Information for Disposal of Dredge and Excavated Material, Funding, Allegheny, Washington and Westmoreland Counties, PA.

Summary: EPA expressed environmental concerns regarding environmental and public health impacts due to possible groundwater contamination, exceedences of Pennsylvania's water quality standards and residential/non-residential soil standards for some metals. EPA also expressed concern about the sediment and water quality sampling process. EPA requested that additional sampling and investigation be done to assess these environmental impacts.

Final EISs

ERP No. F–AFS–L65276–ID, Prince John Timber Sale Project, Implementation, Boise National Forest, Cascade Ranger District, Valley County, ID.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L82014–00, Priest Lake Ranger District Noxious Weed

Control Project, Implementation, Idaho Panhandle National Forest, Bonner County, ID and Pend Oreille County, WA.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L82015–ID, St. Joe Noxious Weed Control Project, Implementation, St. Maries River, St. Joe River and Little North Fork Clearwater River, Benewah, Shoshone and Latah Counties, ID.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. EPA had no objection to the preferred alternative as described in the EIS.

ERP No. F–FHW–J40138–UT, Norman H. Bangerter Highway (Previously Known as the West Valley Highway) 12600 South Street to I–15, Funding and COE Section 404 Permit, in the Cities of Bluffdale, Riverton and Draper, Salt Lake County, UT.

Summary: EPA continued to express concerns regarding mitigation measures for wetland areas and terrestrial animal access.

Dated: July 8, 1997.

Ken Mittelholtz,

Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–18239 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5856–7]

Announcement of and Request for Comment on Municipal Solid Waste Settlement Proposal

SUMMARY: EPA is publishing the ''Municipal Solid Waste Settlement Proposal'' to inform the public about this proposal and to solicit public comment before developing a final policy. This proposal describes a methodology for calculating appropriate settlement contributions for municipal owner/operators (O/Os) and municipal and other generators/transporters (G/Ts) of municipal sewage sludge and municipal solid waste (collectively referred to as MSW) at co-disposal landfills under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), 42 U.S.C. 9601 *et seq.* The purpose of this proposal is to provide a fair, consistent, and efficient settlement methodology for resolving the potential liability of municipal O/Os and MSW G/Ts at co-disposal Superfund sites. Specifically, EPA is proposing settlements based upon a unit cost formula for contributions by MSW G/Ts and a settlement range, based on historical data, for municipal O/Os of co-disposal sites.

DATES: Comments must be submitted no later than August 25, 1997.

ADDRESSES: Comments should be addressed to Leslie Jones, U.S. Environmental Protection Agency, Office of Site Remediation Enforcement, Policy and Guidance Branch (2273A), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Leslie Jones, phone: (202) 564–5144; fax: (202) 564–0091.

EPA Proposal for Municipality and MSW Liability Relief at CERCLA Co-Disposal Sites

Background

Currently, there are approximately 250 landfills on the National Priorities List (NPL) that accepted both municipal solid waste (MSW) and other wastes, such as industrial wastes, containing hazardous substances (commonly referred to as ''co-disposal'' landfills). Co-disposal landfills comprise approximately 23% of the sites on the NPL. Many of these landfills are or were owned or operated by municipalities in connection with their obligation to provide necessary sanitation and trash disposal services to residents and businesses. The number of co-disposal sites on the NPL, and the problems associated with co-disposal of MSW and industrial wastes, have prompted EPA to address issues facing municipal owner/operators (O/Os) and MSW generators/transporters (G/Ts) at Superfund sites.

For the purposes of this proposal, EPA defines municipal solid waste as solid waste that is generated primarily by households, but that may include some contribution of wastes from commercial, institutional and industrial sources as well. Although the actual composition of such wastes varies considerably at individual sites, municipal solid waste is generally composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and may contain small quantities of household hazardous wastes (e.g., pesticides and solvents), as well as conditionally exempt small quantity generator wastes (i.e., a listed or characteristic waste under RCRA that is exempt from permitting because it is accumulated in quantities of less than 100 kilograms (kg)/month for hazardous waste and less than 1 kg/month for acute hazardous waste, 40 C.F.R. 261.5).

Sewage sludge is defined as any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sludge. For purposes of this proposal, municipal solid waste and municipal sewage sludge are collectively referred to as MSW; all other wastes and substances are referred to as non-MSW. The term municipality refers to any political subdivision of a state and may include a city, county, town, township, local public school district or other local government entity.

On December 12, 1989, EPA issued the ''Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes'' (the ''1989 Policy'') to establish a consistent approach to certain issues facing MSW G/Ts and municipalities. The 1989 Policy assists EPA in determining whether to exercise its enforcement discretion to pursue MSW G/Ts as potentially responsible parties (PRPs) under Section 107(a) of CERCLA. The 1989 Policy provides that EPA generally will not identify an MSW G/T as a PRP for the disposal of MSW at a site unless there is site-specific evidence that the MSW contained hazardous substances derived from a commercial, institutional or industrial process or activity. The 1989 Policy recognizes that, like private parties, municipal O/Os may be PRPs at Superfund sites. The 1989 Policy identified several settlement provisions, however, that may be particularly suitable for settlements with municipal O/Os in light of their status as governmental entities.

Notwithstanding EPA's 1989 Policy, MSW G/Ts have sometimes been drawn into CERCLA contribution litigation. PRPs that contributed large quantities of hazardous substances at co-disposal landfills have sometimes sought to spread the cost of their CERCLA liability among large numbers of other parties, including those whose only contribution was MSW.

Numerous studies have demonstrated that hazardous substances are typically present in MSW in very low concentrations. The overwhelming majority of landfills at which MSW alone was disposed do not experience environmental problems of sufficient magnitude to merit designation as Superfund Sites. In the Agency's experience, with only the rarest of exceptions, MSW landfills do not become Superfund Sites unless other types of wastes containing hazardous substances, such as industrial wastes, are co-disposed at the facility.

In addition, the cost of remediating MSW is typically much lower than the cost of remediating industrial waste. In 1992, EPA performed a comparative analysis of the cost of remediating a representative MSW site versus the cost of remediating a representative industrial waste site. At that time, EPA found that on a per-acre basis, the estimated cost of remediating MSW was significantly lower than the cost of remediating industrial waste. Although costs have changed somewhat since 1992 and EPA continues to learn more about remediating different kinds of waste sites, the Agency does not believe that there has been a radical shift in the relative cost of remediating MSW versus industrial wastes.

Introduction and Application

This proposal will provide revised national guidance on how to involve MSW G/Ts in the CERCLA settlement process and more detailed guidelines for Agency settlements with municipal O/Os. This proposal applies to municipal O/Os and to municipal and private MSW G/Ts. This proposal encourages settlements by setting forth a fair and efficient method for calculating an equitable and reasonable settlement contribution for such parties. Such settlements should encourage settlements with and reduce transactions costs for all parties at a site and should reduce third-party litigation. Specifically, this proposal contains a unit cost formula for contributions by MSW G/Ts and a presumptive settlement percentage and range, based on historical data, for municipal O/Os of co-disposal sites. In addition, a final policy will provide guidelines for evaluating a municipality's ability to pay.

This proposal builds on the 1989 Policy with respect to generators and transporters of MSW. The Agency will continue its policy of not identifying such parties as PRPs at Superfund Sites. As in the 1989 Policy, this proposal does not apply if there is site-specific evidence that the MSW contained hazardous substances derived from a commercial, institutional or industrial process or activity. In recognition of the strong public interest in reducing the burden of contribution litigation, however, EPA is proposing to supplement the 1989 policy by offering settlements to any such MSW G/Ts that wish to resolve their potential Superfund liability and to obtain contribution protection pursuant to Section 113(f) of CERCLA.

This proposal does not apply to MSW G/Ts who also generated or transported any non-MSW containing a hazardous substance, except to the extent that a party can demonstrate that the MSW was completely and continually segregated from the non-MSW prior to and during disposal at the site. Such a party would be required to demonstrate to EPA's satisfaction that segregation occurred. In considering claims of segregated waste, EPA will consider whether the MSW and non-MSW were delivered to the site in separate loads and/or separate packaging, disposed of in separate units of the landfill, handled, packaged and disposed of separately within the disposing facility, and other relevant information. Where such segregation of waste is demonstrated, this proposal applies only to the MSW component of that waste stream; the party's liability for non-MSW would continue to be addressed under applicable EPA CERCLA policies (e.g., EPA's de minimis policy).

To address concerns that this proposal may result in the indirect inclusion in contribution litigation of MSW parties who have contributed small amounts of MSW, and in an effort to prevent creation of transaction costs for parties that EPA has tried to protect from lawsuits through the de micromis policy, EPA intends to amend the existing de micromis policy to modify the volumetric cut-off for MSW G/Ts.

This proposal is designed for co-disposal sites on the NPL. Co-disposal sites contain both MSW and non-MSW. Although this proposal has its most direct application at co-disposal sites with multiple, viable non-de minimis G/Ts, EPA may elect to apply all or part of a final policy to other appropriate sites. Because this proposal is a draft and is subject to public comment before finalization, EPA will not apply it until the proposal is issued as a final policy.

EPA does not intend in any circumstances to reopen settlements already entered into or to reconsider Unilateral Administrative Orders (UAOs) issued prior to issuance of this policy. At sites for which prior settlements have been reached but where MSW parties are subject to third party litigation, EPA will recommend that the principles set forth in the final policy be followed by the private litigants to reach a settlement involving the MSW parties. To the extent that such a settlement is not reached, the U.S. may settle with MSW G/Ts based on the formulas established in this proposal and place those settlement funds in a site-specific special account. At sites where no parties have settled to perform work, where the U.S. is seeking to recover costs from private parties, and where the private parties have initiated contribution actions against municipalities and other MSW G/Ts, the U.S. will seek to apply the most expeditious methods available to resolve liability for those parties pursued in third-party litigation, including, in appropriate circumstances, application of this proposal. In no circumstances does EPA intend to bestow a benefit on recalcitrant parties.

This proposal is intended for settlement purposes only and, therefore, the formulas contained in this proposal are relevant only where settlement occurs. Except as specifically provided below, this proposal will not supersede any of EPA's existing policies (e.g., orphan share, residential homeowner, etc.), and is intended to be used in concert with those policies. For example, those parties eligible for orphan share compensation under EPA's orphan share policy will continue to be eligible for such compensation.

Procedure

EPA believes that this proposal can promote global settlements at co-disposal sites. In some cases, site circumstances may warrant a series of settlement negotiations with different parties. Because this proposal is designed to achieve fair and equitable settlements, settlements with the U.S. will generally provide contribution protection for settling parties and require parties settling under this proposal to waive contribution claims against all other PRPs at the site. In addition, the U.S. will accept settlements from parties based on limited ability to pay, where appropriate. Where beneficial to settling parties, the U.S. will place the proceeds of settlements under this proposal into a special account to help fund cleanup at the site.

MSW Generator/Transporter Settlements

One purpose of this proposal is to facilitate settlements with MSW G/Ts who seek settlements with the U.S. This proposal recognizes the differences between MSW and the types of wastes that typically give rise to the environmental problems at Superfund Sites. Consistent with the 1989 Policy, EPA will generally not actively pursue MSW G/Ts absent site-specific evidence that the MSW contained a hazardous substance derived from a commercial, institutional or industrial process or activity. However, in recognition of the fact that the potential for small amounts of hazardous substances in MSW may result in contribution claims against MSW G/Ts, EPA intends to use its enforcement discretion to offer

settlements based on the process and formulas contained in this proposal to parties that have not been issued special notice letters but that wish to enter settlement negotiations with EPA. It will be incumbent upon such parties to notify EPA of their desire to enter into settlement negotiations pursuant to this proposal. Absent the initiation of settlement discussions by an MSW G/T, EPA may not take steps to pursue settlements with these parties.

Proposed G/T Methodology

EPA's proposed methodology for calculating settlement offers to MSW G/Ts requires multiplying the known or estimated quantity of MSW contributed by the G/T by an estimated unit cost of remediating MSW at a representative MSW-only landfill. This method provides a fair, reasonable and efficient means of completing settlements with MSW G/Ts that reflects a reasonable approximation of the cost of remediating MSW.

The unit cost methodology is based on the costs of closure/post-closure activities at a ''clean'' MSW landfill (i.e., a RCRA Subtitle D landfill, not subject to RCRA corrective action or CERCLA response authorities) and increased slightly if certain site conditions exist. EPA's estimate of the cost per unit of remediating MSW at a representative MSW-only landfill is $3.05 per ton.[1] That unit cost is derived from the cost model in EPA's ''Regulatory Impact Analysis for the Final Criteria for Municipal Solid Waste Landfills,'' (RIA) and then adjusted to reflect 1997 dollars. The Subtitle D landfill cost model was run to extract only the costs associated with closure/post-closure activities (thus excluding siting and operational costs). The closure criteria specified in the Solid Waste Disposal Facility Criteria (40 CFR. pt. 257–258) include a final cover system that minimizes erosion and infiltration with an erosion layer underlain by an infiltration layer. Post-closure requirements consist of cover maintenance, maintenance and operation of a leachate collection system, groundwater monitoring, and maintenance and operation of a gas monitoring system, all to be conducted for 30 years.

Of the Subtitle D landfill types addressed in the RIA, EPA selected the type most representative of the landfills encountered within the Superfund program: a closed, unlined, 55.53-acre landfill. Regions may increase the unit cost not to exceed $3.25/ton if the presence of one or more of the following factors exist:

- Shallow aquifer beneath the landfill.
- Unusually high annual rainfall in the area.
- Cold ambient air temperature in the area.
- Affected groundwater beneath the site is classified as drinking water.
- Low-permeability cover material (e.g., clay) is unavailable onsite.

The presence of one or more of these factors may result in greater closure/post-closure costs at any MSW-only landfill due to the additional precautionary and monitoring technology generally utilized in those instances.

In the instance where a party's contribution is known in cubic yards rather than tons, the following density conversion scales should be used to convert the site-specific cubic yard data into tons:

(1) Loose refuse (''curbside'')—100 lbs./cu. yd.;

(2) Refuse in a compactor truck—550 lbs./cu. yd; and

(3) Refuse in a landfill (after degradation and settling)—1200 lbs/cu. yd.[2]

In the instance where a party's contribution is MSS, Regions should use a conversion formula of 8.33 pounds/gallon.[3]

In order to use such density conversions, Regions should first identify whether the MSW cubic yard ''waste-in'' data represents MSW at the time of collection from places of generation, or MSW at the time of transport in or disposal by a compactor truck. Next, Regions should convert the cubic yards to pounds (tons) by multiplying either 100 (for curbside MSW) or 550 (for compactor truck MSW) times the number of cubic yards that a G/T contributed. For cases where site-specific conversion information is already available, Regions may use those conversions rather than the presumptive conversion scales provided in this proposal.

Once the adjusted unit cost is established, the Region will multiply that cost/ton by an individual G/T's quantity contribution to produce a total settlement amount for that party. In order to be eligible for settlements under this proposal, an MSW G/T must provide all information requested by EPA to estimate the quantity of MSW contributed by such party. EPA may solicit information from other parties where appropriate to estimate the quantity of a particular G/T's contribution of MSW. Where the party has been forthcoming with requested information, but the information is nonetheless imperfect or incomplete, EPA will construct an estimate of the party's quantity incorporating reasonable assumptions.

MSW G/Ts settling pursuant to the final policy will be required to waive their contribution claims against other parties at the site. In situations where there is more than one generator or transporter associated with the same MSW, the settling party will not be required to waive its contribution claims for that waste against any non-settling parties associated with the same waste.

Municipal Owner/Operator Settlements

A second purpose of this proposal is to provide a consistent methodology for constructing proposals for municipalities that are potentially liable as past or present owners or operators of co-disposal landfills. Pursuant to this proposal, the U.S. will offer settlements to municipal O/Os of co-disposal facilities who wish to settle; those municipal O/Os who do not settle with EPA will remain subject to site claims by EPA and other parties.

EPA recognizes that some of the co-disposal landfills listed on the NPL are or were owned or operated by municipalities in connection with their governmental obligation to provide basic sanitation and trash disposal services to residents and businesses. In many cases municipalities opened the landfills initially solely to serve their own communities. EPA believes that those factors, along with the non-profit status of municipalities and the unique fiscal planning considerations that they face, warrant a national settlement policy that provides municipal O/Os with reasonably consistent and equitable settlements.

Proposed O/O Methodology

EPA proposes 20% of total response costs for a site as a baseline presumption to be considered as settlement amount for an individual municipal O/O to resolve its liability at the site. Regions will have the discretion to deviate from the presumption (not to exceed 35%) based on a number of site-specific factors. The 20% baseline is an individual cost share and pertains solely to a municipal O/O's liability as an O/O. EPA recognizes that, at some sites,

[1] This cost will be adjusted over time to reflect inflation.

[2] ''Estimates of the Volume of MSW and Selected Components in Trash Cans and Landfills,'' Franklin Assoc., the Garbage Project (1990); prepared for the Council for Solid Waste Solutions.

[3] ''Final Guidance on Preparing Waste-in Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA,'' OSWER Directive 9835.16 (Feb. 22, 1991).

there may be multiple liable municipal O/Os and the Region may determine that it is appropriate to settle for less than the presumption for an individual O/O. A group or coalition of two or more municipalities with the same nexus to a site, at the same time or during continuous operations under municipal control, should be considered a single O/O for purposes of developing a cost share (e.g., two cities operated together in joint operations or in cost sharing agreements). In cases where a municipal O/O is also liable as an MSW G/T, EPA would offer to resolve such liability for an additional payment amount developed pursuant to the MSW G/T settlement methodology.

EPA proposes the 20% baseline settlement contribution on the basis of several considerations. EPA examined the data from past settlements of CERCLA cost recovery and contribution cases with municipal O/Os at co-disposal sites where there were also PRPs who were potentially liable for the disposal of non-MSW, such as industrial waste. In examining that data, EPA considered that such historical settlements also typically reflected resolution of the municipality's liability not only as an owner/operator, but also as a generator or transporter of MSW. Under the final policy, such liability will be resolved through payment of an additional amount, calculated pursuant to the MSW G/T methodology. The 20% baseline does not reflect this separate basis for liability and the respective additional payment.

The 20% baseline figure also reflects the requirement that municipal O/Os that settle under the final policy will be required to waive all contribution rights against other parties as a condition of settlement. By contrast, in many historical settlements, municipal O/Os retained their contribution rights and hence were potentially able to seek recovery of part of the cost of their settlements from other parties.

In addition, the 20% baseline figure reflects EPA's evaluation of public interest considerations relating to municipalities. For example, Section 122(e)(3) of CERCLA authorizes the President to perform ''nonbinding preliminary allocations of responsibility'' for the purpose of promoting settlements and to include ''public interest considerations'' in developing such allocations. EPA believes it is in the public interest to consider collectively: the unique public health obligation of municipalities to provide waste disposal services to their citizens; the municipalities' non-profit status; and the unique fiscal planning considerations for municipalities that require multi-year planning.

Under this proposal, the Regions may adjust the settlement in a particular case upward from the presumptive percentage, not to exceed a 35% share, based on consideration of the following factors:

(1) Whether the municipality performed specific activities that exacerbated environmental contamination or exposure (e.g., the municipality permitted the installation of drinking wells in known areas of contamination);

(2) Whether the O/O received operating revenues net of waste system operating costs during ownership or operation of the site that are substantially higher than the O/O's presumptive settlement amount pursuant to this policy; and

(3) Whether an officer or employee of the municipality has been convicted of performing a criminal activity relating to the specific site during the time in which the municipality owned or operated the site.

The Regions may adjust the presumptive percentage down based on whether the municipality, on its own volition, made specific efforts to mitigate environmental harm once that harm was evident (e.g., the municipality installed environmental control systems, such as gas control and leachate collection systems, where appropriate; whether the municipality discontinued accepting hazardous waste once groundwater contamination was discovered; etc.). The Regions may also consider other equitable factors at the site.

Financial Considerations in Settlement

In all cases under this proposal, the U.S. will consider municipal claims of limited ability to pay. Municipalities making such claims are required to provide Regions all necessary documentation relating to the claim. Recognizing that municipal O/Os may be uniquely situated to perform in-kind services at a site (e.g., mowing, road maintenance, structural maintenance), EPA will carefully consider any forms of in-kind services that a municipal O/O may offer as partial settlement of its cost share.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–18247 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–748; FRL–5728–7]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–748, must be received on or before August 11, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joanne Miller (PM 23) ...	Rm. 237, CM #2, 703–305–6224, e-mail:miller.joanne@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
George LaRocca (PM 13).	Rm. 204, CM #2, 703–305–6100, e-mail: larocca.george@epamail.epa.gov.	Do.
James Tompkins (PM 25).	Rm. 229, CM #2, 703–305–7830, e-mail: tompkins.james@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–748] (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 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 [PF–748] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 1, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. DowElanco

PP 6G3306

EPA has received a pesticide petition (PP) 6G3306 from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by renewing a temporary tolerance for the combined residues of herbicide triclopyr (3,5,6-trichloro-2-pyridinyl)oxyacetic acid and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine in or on the raw agricultural commodities fish and shellfish at 0.2 part per million (ppm). An allowable residue level of 0.5 ppm in potable water is also being renewed. The proposed analytical method is gas chromatography. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Triclopyr Uses

Triclopyr as the triethylamine salt solution is currently registered for use on rights-of-way, industrial sites, non-crop areas, forest sites, rangeland, permanent grass pastures, roadsides, fence rows, ornamental turf, non-irrigation ditchbanks, and rice. It is recommended for the selective control of unwanted woody plants and annual and perennial broadleaf weeds on these sites.

Triclopyr is to be experimentally used for the selective control of aquatic weeds such as alligatorweed, Eurasian watermilfoil, parrot's feather, pickerelweed, purple loosestrife, and water hyacinth growing in lakes, ponds, reservoirs, and wetlands. It will also be tested for the control of woody brush and herbaceous weeds growing in wetlands and the banks and shores of aquatic sites. Application timing will coincide with the seasons of the year when the target species are actively growing. The maximum rates for triclopyr are 2 gallons per acre for the treatment of floating or emerged weeds, 3 gallons per acre for treatment of woody plants, and 2.5 ppm in water for treatment of submersed weeds.

B. Residue Chemistry

1. *Analytical method.* Adequate methodology is available for the enforcement of tolerances for triclopyr residues of concern. Gas chromatography methods are available for the determination of triclopyr residues of concern. Residues of triclopyr, 3,5,6-trichloro-2-pyridinol, and 2-methoxy-3,5,6-trichloropyridine can be separately determined. The detection limits range from 0.01 to 10 ppm depending on the compound being analyzed.

2. *Magnitude of residues.* In field studies, triclopyr in water has a half-life of 0.5 - 3.5 days. Triclopyr residues were below 0.5 ppm after 3 days. The metabolite, 3,5,6-trichloro-2-pyridinol was not detected within the treatment area. Within the treatment area, triclopyr was detected at <0.01 - 0.03 ppm in water collected 21 days after application. The average concentration did not exceed 0.5 ppm at 600 ft from the border of the treated area. Residues of triclopyr and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine were detectable only at the limit of detection, 0.01 ppm and non-detectable after day eight in fish flesh. Shellfish residues were

greater, with less than 0.1 ppm remaining in the edible portion after two weeks of treatment.

C. Toxicology Profile

1. *Acute toxicity.* Acute toxicity studies conducted with the triethylamine salt of triclopyr indicate low toxicity with the exception of eye irritation. The acute oral LD_{50}, in rats with the triethylamine salt of triclopyr is 2,574 mg/kg (males) or 1,847 mg/kg (females) (Toxicity Category III.) The acute dermal LD, in rabbits using the triethylamine salt of triclopyr was > 2,000 mg/kg (Toxicity Category III.) The acute inhalation LD_{50}, in rats was > 2.6 mg/L (maximum attainable concentration) with a Toxicity Category of III. In a primary eye irritation study in rabbits the triethylamine salt of triclopyr was found to be corrosive, with corneal involvement present through day 21 post-dose. The triethylamine salt of triclopyr was found to be non-irritating to the skin of white rabbits. In dermal sensitization studies in guinea pigs, sensitization was observed with the triethylamine salt of triclopyr.

2. *Genotoxicity.* The genotoxic potential of triclopyr has been evaluated in a range of assays *in vivo* and *in vitro*. These assays demonstrate triclopyr is non-mutagenic *in vivo* and *in vitro*. Mutagenicity data included gene mutation assays with E. coli and S. typhimurium (negative); DNA damage assays with B. subtillis (negative); an unscheduled DNA synthesis with rat hepatocytes (negative), a chromosomal aberration test in Chinese hamster cells and rat cells (negative) and dominant lethal assays in rats and mice (negative).

3. *Reproductive and developmental toxicity.* A developmental toxicity study in rats fed dosage levels of 0, 30, 100, and 300 mg/kg/day, with a maternal lowest observed effect level (LOEL) = 300 mg/kg based on the increased incidence of salivation and mortality and a maternal no-observed effect level (NOEL) = 100 mg/kg. Developmental toxicity was evident in this study at the 300 mg/kg dose level, and included decreased mean fetal body weight, increased fetal and litter incidence of skeletal anomalies and an increase in the number of fetuses with unossified sternebrae. The developmental LOEL = 300 mg/kg-based on decreased mean fetal weight, increased fetal and fitter incidence of skeletal anomalies, and increased fetal incidence of unossified sternebrae. The developmental NOEL = 100 mg/kg.

A developmental toxicity study in rabbits fed dosage levels of 0, 10, 30, and 100 mg/kg/day with a maternal LOEL = 100 mg/kg based on the decreased body weight gain, decreased food efficiency, and increased liver and kidney weight. The maternal NOEL = 30 mg/kg. Developmental toxicity was evident at the 100 mg/kg dose level in the form of reduced number of litters, reduced number of corpora lutea, reduced number of total implants, reduced total live fetuses, increased embryonic deaths and deaths/dam, and increased pre-implantation loss. The developmental LOEL =100 mg/kg based an the decreased number of live implants, decreased live fetuses, and increased embryonic deaths. The developmental NOEL = 30 mg/kg.

A 2–generation reproduction study in rats fed dosages of 0, 5, 25, and 250 mg/kg/day with a Parental Systemic Toxicity NOEL = 5 mg/kg/day (males and females); the parental Systemic Toxicity LOEL = 25 mg/kg/day, based on increased incidence of proximal tubular degeneration in male and female P_1 and P_2 rats. The Reproductive/Systemic Toxicity NOEL = 25 mg/kg/day; the Reproductive/Systemic Toxicity LOEL = 250 mg/kg/day, based on decreased litter size, decreased body weight and weight gain, and decreased survival in the F_1 and F_2 litters.

4. *Subchronic toxicity.* A subchronic oral toxicity study in rats receiving dietary concentrations of triclopyr at doses of 0, 5, 20, 50, or 250 mg/kg/day for 13 weeks with a systemic NOEL was 5 mg/kg/day, and the systemic LOEL of 20 mg/kg/day, based on histopathological changes in the kidneys of both sexes.

A 183-day toxicity study in dogs receiving dietary doses of triclopyr technical at 0, 0.1, 0.5, or 2.5 mg/kg/day with decreased rate of phenolsulfanthalein (PSP) excretion was observed in dogs receiving 2.5 mg/kg/day triclopyr. This effect is a result of competition between triclopyr and PSP for renal excretion, and is not toxicologically relevant. The systemic NOEL is 2.5 mg/kg/day and the systemic LOEL is > 2.5 mg/kg/day in both sexes.

5. *Chronic toxicity.* In a 1–year dietary toxicity study, triclopyr was administered to dogs at doses of 0, 0.5, 2.5, or 5.0 mg/kg/day. There were no significant effects of treatment on mortality, clinical signs, body weight, or food consumption in male and female dogs at any dose level treated. Increases in urea nitrogen and creatinine were observed at 2.5 and 5.0 mg/kg/day; these changes in clinical chemistry values do not represent a toxic response to the test chemical, but a physiologic response of the dog, based on the limited ability of the dog to excrete organic acids at higher plasma concentrations. The lack of histopathologic alterations in the kidneys of both sexes is supportive of this conclusion. The systemic NOEL is ≧ 5.0 mg/kg/day for both sexes; the systemic LOEL is >5.0 mg/kg/day.

In a chronic toxicity/carcinogenicity study, triclopyr was administered in the diet to mice at dose levels of 0, 50 ppm, 250 ppm, or 1,250 ppm. There were no compound-related tumors observed in mice. The LOEL was considered to be 143 mg/kg/day in male mice and 135 mg/kg/day in female mice, based on the decreased body weight gain. The NOEL is considered to be 28.6 mg/kg/day in male mice, and 26.5 mg/kg/day in female mice.

In a chronic toxicity/carcinogenicity study, triclopyr was administered to Fischer 344 rats for 2 years at dose levels of 0, 3, 12, or 36 mg/kg/day. Mortality in treated groups of male rats was lower than that in the control group. Cumulative mortality was 50%, 32%, 26%, and 36% for control, low, mid, and high dose level male rats. Red cell count, hemoglobin, and hematocrit in male rats was numerically decreased at the high dose at 6, 12, and 24 months. Statistical significance was achieved for the decrease in red cells at 12 months, for hemoglobin at 6 months, and for hematocrit at 6 and 22 months. Absolute and relative kidney weight was significantly increased (10-13%) at the high dose in male rats, with an apparent dose-related trend at 12 months. Female rats showed an increased incidence of pigmentation of the proximal descending tubule at all dose levels compared to control, while male rats in the 6-month satellite group showed increased incidence of proximal tubule degeneration at the 12 and 36 mg/kg/day dose levels compared to control. There were no significant increasing trends in tumor incidence for rats.

As a result of the August 9, 1995 meeting of the Health Effects Division Carcinogenicity Peer Review Committee, triclopyr was classified as a Group D chemical (not classifiable as to human carcinogenicity).

6. *Animal metabolism.* Disposition and metabolism of ^{14}C-triclopyr was investigated in rats at a low oral dose (3 mg/kg), repeated low oral doses (3 mg/kg x 14 days), and a high dose (60 mg/kg.) Comparison of disposition data in intravenously dosed and orally dosed rats demonstrated that triclopyr was well absorbed after oral administration. Excretion was relatively rapid at the low dose, with a majority of radioactivity eliminated in the urine by 24 hours. At 60 mg/kg, urinary elimination of ^{14}C-triclopyr derived radioactivity was decreased in rats from 0-12 hours, due to apparent saturation of renal

elimination mechanisms. Fecal elimination of ^{14}C-Triclopyr derived radioactivity was a minor route of excretion, as was elimination via exhaled air. No significant effect was observed on metabolism or disposition of ^{14}C-triclopyr from repeated low oral dosing.

Urinary metabolites of ^{14}C-triclopyr were isolated and identified by HPLC and GC/MS. Unmetabolized parent chemical represented >90% of urinary radioactivity, with the remainder accounted for by the metabolite 3,5,6-trichloro-2-pyridinol (3,5,6-TCP), and possible glucuranide and/or sulfate conjugates of 3,5,6-TCP. Plasma elimination following intravenous administration of ^{14}C-triclopyr was consistent with a one-compartment model with an elimination half-life of 3.6 hr and zero-order kinetics from 0-12 hours at the 60 mg/kg dose.

7. *Bioequivalency*. Toxicology studies conducted with triclopyr have been performed using either the free acid or the triethylamine salt form of triclopyr. Bioequivalency of the two chemical forms of triclopyr has been addressed through the conduct of special studies with the triethylamine form of triclopyr. These studies, which included data on comparative disposition, plasma half-life, tissue distribution, hydrolytic cleavage under physiological and environmental conditions for triclopyr triethylamine salt were found to adequately address the issue of bioequivalency. In addition, subchronic toxicity studies supported the pharmacokinetic data in demonstrating bioequivalence. Therefore, studies conducted with any one form of triclopyr can be used to support the toxicology database as a whole.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. The Reference Dose (RfD) for triclopyr is based upon the 2-generation reproduction toxicity study in rats with a NOEL of 5.0 mg/kg/day, the lowest dose tested. An uncertainty factor of 10 for interspecies differences in response and an uncertainty factor of 10 for intraspecies differences in response was applied. Thus, the RfD for triclopyr was established at 0.05 mg/kg/day by the RfD Peer Review Committee on September 4, 1996.

A chronic dietary exposure analysis was performed using tolerance level residues and 100% crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. Existing tolerances result in a TMRC which represents 0.81% of the RfD for the U.S. general population. The highest subgroup, Non-Nursing Infants (<1 year old) occupies 2.65% of the RfD. The chronic analysis for triclopyr is a worse case estimate of dietary exposure with all residues at tolerance level and 100% of the commodities assumed to be treated with triclopyr. Based on the risk estimates calculated in this analysis, it appears that chronic dietary risk from the uses currently registered, is not of concern.

Since the toxicological endpoint to which exposure is being compared in the acute dietary risk analysis is a developmental NOEL (30 mg/kg/day), females (13* years) is the sub population of particular interest. The Margin of Exposure (MOE) is a measure of how close the high end exposure comes to the NOEL (the highest dose at which no effects were observed in the laboratory test), and is calculated as the ratio of the NOEL to the exposure (NOEL/exposure = MOE.) Generally, acute dietary margins of exposure greater than 100 tend to cause no dietary concern. The high end MOE value of 2,500 is above the acceptable level and demonstrates no acute dietary concern.

An acute dietary exposure analysis was performed using tolerance level residues and 100% crop treated to estimate the high end exposure for the general population, and females (13+, pregnant, non-nursing). The high end exposure was assumed to be the upper 0.5% of consumers, that is, the 99.5 percentile. The resulting exposure estimates and margins of exposure are as follows:

Population Subgroup Exposure	(mg/kgBW/day)	MOE
U.S. Population	0.00230	13050
Females	0.00184	16277

These high end MOE values are above the acceptable level and demonstrate no acute dietary concerns.

ii. *Drinking water*. The use of triclopyr in the proposed EUP does not add any additional exposure of triclopyr to humans. The only additional source that needs to be considered is drinking water. The proposed EUP labeling requires that the product not be applied within one mile of a potable water intake, and treated water is not to be used for domestic purposes for 21 days after application. The basis for these restrictions is a study conducted at Lake Seminole, GA. In this study, triclopyr was not detected one mile downstream from the treated area for up to 42 days after treatment. Within the treatment area, triclopyr was detected at <0.01 - 0.03 ppm in water collected 21 days after application. At 1 hour after application, water from the treated area contained 2.6 ppm of triclopyr, and was below the temporary tolerance level of 0.5 ppm at 3 days after treatment.

If the proposed labeling is followed precisely, that is, potable water is not collected within one mile of a treated area, triclopyr residues will not be detected (<0.01 ppm), and there will be no contribution from water to the ''risk cup'' for triclopyr. If water is collected from the treated area 21 days after treatment and used in drinking water supplies, the maximum residue of 0.03 ppm in the Lake Seminole study would increase the amount of the RfD used for non-nursing infants (<1 yr old) from 2.6 % to 7.0 % for chronic exposure.

For a worst case estimate of potential drinking water exposure, the water residue data from the treated area in the Lake Seminole study was utilized. It was assumed that potable water was collected from the treatment area during the 21 days following the application. The data were integrated over the time period to find an ''average'' value, which calculated to be 0.2 ppm. When this residue level is considered, the following analysis demonstrates the risk is minimal.

Acute NOEL (Pregnant females) = 30 mg/kg/day; Acute NOEL (Children 1-6 years); Chronic NOEL (all population subgroups) = 5 mg/kg/day Time weighted concentration during the mitigation period = 0.2 ppm = 2.0×10^{-1} mg/L

For a 10 kg child consuming 1 liter a day (Acute):

(2.0×10^{-1} mg/L X 1 L/day) / 10 kg = 2.0×10^{-2} mg/kg/day MOE = NOEL/Exposure = 5 mg/kg/day / 2.0×10^{-2} mg/kg/day MOE = 250

For a 10 kg child consuming 1 Liter a day (Chronic):

Percent of RfD = (2.0×10^{-2} mg/kg/day / 0.05) X 100 = 40%

For a 60 Kg pregnant female consuming 2 Liters a day (Acute):

(2.0×10^{-1} mg/L X 2 L/day) / 60 kg = 6.7×10^{-3} mg/kg/day

MOE = 30 mg/kg/day / 6.7×10^{-3} mg/kg/day = 4478

For a 60 kg pregnant female consuming 2 Liters a day (Chronic):

Percent of RfD = (6.7×10^{-3} mg/kg/day / 0.05) x 100 = 13.4%

2. *Non-dietary exposure*. There are potential exposures to homeowners during usual use-patterns associated with triclopyr. These involve application of triclopyr-containing products by means of aerosol cans, pump spray bottles, squeeze bottles, ''weed sticks,'' hose-end sprayers, power sprayers, paint brush, rotary and

drop spreaders. It is unlikely that power sprayers will be used by homeowners; this is an application method requiring special applicator equipment more apt to be used by agricultural or commercial applicator.

Homeowner exposure will not be significant, for the following reasons: the percent a.i., in products for homeowner use is less than that for agricultural or industrial use; the areas treated are usually limited in size; all products are intended for outdoor use which is likely to reduce the concentration in the environment by allowing dissipation in the outdoor air; the application methods recommended or commonly used by homeowners are not expected to provide significant exposure. Additionally, no toxicological endpoints of concern have been identified by EPA for dermal exposure to triclopyr, therefore, no exposure assessment is required for this exposure; an inhalation exposure assessment is also not required and no chronic use pattern is expected for homeowner use of triclopyr products.

E. Cumulative Effects

The potential for cumulative effects of triclopyr and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of triclopyr is well defined. However, the biochemical mechanism of toxicity of this compound is not well known. No reliable information exists to indicate that toxic effects produced by triclopyr would be cumulative with those of any other chemical compounds. Therefore, consideration of a common mechanism of toxicity with other compounds is not appropriate. Thus only the potential risks of triclopyr are considered in the aggregate exposure assessment.

F. Safety Determination

1. *U.S. population*. Because of the toxicological characteristics of triclopyr (no dermal endpoint of concern), post-application exposure assessment was not necessary. Residential exposure is considered to be negligible. Therefore, residential exposure was not considered in the aggregate risk calculation. The water exposure value used the time weighted concentration during the mitigation period = 0.2 ppm = 2.0×10^{-1} mg/L in the calculations below for drinking water exposure. The high end (99.5 percentile) exposure from the acute dietary analysis is used for the populations below.

13+ *pregnant females Dietary + Drinking water*

0.0018 mg/kg/day + 6.7×10^{-3} mg/kg/day = 8.5×10^{-3} mg/kg/day

Acute MOE = 30 mg/kg/day / 8.5×10^{-3} mg/kg/day = 3529

Non-nursing infants Dietary + Drinking water

0.006 mg/kg/day + 0.02 mg/kg/day = 2.6×10^{-2} mg/kg/day

Acute MOE = 5 mg/kg/day / 2.6×10^{-2} mg/kg/day = 192

Children (1-6 years), Dietary + Drinking Water

0.0035 mg/kg/day + 0.02 mg/kg/day = 2.35×10^{-2} mg/kg/day

Acute MOE = 5 mg/kg/day/2.35×10^{-2} mg/kg/day = 213

Determination of Safety for U.S. Population

Based on the current state of knowledge for this chemical, the RfD approach accurately reflects the exposure of the U.S. population, infants and children to triclopyr.

2. *Infants and children*. Studies cited earlier in this document indicate that triclopyr is not a developmental toxicant, and an additional uncertainty factor for infants and children is unnecessary. This decision is based on the following data.

Since the developmental and reproductive NOELs were either the same or greater than the maternal or parental, it is unlikely that there is additional risk concern for immature or developing organisms which is not reflected by the risk assessment utilizing the established reference dose.

The effects noted for the RfD NOEL are parental effects, not developmental. Even using the time weighted concentration during the mitigation period for drinking water risk is minimal.

G. International Tolerances

There are no established or proposed Codex MRLs for triclopyr residues. Therefore, there are no issues of compatibility with respect to U.S. tolerances and Codex MRLs.

H. Endocrine Effects

An evaluation of the potential effects on the endocrine systems of mammals has not been determined; However, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that triclopyr causes endocrine effects. (James Tompkins)

2. DowElanco

PP 4F4379, 8F3600, and 8H5551

EPA has received pesticide petitions (PP) 4F4379 (sweet corn and popcorn) and 8F3600 and 8H5551 (sugar beets) from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268-1054, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR Part 180 by establishing a tolerance for residues of the herbicide clopyralid in or on the raw agricultural commodities (RACs) sweet corn, fodder at 10.0 ppm; sweet corn, forage and cannery waste at 3.0 ppm; sweet corn, grain at 1.0 ppm and kernel plus cob with husks removed (K + CWHR) at 0.5 ppm; and pop corn, fodder at 10.0 ppm, and pop corn, grain at 1.0 ppm; and revising the tolerance for residues of the herbicide clopyralid in or on the raw agricultural commodities sugar beet, roots at 1.0 ppm and sugar beet, tops at 1.0 ppm and on the processed agricultural commodity (PAC) sugar beet, molasses at 8.0 ppm. The proposed analytical method is available for enforcement purposes.

Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as amended, DowElanco has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by DowElanco and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioners and not necessarily EPAs and to remove certain extraneous material.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism in plants is adequately understood. No metabolites of significance were detected in plant metabolism studies.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of clopyralid in or on food with a limit of quantitation (LOQ) of 0.05 ppm that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement.

3. *Magnitude of residues*— i. *Sugar beets*. Tolerances for residues of the herbicide clopyralid in or on the following raw agricultural commodities, sugar beet roots and tops and the processed agricultural commodity molasses, were established on August 12, 1988 (53 FR 33488, 33489) at 0.5, 0.5, and 7.0 parts per million (ppm), respectively, based upon residue data generated by Craven Laboratories. The validity of these data were in question and DowElanco repeated the residue studies. The last of the required residue data were submitted to the Agency in June 1994. The range of the residues

found for sugar beet, roots was to no detected residues above the LOQ of the method - 0.7 ppm; sugar beet, tops; was to no detected residues above the LOQ of the method - 0.9 ppm; and the residues in the processed agricultural commodities when clopyralid was applied at the maximum labeled rate were 0.5, 0.09, and 6.3 ppm for pulp, sugar and molasses respectively. The proposed revised tolerances would adequately cover these anticipated residues.

ii. *Sweet corn*. Clopyralid was applied at the maximum label rate and residues were detected at the following ppm ranges: Grain, 0.087 - 0.12; Forage, 0.34 - 2.0; Ears (K + CWHR), 0.029 - 0.23 and Cannery Waste; no residues were detected above the LOQ of the method. The proposed tolerances would adequately cover these anticipated residues.

iii. *Pop corn*. Clopyralid was applied at the maximum label rate and residues were detected at the following ppm ranges; Grain: 0.03 - 0.91, Fodder: No detectable residues above the LOQ of the method - 0.60, and Forage 0.14 - 1.2, The proposed tolerances would adequately cover these anticipated residues.

B. Toxicological Profile

1. *Acute toxicity*. Clopyralid has low acute toxicity. The rat oral LD_{50} is 5,000 mg/kg or greater for males and females. The rabbit dermal LD_{50} is greater than 2,000 mg/kg and the rat inhalation LC_{50} is greater than 1.0 mg/L air (the highest attainable concentration). In addition, clopyralid is not a skin sensitizer in guinea pigs and is not a dermal irritant. Technical clopyralid is an ocular irritant but ocular exposure to the technical material would not normally be expected to occur to infants or children or the general public. End use formulations of clopyralid have similar low acute toxicity profiles and most have low ocular toxicity as well. Therefore based on the available acute toxicity data, clopyralid does not pose any acute dietary risks.

2. *Genotoxicity*. Clopyralid is not genotoxic. The following studies have been conducted and all were negative for genotoxic responses. Ames bacterial mutagenicity assay (with and without exogenous metabolic activation); Host-Mediated assay *In vivo* cytogenetic test, rat; *In vivo* cytogenetic test, mouse; *In vivo* dominant lethal test, rat; *In vitro* unscheduled DNA synthesis assay in primary rat hepatocyte cultures; *In vitro* mammalian cell gene mutations assay in Chinese hamster ovary cell cultures (with and without exogenous metabolic activation).

3. *Reproductive and developmental toxicity*. Developmental toxicity was studied using rats and rabbits. The developmental study in rats resulted in a developmental NOEL of >250 mg/kg/day (a maternally toxic dose) and a maternal toxicity NOEL of 75 mg/kg/day. A 1974 study in rabbits revealed no evidence of developmental or maternal toxicity at 250 mg/kg/day; thus the developmental and maternal NOEL was >250 mg/kg/day. A more recent study in rabbits (1990) resulted in developmental and maternal NOELs of 110 mg/kg/day based on maternal toxicity at 250 mg/kg/day. Based on all of the data for clopyralid, there is no evidence of developmental toxicity at dose levels that do not result in maternal toxicity. In a 2–generation reproduction study in rats, pups from the high dose group which were fed diets containing clopyralid had a slight reduction in body weight during lactation and an increase in liver weights in F1a and F1b weanlings. The NOEL for parental systemic toxicity was 500 mg/kg/day. There was no effect on reproductive parameters at >1,500 mg/kg/day nor was there an adverse effect on the morphology, growth or viability of the offspring; thus, the reproductive NOEL is >1500 mg/kg/day.

4. *Subchronic toxicity*. The following studies have been conducted using clopyralid. In a rat 90–day feeding study, Fischer 344 rats were fed diets containing clopyralid at doses of 5, 15, 50, or 150 mg/kg/day with no adverse effects attributed to treatment. In a second study, Fischer 344 rats were fed diets containing clopyralid at doses of 300, 1,500, and 2,500 mg/kg/day. Effects at the highest doses were decreased food consumption accompanied by decreased body weights and weight gains in both males and females. Slightly increased mean relative liver and kidney weights were noted in males of all doses and in females at the top 2 doses. Because there were no other effects, the kidney and liver weight effects were judged as being adaptive rather than directly toxic. The no-observed-adverse-effect level (NOAEL) was 1,500 mg/kg/day for males and females. The no-observed-effect level (NOEL) was 300 mg/kg/day for females. In a mouse 90–day feeding study, B6C3F1 mice were fed diets containing clopyralid at doses of 200, 750, 2,000 or 5,000 mg/kg/day. A slight decrease in body weight occurred at the top dose in both sexes. The liver was identified as the target organ based on slight increases in liver weights and minimal microscopic alterations at the higher dose levels. The liver changes were considered to be reversible and adaptive. The NOEL for males was 2,000 mg/kg/day and for females was 750 mg/kg/day. In a 180–day feeding study, beagle dogs were fed diets containing clopyralid at doses of 15, 50, or 150 mg/kg/day; there were no adverse effects. In a second dietary study, dogs also were fed diets containing clopyralid at doses of 15, 50, or 150 mg/kg/day; the only effect was an increase in the mean relative liver weight in females at the 150 mg/kg/day. In a 21–day dermal study, clopyralid was applied by repeated dermal application to New Zealand White rabbits at dose levels up to 1,000 mg/kg/day. Treatment produced no systemic effects.

5. *Chronic toxicity*. In a chronic toxicity and oncogenicity study, Sprague-Dawley rats were fed diets containing clopyralid at doses of 5, 15, 50 or 150 mg/kg/day. The only effect was a trend toward a decreased body weight of female rats receiving the 150 mg/kg/day dose with a NOEL of 50 mg/kg/day. In a second study clopyralid was fed to Fischer 344 rats in the diet at doses of 15, 150, or 1,500 mg/kg/day. The effects were confined almost entirely to the 1,500 mg/kg/day dose groups and included slightly decreased food consumption and body weights, slightly increased liver and kidney weights and macroscopic and microscopic changes in the stomach. No tumorigenic response was present. The NOEL for this study was 150 mg/kg/day. B6C3F1 mice were maintained for 2 years on diets formulated to provide targeted dose levels of 10, 500, or 2,000 mg/kg/day. The only evidence of toxicity was body weight depression in males dosed at 2,000 mg/kg/day. There was no evidence of tumorigenic response at any dose level. Based on the chronic toxicity data, EPA has established the RfD for clopyralid at 0.5 milligrams (mg)/kilogram (kg)/day. The RfD for clopyralid is based on a 2–year chronic oncogenicity study in rats with a no-observed-effect level (NOEL) of 50 mg/kg/day and an uncertainty (or safety) factor of 100. Thus, it would not be necessary to require the application of an additional uncertainty factor above the hundredfold factor already applied to the NOEL.

6. *Carcinogenicity*. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), clopyralid would be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of the carcinogenicity studies. There was no evidence of carcinogenicity in 2–year feeding studies in mice and rats at the dosage levels tested. The doses tested are adequate for identifying a cancer

risk. Thus, a cancer risk assessment would not be appropriate.

7. *Animal metabolism*. Disposition and metabolism of clopyralid were tested in male and female rats at a dose of 5 mg/kg (oral). The majority of a radioactive dose was excreted in 24 hours of all dose groups. Fecal elimination was minor. Detectable levels of residual radioactivity were observed in the carcass and stomach at 72 hours post-dose. HPLC and TLC analysis of urine and fecal extracts showed no apparent metabolism of clopyralid.

8. *Metabolite toxicity*. There are no clopyralid metabolites of toxicological significance.

9. *Endocrine effects*. There is no evidence to suggest that clopyralid has an effect on any endocrine system.

C. Aggregate Exposure

1. *From food and feed uses*. For purposes of assessing the potential dietary exposure under these tolerances, exposure is estimated based on the TMRC from the existing and pending tolerances for clopyralid on food crops. The TMRC is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of those food products eaten by various population subgroups. Exposure of humans to residues could also result if such residues are transferred to meat, milk, poultry or eggs. The following assumptions were used in conducting this exposure assessment: 100% of the crops were treated, the RAC residues would be at the level of the tolerance, certain processed food residues would be at anticipated (average) levels based on processing studies and all current and pending tolerances were included. This results in an overestimate of human exposure and a conservative assessment of risk. Based on a NOEL of 50 mg/kg/day in a 2–year chronic feeding/oncogenicity study in the rat and a hundredfold safety factor, the reference dose (RfD) would be 0.5 mg/kg/day. Consequently, all existing and pending tolerances have a theoretical maximum residue contribution of 0.005135 mg/kgBW/day and would utilize less than 2.3% of the RfD.

2. *From potable water*. Another potential source of dietary exposure to residues of pesticides are residues in drinking water. There is no established Maximum Concentration Level for residues of clopyralid in drinking water. Although there has been limited detections at ppb levels in some of the specially designed studies under highly vulnerable test conditions, no ongoing monitoring studies (U.S. Geological Survey, Selected Water Resources Abstracts, and Pesticides in Ground Water Database - A Compilation of Monitoring Studies: 1971-1991 National Summary; U.S. Department of Agriculture, AGRICOLA database; and, U.S. Department of Commerce, National Technical Information Service) have reported residues of clopyralid in ground or surface waters.

Based on the physical and chemical characteristics of clopyralid, such as water solubility and its stability under hydrolysis and photolysis, it has potential for downward movement through the soil profile. However, the behavior of the compound under field conditions demonstrates fairly rapid degradation and limited downward movement. Degradation based on 20 field dissipation sites indicated an average half-life of 34 days. Degradation is driven primarily by microbial processes. Downward movement through the soil profile was generally confined to the upper 18 inches of the soil profile. Validated computer modeling also predicted the maximum depth of residues to be 18-inches, with no detections predicted at 6 months after application. Because the laboratory derived physical/chemical properties of clopyralid indicate a potential for downward movement, lysimeter studies were conducted. In a U.S. study, undisturbed soil columns (lysimeters), 8 inches in diameter, and 3 feet deep, were treated with 950 g ae/ha (about 5 X labeled use rates) in actual field conditions. Residues of clopyralid in soil as well as soil-solution (leachate) were collected in the closed system. The average depth of movement for the majority of clopyralid (center of mass) was 11 inches, and no detectable residues were observed in the leachate. In a European study, lysimeters 1 - 3 ft. diameter, and 3 ft. deep, were treated with 120 and 240 g ae/ha in actual field conditions. The average center of mass was 12 inches. No detectable residues were observed in the lysimeters. The amount of 14_C in leachate accumulated over 2 years in the degraded loess and silty sand lysimeters, was only 0.6% and 0.3% of applied, respectively. The leachate concentrations of 14_C-labeled clopyralid in degraded loess and silty sand throughout the first 10-16 months of the study ranged from 0.002-0.14 µg/l (ppb) and 0.003-0.02 ppb, respectively. A second European lysimeter study with silty sand lysimeters treated with 120 g ae/ha revealed a 2–year cumulative clopyralid leachate of only 0.1% of applied (0.04 ppb). These studies demonstrate that in lysimeter test systems, under field environmental conditions, clopyralid rapidly dissipates through mineralization to carbon dioxide. Also the very low levels observed in leachate demonstrate that there is very little potential for clopyralid to leach through soil and to contaminate ground water.

In summary, these data on potential water exposure indicate insignificant additional dietary intake of clopyralid and any exposure is more than offset for in the conservative dietary risk evaluation. Therefore, it is concluded that there is a reasonable certainty of no harm even at potential upper limit exposures to clopyralid from drinking water.

3. *From non-dietary uses*. There is only one non-dietary use registered under the Federal Insecticide, Fungicide and Rodenticide Act. The use is for weed control in residential turf. Potential exposures for children from non-occupational uses is therefore limited to turf re-entry and this exposure is low.

4. *Short-term or intermediate-term*. The data for clopyralid does not indicate any evidence of significant toxicity by the dermal and inhalation routes. Consequently, there is no concern for short-term or intermediate-term residential risk. Therefore, a short-term or intermediate-term residential risk assessment would not be required.

5. *Chronic*. As part of a hazard assessment process an endpoint of concern is determined for the chronic occupational or residential risk assessment. However, as indicated, the exposures that would result from the use of clopyralid are of an intermittent nature. The frequency and duration of these exposures do not exhibit a chronic exposure pattern. The exposure does not occur often enough to be considered a chronic exposure; i.e., a continuous exposure that occurs for a least several months. Therefore, it would not be appropriate to aggregate exposure from the residential use with exposure from food and drinking water.

6. *Acute*. No concern would exist for an acute dietary assessment for clopyralid because the available data indicates no evidence of significant toxicity from a one day or single event exposure by the oral route. Therefore, an acute dietary risk assessment would not be required.

D. Cumulative Exposure to Substances with Common Mechanism of Toxicity

The potential for cumulative effects of clopyralid and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of clopyralid is well defined. However, no reliable information exists to indicate that toxic effects produced

by clopyralid would be cumulative with those of any other chemical compound. Additionally, clopyralid does not appear to produce a toxic metabolite produced by other substances. Therefore, consideration of a common mechanism of toxicity with other compounds is not appropriate at this time. Thus only the potential exposures to clopyralid were considered in the aggregate exposure assessment.

E. Determination of Safety

1. *U.S. population in general*. Based on a NOEL of 50.80 mg/kg/bwt/day from a 2–year rat feeding study with a decreased mean body weight gain effect, and using an uncertainty factor of 100 to account for the interspecies extrapolation and intraspecies variability, a Reference Dose (RfD) of 0.5 mg/kg bwt/day was used for this assessment of chronic risk. As indicated, there is no endpoint of concern identified with acute and short- or intermediate-term exposures. Based on the known toxicity and exposure data, the proposed and existing tolerances would utilize approximately 2% of the RfD for the U.S. population. And, as indicated previously, whatever upper limit might be used for drinking water exposure, the exposure estimate for clopyralid would not exceed the RfD. Generally, exposures below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to clopyralid residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of clopyralid, data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat were considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism during prenatal development resulting from pesticide exposure to one or both parents. Reproduction studies provide (1) information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and (2) data on systemic toxicity.

Developmental toxicity was studied using rats and rabbits. The developmental study in rats resulted in a developmental NOEL of >250 mg/kg/day (a maternally toxic dose) and a maternal toxicity NOEL of 75 mg/kg/day. A 1974 study in rabbits revealed no evidence of developmental or maternal toxicity at 250 mg/kg/day; thus the developmental and maternal NOEL was >250 mg/kg/day. A more recent study in rabbits (1990) resulted in developmental and maternal NOEL's of 110 mg/kg/day based on severe maternal toxicity at 250 mg/kg/day. Based on all of the data for clopyralid, there is no evidence of developmental toxicity at dose levels that do not result in maternal toxicity.

In a 2–generation reproduction study in rats, pups from the high dose group which were fed diets containing clopyralid had a slight reduction in body weight during lactation and an increase in liver weights in F1a and F1b weanlings. The NOEL for parental systemic toxicity was 500 mg/kg/day. There was no effect on reproductive parameters at >1500 mg/kg/day nor was there an adverse effect on the morphology, growth or viability of the offspring; thus, the reproductive NOEL is >1,500 mg/kg/day.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. These data suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or post-natal sensitivity. Therefore, an additional uncertainty factor is not necessary to protect the safety of infants and children and that the RfD at 0.5 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

The percent of the RfD that will be utilized by the aggregate exposure from all tolerances to clopyralid will be much less than 10% for non-nursing infants and for children (1 - 6 years of age). Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to clopyralid residues.

F. International Tolerances

There are no Codex maximum residue levels established for clopyralid. (Joanne Miller)

3. E.I. DuPont Company

PP 4F4391

In the **Federal Register** of October 25, 1995, (60 FR 54607), EPA established a time-limited tolerance pursuant to the Federal Food Drug and Cosmetic Act (FFDCA) for residues of the herbicide pyrithiobac sodium salt (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate) in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm). The time-limited tolerance expires September 30, 1997. The tolerance was requested in pesticide petition (PP) 4F4391 by E. I. DuPont de Nemours and Co., Inc. (DuPont), Barley Mill Plaza, P.O. Box 80083, Wilmington, DE 19880-0038. The tolerance was issued as a time-limited tolerance because EPA required additional residue data on the commodity of cotton gin byproducts. The petitioner proposes to renew the time-limited tolerance for a 2–year period and retain the pesticide labeling previously accepted under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), as amended, which bears a restriction against feeding cotton gin byproducts from treated fields to livestock. DuPont has requested this tolerance extension pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 346a(d), by the Food Quality Protection Act of 1996 (Pub. L. 104-170, 110 Stat. 1489). The request addresses the requirements of the new FFDCA Section 408(d)(2). The time-limited tolerance would expire on September 30, 1998. An adequately validated analytical method is available for enforcement purposes. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, DuPont has submitted the following summary of information, data and arguments in support of its pesticide petition. This summary was proposed by DuPont and EPA has not yet fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments presented are those of the petitioner and not necessarily EPA's and to remove certain extraneous material.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residues of pyrithiobac sodium in cotton is adequately understood. Metabolism studies with pyrithiobac sodium indicate the major metabolic pathway being o-dealkylation of the parent compound resulting in o-desmethyl pyrithiobac sodium (O-DPS). O-DPS, both free and conjugated, was the major metabolite identified in cotton foliage. The results of a confined crop rotation study with pyrithiobac sodium revealed the presence of a metabolite 2-chloro-6-sulfobenzoic acid (CSBA) not seen in the cotton metabolism study. This metabolite appeared to originate from soil metabolism of pyrithiobac sodium. Since preemergence applications of pyrithiobac sodium are allowed, crop residues of CSBA were

considered a possibility. In consideration of PP 4F4391 CBTS, in consultation with the HED Metabolism Committee has previously concluded that for the proposed use on cotton, none of the pyrithiobac sodium metabolites including O-DPS and CSBA warrant inclusion in the tolerance regulation, and that the only residue of concern is the parent, pyrithiobac sodium.

2. *Analytical method*. There is a adequately validated practical analytical method available using HPLC-UV with column switching, to measure levels of pyrithiobac sodium in or on cotton with a limit of quantitation that allows monitoring of cottonseed at or above tolerance levels. EPA has provided information on this method to FDA for future publication in PAM II.

3. *Magnitude of residues*. Crop field trial residue data from a 60 day PHI study shows that the established pyrithiobac sodium time-limited tolerance on cottonseed of 0.02 ppm will not be exceeded when DuPont Staple Herbicide is used as directed. An adequate cottonseed processing study shows that pyrithiobac sodium does not concentrate in cottonseed processed commodities; thus no tolerances on these commodities are required.

B. Toxicological Profile

1. *Acute toxicity*. Pyrithiobac sodium technical has been placed in EPA Toxicity Category II for acute eye irritation based on the test article inducing irritation in the form of corneal opacity, iritis and conjunctival redness, and discharge in the eyes of rabbits after receiving ocular doses of 36 mg (0.1 ml). Signs of irritation were clear within 14 days of treatment. Pyrithiobac sodium has been placed in Toxicity Category III for acute dermal toxicity based on the test article being nonlethal and nonirritating at the limit dose of 2,000 mg/kg (highest dose tested). Pyrithiobac sodium has been placed in Toxicity Category III for acute oral toxicity based on acute oral LD_{50}s of 3,200 mg/kg for both male and female rats. Pyrithiobac sodium has been placed in Category IV for the remaining acute toxicity tests based on the following: a rat acute inhalation study with an LC_{50} of >6.9 mg/l; and a primary dermal irritation test that did not induce a dermal irritation response. A dermal sensitization test with pyrithiobac sodium technical in guinea pigs demonstrated no significant effects. Based on these results, pyrithiobac sodium does not pose an acute dietary or exposure risk.

2. *Genotoxicty*. Pyrithiobac sodium technical was negative (non-mutagenic and non-genotoxic) in the following tests: Ames microbial mutation assay; the hypoxanthine-guanine phosphoribosyl transferase gene mutation assay using Chinese hamster ovary cells; and induction of unscheduled DNA synthesis (UDS) in primary rat hepatocytes. Pyrithiobac sodium was positive in an *in vitro* assay for chromosome aberrations in human lymphocytes. It was negative for the induction of micronuclei in the bone marrow cells of male and female CD-1 mice administered the test article by oral gavage at 500, 1,000 or 2,000 mg/kg. Based on the weight of these data, pyrithiobac sodium is neither genotoxic nor mutagenic.

3. *Reproductive and developmental toxicity*. A 2–generation, 4 litter reproduction study with CD rats treated at dietary levels of 0, 25, 1,500, 7,500 or 20,000 ppm of pyrithiobac sodium demonstrated a maternal NOEL of 1,500 ppm (103 mg/kg/day) and a maternal LOEL of 7,500 ppm (508 mg/kg/day), based on decreased body weight gain and food efficacy. An offspring NOEL of 7,500 ppm (508 mg/kg/day) and LOEL of 20,000 ppm (1,551 mg/kg/day) were also demonstrated based on decreased offspring body weight. Pyrithiobac sodium was not teratogenic when administered to rats or rabbits. A developmental toxicity study with pyrithiobac sodium in rats demonstrated a maternal NOEL of 200 mg/kg and LOEL of 600 mg/kg due to increased incidence of salivation. A developmental NOEL of 600 mg/kg and LOEL of 1,800 mg/kg were demonstrated based on an increased incidence of skeletal variations. A developmental toxicity study with pyrithiobac sodium in rabbits demonstrated maternal and developmental NOELs of 300 mg/kg and a maternal LOEL of 1,000 mg/kg based on mortality, decreased body weight gain and feed consumption, increased incidence of clinical signs, and an increase in early resorptions. A developmental LOEL of 1,000 mg/kg was based on decreased fetal body weight gain. Based on the weight of these data, pyrithiobac sodium is not considered a reproductive or developmental hazard. In addition, there were no effects observed in offspring in the absence of maternal toxicity; therefore, the offspring were not uniquely susceptible to the effects of compound administration.

4. *Subchronic toxicity*. In a 90-day feeding study in rats conducted with pyrithiobac sodium at dietary levels of 0, 10, 50, 500, 7,000 and 20,000 ppm, the NOEL was 500 ppm (31.8 and 40.5 mg/kg/day, M/F) and the LOEL was 7,000 ppm (466 and 588 mg/kg/day, M/F) based on decreased body weight gains and increased rate of hepatic B-oxidation in males. In a 90-day feeding study in mice conducted with pyrithiobac sodium at dietary levels of 0, 10, 50, 500, 1,500 and 7,000 ppm, the NOEL was 500 ppm (83.1 and 112 mg/kg/day, M/F) and the L0EL was 1,500 ppm (263 and 384 mg/kg/day, M/F) based on increased liver weight and increased incidence of hepatocellular hypertrophy in males and decreased neutrophil count in females. In a 90-day feeding study in dogs conducted with pyrithiobac sodium at dietary levels of 0, 50, 5,000, or 20,000 ppm, the NOEL was 5,000 ppm (165 mg/kg/day) and the LOEL was 20,000 ppm (626 mg/kg/day) based on decreased red blood cell count, hemoglobin, and hematocrit in females and increased liver weight in both sexes. In a 21-day dermal study with rats conducted with pyrithiobac sodium at exposure levels of 0, 50, 500, or 1,200 mg/kg/day, the dermal irritation NOEL was 500 mg/kg/day and the dermal irritation LOEL was 1,200 mg/kg/day. There were no systemic effects observed at this high dose; therefore, the systemic NOEL is considered to be 1,200 mg/kg/day.

5. *Chronic toxicity*. A 1-year feeding study in dogs conducted with pyrithiobac sodium at dietary levels of 0, 100, 5,000, and 20,000 ppm resulted in a NOEL of 5,000 ppm (143 and 166 mg/kg/day, M/F) and a LOEL of 20,000 ppm (580 and 647 mg/kg/day, M/F) based on decreases in body weight gain and increased liver weight. A 78-week oncogenicity study in mice was conducted with pyrithiobac sodium at dietary levels of 0, 10, 150, 1,500 and 5,000 ppm. The systemic NOEL is 1,500 ppm (217 and 319 mg/kg/day, M/F) and the LEL is 5,000 ppm (745 and 1,101 mg/kg/day, M/F), based on decreased body weight gain and liver lesions. Kidney effects were also observed at 5,000 ppm; however, these were present at low incidence and were of minimal severity and were considered to be of only minimal biological significance. Increased incidence of foci/focus of hepatocellular alteration was observed in males fed 5,000 ppm diets. Increased incidences of hepatocellular neoplasms (adenomas or adenomas plus carcinomas) were observed only in 150 and 1,500 ppm males. The incidence of these liver tumors was not significantly increased in the 5,000 ppm males or in females at any dose level; the 5,000 ppm male tumor incidence was within the historical control range. A 2-year study in rats was conducted at dietary pyrithiobac sodium levels of 0, 5, 25,

1,500 or 5,000 ppm for males and 0, 5, 25, 5,000 or 15,000 ppm for females. The NOEL for systemic effects was 1,500 ppm (58.7 mg/kg/day) for males and 5,000 ppm (278 mg/kg/day) for females. The LEL was 5,000 ppm (200 mg/kg/day for males)/15,000 ppm (918 mg/kg/day) for females. The LEL was based on the following: decreased body weight, body weight gain and food efficiency (for females); mild changes in hematology and urinalysis, clinical signs indicative of urinary tract dysfunction (both sexes); increased incidence of focal cystic degereration in the liver and increased rate of hepatic peroxisome beta-oxidation (males); and an increased incidence of inflammatory and degenerative microscopic lesions in the kidney (females). There was evidence of oncogenicity based on an increased trend for kidney tubular combined adenoma/ carcinoma in male rats and an increased trend for kidney tubular adenomas in female rats. Although the incidences were low, they were statistically significant. The highest dose level tested in male rats (5,000 ppm) was considered adequate for assessment of oncogenic potential, that in female rats (15,000 ppm) exceeded the Maximum Tolerated Dose (MTD).

6. *Carcinogenicity*. In consideration of PP 4F4391 the HED Carcinogenicity Peer Review Committee has previously concluded that the available data provide limited evidence of the carcinogenicity of pyrithiobac sodium in mice and rats and has classified pryithiobac sodium as a Group C (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines published in the **Federal Register** in 1986 (51 FR 33992, September 24, 1986) and recommend that for the purpose of risk characterization a low-dose extrapolation model should be applied to the experimental animal tumor data for quantification for human risk (Q1*). This decision was based on liver adenomas, carcinomas and combined adenoma/carcinomas in the male mouse and kidney tubular adenomas, carcinomas and combined adenoma/ carcinomas in the male rat. The unit risk, Q1* (mg/kg/day)-1, of pyrithiobac sodium is 1.05 x 10-3 (mg/kg/day)-1 in human equivalents based on male kidney tumors.

7. *Animal metabolism*. Disposition and metabolism of pyrithiobac sodium were tested in male and female rats using two radiolabeled forms of pyrithiobac sodium. Either phenyl-labeled or pryimidine-labeled compounds were administered orally at 5 or 250 mg/kg. In addition, i.v. administration was evaluated at 5 mg/kg. Essentially all of the dose was excreted in the urine and feces, with greater than 90% being excreted within 48 hours. No label was detected in the expired air. Only minute quantities of radioactivity (at or near the limit of detection) were detected in the major organs of metabolism and excretion. This study indicates that pyrithiobac sodium has low toxicity and does not accumulate within the body. The major compound eliminated in urine and feces was O-DPS (desmethyl metabolite), formed by demethylation of the pyrimidine ring. There was evidence that conjugation with glucuronic acid and 5-hydroxylation of the pyrimidine ring of pyrithiobac sodium were additional minor routes of metabolism in the rat.

8. *Metabolite toxicology*. There is no evidence that the metabolites of pyrithiobac sodium as identified in either the plant metabolism, confined crop rotation, or animal metabolism studies are of any toxicological significance.

9. *Neurotoxicity*. A 90–day rat neurotoxicity screen battery conducted with pyrithiobac sodium resulted in a systemic NOEL of 7,000 ppm (466 and 588 mg/kg/day, M/F) and a systemic LOEL of 20,000 ppm (1,376 and 1,609 mg/kg/day, M/F) based on reduced body weight gain and food efficiency and increased liver weight. Slight reductions in hind-leg grip strength and slightly increased foot splay in males were observed in 20,000 ppm males. However, because these were of small magnitude, lacked statistical significance and corresponding histopathology, pyrithiobac sodium was not considered a neurotoxin. The NOEL for neurotoxicity was 20,000 ppm [highest dose tested (HDT)].

10. *Endocrine effects*. No special studies investigating potential estrogenic or other endocrine effects of pyrithiobac sodium have been conducted. However, the standard battery of required toxicology studies has been completed and found acceptable. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that pyrithiobac sodium has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. For purposes of assessing the potential dietary exposure under this tolerance, an estimate of aggregate exposure is made using the tolerance on cottonseed at 0.02 ppm. The potential exposure is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of cottonseed products translated as cottonseed meal and cottonseed oil eaten by various population subgroups. Cottonseed is fed to animals, thus exposure of humans to residues of cottonseed might result if such residues are transferred to meat, milk, poultry, or eggs. However, in consideration of PP 4F4391 CBTS has previously concluded that secondary residues in meat, milk, poultry and eggs are not expected from the use of cottonseed (undelinted) as an animal feed. There are no other established tolerances or registered uses for pyrithiobac sodium in the United States. Based on a NOEL of 58.7 mg/kg/day, from the chronic rat toxicity study and a hundredfold safety factor, the reference dose (RfD) is 0.58 mg/kg/day. Assuming residues at tolerance levels and that 100% of the crop is being treated, a theoretical maximum residue contribution (TMRC) of <0.000001 mg/kg/day is calculated. With the above assumptions which clearly overestimate potential human exposure and are a most conservative assessment of risk, dietary (food) exposure to pyrithiobac sodium will utilize significantly less than 1% of the RfD for the overall US population. For the most highly exposed subgroup, children aged 1 to 6 years, the TMRC is 0.000001 mg/kg/day, which is still less than 1% of the RfD. The unit risk, $Q1^*$ (mg/kg/day)-1, of pyrithiobac sodium is 1.05×10^{-3} (mg/kg/day)-1 in human equivalents based on male kidney tumors. Based on this upper bound potency factor ($Q1^*$), a 70-year life-span, and the assumption that 100% of the crop is treated with pyrithiobac sodium, the upper-bound limit of a dietary carcinogenic risk is calculated in the range of 1 incidence in a billion (1.0×10^{-9}).

ii. *Drinking water*. Other potential dietary sources of exposure of the general population to pesticides are residues in drinking water. There is no Maximum Contaminant Level established for residues of pyrithiobac sodium. The petitioner has reported to the Environmental Fate and Groundwater Branch of EPA (EFGWB) the interim results of a prospective groundwater monitoring study conducted at a highly vulnerable site. In consideration of this information in support of PP 4F4391 EFGWB has previously concluded by preliminary evaluation, that pyrithiobac sodium may

not be stable enough to leach to groundwater at most use sites, even in sandy soils. All other environmental fate data requirements for pyrithiobac sodium have been satisfied and based on these studies and the conditions of use, the potential for finding pyrithiobac sodium residues in drinking water is minimal.

2. *Non-dietary exposure*. Pyrithiobac sodium is not registered for any use which could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

Pyrithiobac sodium is based on a new chemical class; there are no known registered herbicides with similar structure. Therefore, EPA should consider only the potential risks of pyrithiobac sodium in its exposure assessment. The herbicidal activity of pyrithiobac sodium is due to the inhibition of acetolactate synthase (ALS), an enzyme only found in plants. ALS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the low toxicity of pyrithiobac sodium in animals. There is no evidence to indicate or suggest that pyrithiobac sodium has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population*. Based on a complete and reliable toxicity database, the EPA has adopted an RfD value of 0.58 mg/kg/day using the NOEL of 58.7 mg/kg/day, from the 2-year chronic toxicity study in rats and a hundredfold safety factor. Using crop tolerance levels and assuming 100% of the crop being treated a Theoretical Maximum Residue Contribution (TMRC) was calculated for the overall US population and 22 population subgroups. This analysis concluded that aggregate exposure to pyrithiobac sodium will utilize significantly less that 1 percent of the RfD for either the entire U.S. population or any subgroup population. The TMRC for the most highly exposed subgroup identified as children aged 1 thru 6 years was 0.000001 mg/kg/day. EPA generally has no concern for exposure below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to pyrithiobac sodium residues. The unit risk, $Q1^*$ (mg/kg/day)-1, of pyrithiobac sodium is 1.05×10^{-3} (mg/kg/day)-1 in human equivalents based on male kidney tumors. Based on this upper bound potency factor ($Q1^*$) and assuming a 70 year lifetime exposure an upper-bound limit of a dietary carcinogenic risk is calculated in the range of 1 incidence in a billion (1.0×10^{-9}). This indicates a negligible cancer risk.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of pyrithiobac sodium, data from the previously discussed developmental and reproduction toxicity studies were considered. Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during pre-natal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide. Based on the weight of these data, pyrithiobac sodium was not a reproductive toxicant. Maternal and developmental effects (NOEL's, LOEL's) were comparable indicating no increase in susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre and post-natal toxicity and the completeness of the database. Based on current toxicological data requirements, the database for pyrithiobac sodium relative to pre- and post-natal effects for children is complete. The NOEL of 58.7 mg/kg/day from the 2-year rat study with pyrithiobac sodium, which was used to calculate the RfD, is lower than any of the NOEL's defined in the developmental and reproductive toxicity studies with pyrithiobac sodium. When the weight of these facts is considered an additional safety factor is not warranted for developmental effects. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U.S. population or any of 22 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to pyrithiobac sodium residues.

F. International Tolerances

There are no established Codex MRLs for pyrithiobac sodium on cottonseed. An established Mexican tolerance for pyrithiobac sodium on cottonseed is identical to the U.S. tolerance. Compatibility is not a problem at this time. (James Tompkins)

4. Zeneca AG

PP 5F4588

EPA has received a pesticide petition (PP 5F4588) from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, Delaware 19850-5458, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for combined residues of the insecticide lambda-cyhalothrin and its epimer in or on the raw agricultural commodities (RACs) alfalfa forage at 5.0 parts per million (ppm), alfalfa hay at 6.0 ppm, leaf lettuce at 2.0 ppm, head and stem Brassica crop subgroup at 0.4 ppm, aspirated grain fractions at 2.0 ppm and increasing the existing time-limited tolerance for poultry fat to 0.03 ppm. The proposed analytical method is gas liquid chromatography with an electron capture detector.

Pursuant to section 408 (d) (2) (A) (i) of the FFDCA, as amended, Zeneca Ag Products has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Zeneca and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's.

A. Residue Chemistry

1. *Plant Metabolism*. The metabolism of lambda-cyhalothrin in plants is adequately understood for this use. Any secondary residues occurring in meat and meat by-products will be covered by the existing tolerances with the exception of the fat of poultry, which is discussed under Magnitude of Residues.

2. *Analytical method*. An adequate analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement purposes.

3. *Magnitude of residues*—i. *Alfalfa*. Sixteen field trials were carried out on alfalfa forage and hay in twelve states during 1990 in the USA. The trials were conducted in the states of Arizona, California, Iowa, Idaho, Kansas, Michigan, Minnesota, Montana, Nebraska, New York, South Dakota, and Wisconsin. The number and geographical distribution of the trials agrees with the recommendation given in the ''EPA Residue Chemistry Guidance'' (1994).

In these trials, the maximum combined residues of lambda-cyhalothrin and epimer in or on alfalfa

forage is 5.0 ppm and alfalfa hay is 6.0 ppm.

ii. *Leaf lettuce*. Eight field trials were carried out on leaf lettuce in eight states during 1990 in the USA. The trials were conducted in Arizona, California, Colorado, Florida, Michigan, New York, Texas, and Washington. The number and geographical distribution of the trials agrees with the recommendation given in the ''EPA Residue Chemistry Guidance'' (1994).

In these trials, the maximum combined residues of lambda-cyhalothrin and epimer in or on leaf lettuce is 1.8 ppm.

iii. *Head and stem Brassica crop subgroup*. No additional residue crop field data were conducted for the head and stem Brassica crop subgroup. The tolerance request is based on existing data and the existing time-limited tolerances for combined residues of lambda-cyhalothrin and epimer in or the Brassica crops, cabbage, and broccoli at 0.4 ppm.

iv. *Aspirated grain fractions*. The existing tolerance for wheat grain dust at 2.0 ppm is being revised to read ''aspirated grain fractions'' at the same tolerance level. This change reflects Agency policy to establish grain dust tolerances in terms of aspirated grain fractions which include a mixture of all aspirated grains for which the pesticide has a tolerance and is established at the highest current tolerance for any grain dust.

v. *Poultry fat*. Alfalfa forage, hay, meal and silage are animal feed items for beef and dairy cattle. Alfalfa meal is a feed item for poutry and swine. No feed items are involved with the proposed uses on leaf lettuce and the head and stem Brassica crop subgroup. Based on calculated realistic worst case secondary dietary burdens for animal commodities, the maximum calculated residues expected for the fat of poultry is 0.0225 ppm compared to the existing tolerance of 0.01 ppm.

B. Toxicological Profile

The following toxicity studies have been conducted to support the request for a regulation for residues of lambda-cyhalothrin in or on rice.

1. *Acute toxicity*. Acute toxicity studies with the technical grade of the active ingredient lambda-cyahothrin: oral LD_{50} in the rat of 79 mg/kg (males) and 56 mg/kg (females), dermal LD_{50} in the rat of 632 mg/kg (males) and 696 mg/kg females, primary eye irritation study showed mild irritation and primary dermal irritation study showed no irritation.

2. *Genotoxicity*. The following genotoxicity tests were all negative: a gene mutation assay (Ames), a mouse micronucleus assay, an in-vitro cytogenetics assay, and a gene mutation study in mouse lymphoma cells.

3. *Reproductive and developmental toxicity*. A 3-generation reproduction study in rats fed diets containing 0, 10, 30, and 100 ppm with no developmental toxicity observed at 100 ppm, the highest dose tested. The maternal NOEL (no-observed effect level) and LOEL (lowest observed effect level) for the study are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based upon decreased parental body weight gain. The reproductive NOEL and LOEL are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based on decreased pup weight gain during weaning.

A developmental toxicity study in rats given gavage doses of 0, 5, 10, and 15 mg/kg/day with no developmental toxicity observed under the conditions of the study. The developmental NOEL is greater than 15 mg/kg/day, the highest dose tested. The maternal NOEL and LOEL are established at 10 and 15 mg/kg/day, respectively, based on reduced body weight gain.

A developmental toxicity study in rabbits given gavage doses of 0, 3, 10, and 30 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOEL and LOEL are established at 10 and 30 mg/kg/day, respectively based on decreased body weight gain. The developmental NOEL is greater than 30 mg/kg/day, the highest dose tested.

4. *Subchronic toxicity*. A 90-day feeding study in rats fed doses of 0, 10, 50 and 250 ppm with a NOEL of 50 ppm and a LOEL of 250 ppm based on body weight gain reduction.

A 21-day study in rabbits exposed dermally to doses of 0, 10, 100, and 1,000 mg/kg/day, 6 hours/day, 5 days/week with a systemic NOEL >1,000 mg/kg/kg. There were no clinical signs of systemic toxicity at any dose level tested.

5. *Chronic toxicity*. A 12-month feeding study in dogs fed dose (by capsule) levels of 0, 0.1, 0.5, 3.5 mg/kg/day with a NOEL of 0.1 mg/kg/day. The LOEL for this study is established at 0.5 mg/kg/day based upon clinical signs of neurotoxicity.

A 24-month chronic feeding/carcinogenicity study with rats fed diets containing 0, 10, 50, and 250 ppm. The NOEL was established at 50 ppm and LOEL at 250 ppm based on reduced body weight gain. There were no carcinogenic effects observed under the conditions of the study.

A carcinogenicity study in mice fed dose levels of 0, 20, 100, or 500 ppm (0, 3, 15, or 75 mg/kg/day) in the diet for 2 years. A systemic NOEL was established at 100 ppm and systemic LOEL at 500 ppm based on decreased body weight gain in males throughout the study at 500 ppm. The Agency has classified lambda-cyhalothrin as a Group D carcinogen (not classifiable due to an equivocal finding in this study). It is Zeneca's position that no treatment-related carcinogenic effects were observed under the conditions of the study.

6. *Animal metabolism*. Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. Accumulation of unchanged compound in fat upon chronic administration with slow elimination. Otherwise, lambda-cyhalothrin was rapidly metabolized and excreted. The metabolism of lambda-cyhalothrin in livestock is also adequately understood for the proposed use on alfalfa.

7. *Metabolite toxicology*. The Agency has previously determined that the metabolites of lambda-cyhalothrin are not of toxicological concern and need not be included in the tolerance expression. Given this determination, it is concluded that there is no need to discuss metabolite toxicity.

C. Aggregate Exposure

1. *Dietary exposure*—i *Food*. For the purposes of assessing the potential dietary exposure for all existing and pending tolerances for lambda-cyhalothrin, Zeneca has utilized available information on anticipated residues and percent crop treated. For all existing and pending tolerances the Anticipated Residue Contribution (ARC) is estimated at 0.000310 mg/kg/bwt/day.

ii. *Drinking water*. Laboratory and field data have demonstrated that lambda-cyhalothrin and its degradates are immobile in soil and will not leach into groundwater. Other data show that lambda-cyhalothrin is virtually insoluble in water and extremely lipophilic. As a result, residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Together these data indicate that residues are not expected in drinking water.

2. *Non-dietary exposure*. Other potential sources of exposure are from non-occupational sources such as structural pest control and ornamental plant and lawn use of lambda-cyhalothrin. Zeneca has no data upon which to estimate exposure from these

uses. However, given the extremely low vapor pressure of lambda-cyhalothrin (1.5 x 10^{-9} millimeters of Hg) and the low use rates, it is anticipated that inhalation and dermal exposure from these uses will be insignificant.

D. Cumulative Effects

At this time, Zeneca cannot make a determination based on available and reliable information that lambda-cyhalothrin and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore for purposes of these tolerances it is appropriate only to consider the potential risks of lambda-cyhalothrin in an aggregate exposure assessment.

E. Safety Determination

The acceptable Reference Dose (RfD) based on a NOEL of 0.1 mg/kg/body weight/day from the chronic dog study and a safety factor of 100 is 0.001 mg/kg/body weight/day. A chronic dietary exposure/risk assessment has been performed for lambda-cyhalothrin using the above RfD. Available information on anticipated residues and percent crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC) for all existing and the proposed tolerances. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues.

1. *US population.* The ARC from established tolerances and the current and pending actions are estimated to be 0.000310 mg/kg/bwt/day and utilize 31.04 per cent of the RfD for the U.S. population.

2. *Infants and children.* The ARC for children, aged 1 to 6 years old, and nonnursing infants (subgroups most highly exposed) utilizes 60 and 67% of the RfD, respectively. Generally speaking, the Agency has no cause for concern if anticipated residues contribution for all published and proposed tolerances is less than the RfD.

F. International Tolerances

There are no Codex maximum residue levels [MRL] established for residues of lambda-cyhalothrin in or on alfalfa hay, forage, leaf lettuce, or Brassica crop subgroup. (George LaRocca)

[FR Doc. 97–18256 Filed 7–10–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–741; FRL–5723–1]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–741, must be received on or before August 11, 1997.

ADDRESSES: By mail submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
George LaRocca (PM 13).	Rm. 204, CM #2, 703–305–6100, e-mail:.@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Mary Waller (PM 21)	Rm. 265, CM #2, 703–308–9354, e-mail:waller.mary@epamail.epa.gov.	Do.
Cynthia Giles-Parker (PM 22).	Rm. 229, CM #2, 703–305–5540, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–741 (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 record is located at the address in ''ADDRESSES''.

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 control number PF–741 and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

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

List of Subjects

Environmental protection, Agricultural commodities, Food

additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below petitioner summaries of the pesticide petitions are printed as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. ISK Biosciences Corporation

PP 6F4611

EPA has received a pesticide petition (PP 6F4611, (dated 6/25/95) from ISK Biosciences Corporation (''ISK''), 5966 Heisley Road, P.O. Box 8000, Mentor, Ohio 44061–8000 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR part 180.275 by establishing tolerances for residues of 4-hydroxy-2,5,6-trichloroisophthalonitrile (SDS–3701), a metabolite of the fungicide chlorothalonil, in/on raw agricultural meat and milk commodities as follows:

Commodity	Parts per million
Cattle, fat	0.1
Cattle, kidney	0.5
Cattle, meat	0.03
Cattle, mbyp (except kidney)	0.05
Goats, fat	0.1
Goats, kidney	0.5
Goats, meat	0.03
Goats, mbyp (except kidney)	0.05
Hogs, fat	0.1
Hogs, kidney	0.5
Hogs, meat	0.03
Hogs, mbyp (except kidney)	0.05
Horses, fat	0.1
Horses, kidney	0.5
Horses, meat	0.03
Horses, mbyp (except kidney)	0.05
Milk	0.1
Sheep, fat	0.1
Sheep, kidney	0.5
Sheep, meat	0.03
Sheep, mbyp (except kidney)	0.05

A. Residue Chemistry

1. *Plant/Animal metabolism.* The nature of the residue of chlorothalonil in plants and animals, including ruminants, is adequately understood. Chlorothalonil is not systemic in plants. Chlorothalonil is rapidly metabolized in the ruminant and is not transferred in animals to meat and milk through dietary consumption of feedstuffs from crops treated with chlorothalonil products. Analytical method development studies and storage stability studies with chlorothalonil demonstrated that it is not stable in meat or milk. Studies have determined that the chlorothalonil metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, may be present in meat and milk from dietary intake of animal feed items from chlorothalonil treated crops. The metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, is stable in meat and milk.

2. *Analytical method.* The analytical method (electron capture gas chromatography) is adequate for analysis of 4-hydroxy-2,5,6-trichloroisophthalo-nitrile in meat and milk and has been submitted to the Agency for inclusion in PAM Vol. II. The method has undergone a successful method validation by an independent laboratory.

3. *Magnitude of the residues.* Residue studies and metabolism studies have shown that residues of chlorothalonil per se are not expected to transfer from feed items to meat/milk but residues of 4-hydroxy-2,5,6-trichloroisophthalonitrile could occur in these commodities both from direct transfer of residues of the metabolite found on feedstuffs in the diet and from a low percentage conversion of chlorothalonil to the metabolite in the animal. Due to the instability of chlorothalonil per se in meat and milk tissues, residues would not be expected to occur even from misuse of chlorothalonil. The chlorothalonil related residue found in meat and milk is 4-hydroxy-2,5,6-trichloroisophthalonitrile. The submitted lactating dairy cow feeding study is adequate to determine appropriate tolerance levels in meat and milk. Analytical results are supported by frozen storage stability data. No significant losses of 4-hydroxy-2,5,6-trichloroisophthalonitrile occurred during frozen storage of spiked analytical samples. Studies have shown that 4-hydroxy-2,5,6-trichloroisophthalonitrile does not persist long in animals and that it does not bioaccumulate in animal tissues.

The proposed tolerances are adequate to cover residues of 4-hydroxy-2,5,6-trichloroisophthalonitrile that might occur in meat and milk as a result of chlorothalonil uses on presently-registered crops that may involve animal feed items.

B. Toxicological Profile

The following studies on file with the Agency support this petition.

1. *Acute toxicity.* Acute toxicity studies include an acute oral rat study on technical chlorothalonil with an LD_{50} >10,000 mg/kg, an acute dermal toxicity study in the rabbit with an LD_{50} >20,000 mg/kg, a four-hour inhalation study with finely ground technical chlorothalonil resulting in a 4-hour LC_{50} of 0.092 mg/L (actual airborne concentration), a primary eye irritation study with irreversible eye effects in the rabbit at 21 days, a primary dermal irritation study showing technical chlorothalonil is not a dermal irritant, and a dermal sensitization study showing technical chlorothalonil is not a skin sensitizer.

Acute oral toxicity studies with the 4-hydroxy metabolite, indicate the oral LD_{50}s in male and female rats were 332 and 242 mg/kg respectively.

2. *Genotoxicity.* The mutagenic potential of chlorothalonil has been evaluated in a large number of studies covering a variety of endpoints. The overall conclusion is that chlorothalonil is not mutagenic.

Mutagenicity studies with chlorothalonil include gene mutation assays in bacterial and mammalian cells; *in vitro* and *in vivo* chromosomal aberration assays; DNA repair assays in bacterial systems; and cell transformation assays. All were negative with the following two exceptions:

a. Chlorothalonil was positive in an *in vitro* chromosomal aberration assay in (Chinese Hamster Ovary (CHO) cells without metabolic activation but was negative with metabolic activation.

b. In vivo chromosomal aberration studies in rats and mice were negative and one study in the Chinese hamster was equivocal. The results of this study could not be confirmed in a subsequent study at higher doses. The conclusion was that chlorothalonil does not cause chromosome aberrations in bone marrow cells of the Chinese hamster. It can be concluded that chlorothalonil

does not have clastogenic potential in intact mammalian systems.

In bacterial DNA repair tests, chlorothalonil was negative in *Bascillus subtilis*, but was positive in *Salmonella typhimurium*. In an *in vivo* DNA binding study in rats with 14C-chlorothalonil, there was no covalent binding of the radiolabel to the DNA of the kidney, the target organ for chlorothalonil toxicity in rodents.

c. The mutagenic potential of the 4-hydroxy metabolite has also been evaluated for a variety of endpoints and it is concluded that it is not mutagenic. The 4-hydroxy metabolite has been tested in gene mutations assays in bacterial and mammalian cells; *in vivo* and *in vitro* chromosome aberration studies; a DNA repair assay in the *Salmonella typhimurium*; and a cell transformation assay.

The 4-hydroxy metabolite was positive in only one assay, an *in vitro* chromosome aberration assay in CHO cells. *In vivo*, the 4-hydroxy metabolite was negative in a bone marrow chromosome aberration study in Chinese hamsters. Dominant lethal studies in rats and mice were clearly negative in rats and equivocal in mice. Because it was negative *in vivo* in studies to test for chromosome damage, it can be concluded that the 4-hydroxy metabolite does not have clastogenic potential in intact mammalian systems

3. *Developmental and reproductive toxicity. a.* A developmental toxicity study with rats given gavage doses of 0, 25, 100, and 400 mg/kg body weight/day of chlorothalonil from days 6 through 15 of gestation resulted in a no observed effect level (NOEL) for maternal toxicity of 100 mg/kg/day based on increased mortality, reduced body weight, and a slight increase in early resorptions at the highest dose. There were no developmental effects observed at any dose in this study.

b. A developmental toxicity study in rabbits given gavage doses of 0, 5, 10, or 20 mg/kg/day of chlorothalonil on days 7 through 19 of gestation resulted in a maternal NOEL of 10 mg/kg/day. Effects observed in the dams in the high-dose group were decreased body weight gain and reduced food consumption. There were no developmental effects observed in this study.

c. A two-generation reproduction study in rats fed diets containing 0, 500, 1,500 and 3,000 ppm of chlorothalonil resulted in a reproductive NOEL of 1,500 ppm (equivalent to 115 mg/kg/day) based on lower neonatal body weights by day 21.

There were no effects seen on any reproductive parameter at any dose level in this study.

d. A developmental toxicity study in rabbits receiving gavage doses of 0, 1, 2.5 or 5 mg/kg/day of the 4-hydroxy metabolite on days 6 through 18 of gestation resulted in a maternal NOEL of 2.5 mg/kg/day. Effects observed in the dams in the high-dose group were an increase in the number of females with dead or resorbed fetuses and in the number of aborted fetuses. There were no developmental effects observed in this study.

e. A three-generation reproduction study in rats fed diets containing 0, 10, 60 and 125 ppm of the 4-hydroxy metabolite, resulted in a NOEL of 10 ppm (equivalent to 0.5 mg/kg/day) based on lower neonatal body weights on days 14 and 21 of lactation. The reduction of pup growth at the two highest dose levels during the later part of the gestation period can be attributed to the direct ingestion of the adult diet by the pups which resulted in inordinately high doses (per kg of body weight) of the test material for the pups as compared to the adults. There were no effects seen on any reproductive parameter at any dose level in this study. The reproductive NOEL was the highest dose tested.

f. A one generation reproduction study in rats was conducted to further define the NOEL for the reduction in pup growth observed during lactation in the three generation reproduction study with the 4-hydroxy metabolite. Dietary levels of 0, 10, 20, 30, 60 and 120 ppm of the 4-hydroxy metabolite were fed to rats. Two litters, F1a and F1b were evaluated. The NOEL in this study was determined to be 30 ppm (equivalent to 1.5 mg/kg/day).

4. *Subchronic toxicity. a.* A subchronic toxicity study (90-days) was conducted in rats with chlorothalonil at doses of 0, 1.5, 3.0, 10 and 40 mg/kg bwt. Treatment-related hyperplasia and hyperkeratosis of the forestomach were observed at the two highest dose levels. Although the initial histopathological evaluation did not demonstrate any nephrotoxicity, a subsequent evaluation observed a treatment-related increase in hyperplasia of the proximal tubule epithelium at 40 mg/kg bwt. in the male rats but not in the females. The no effect level for renal histopathology was 10 mg/kg bwt. in males and 40 mg/kg bwt. in females.

b. A 90-day oral toxicity study was conducted in dogs with dose levels of technical chlorothalonil of 15, 150 and 750 mg/kg bwt./day. The two highest dosages resulted in lower body weight gain in male dogs. The NOAEL was 15 mg/kg/day. There were no macroscopic or microscopic tissue alterations related to chlorothalonil and there were no signs of renal toxicity.

c. A subchronic toxicity study (60-days) was conducted in rats with the 4-hydroxy metabolite at doses of 0, 10, 20, 40, 75, 125, 250, 500, and 750 mg/kg bwt. The NOEL was determined to be 20 mg/kg/day. Treatment-related effects observed at higher doses included changes in hematopoietic and clinical chemistry parameters, mild hemosiderosis, toxic hepatitis, and microscopic degeneration in several organs.

d. Two 21-day dermal toxicity studies have been conducted with technical chlorothalonil. In the initial study doses of 50, 2.5 and 0.1 mg/kg bwt./day were administered to rabbits. The NOEL for systemic effects was greater than 50 mg/kg bwt./day and the NOEL for dermal irritation was 0.1 mg/kg bwt./day.

e. A subsequent 21-day dermal study was conducted in male rats, to specifically evaluate the potential for nephrotoxicity in this laboratory species following dermal dosing. In this study the doses were 60, 100, 250 and 600 mg/kg bwt./day. The NOEL for nephrotoxicity was greater than 600 mg/kg bwt./day.

5. *Estrogenic effects.* Based upon all of the chronic toxicity, teratogenicity, mutagenicity and reproductive studies conducted with chlorothalonil and its metabolites, including the 4-hydroxy metabolite, there were no results which indicate any potential to cause estrogenic effects, or endocrine disruption. These effects would have manifested themselves in these studies as reproductive or teratogenic effects, or by producing histopathological changes in estrogen sensitive tissues such as the uterus, mammary glands or the testes. Thus, it can be concluded based upon the *in vivo* studies, that chlorothalonil does not cause estrogenic effects.

6. *Chronic toxicity. a.* A 12-month chronic oral toxicity study in Beagle dogs was conducted with technical chlorothalonil at dose levels of 15, 150 and 500 mg/kg/day. The NOAEL was 150 mg/kg/day based on lower blood albumin levels at the highest dose. There was no nephrotoxicity observed at any dose in this study. This study replaced an old outdated study that was not conducted under current guidelines and did not use the current technical material.

b. A chronic feeding/carcinogenicity study with Fischer 344 rats at dose levels of 0, 40, 80 or 175 mg/kg/day of technical chlorothalonil for 116 weeks in males or 129 weeks in females, resulted in a statistically higher incidence of combined renal adenomas and carcinomas. At the high dose,

which was above the MTD, there was also a statistically significant higher incidence of tumors of the forestomach in female rats.

c. In a second chronic feeding/carcinogenicity study with technical chlorothalonil in Fischer 344 rats, designed to define the NOEL for tumors and the preneoplastic hyperplasia, animals were fed diets which resulted in dose levels of 0, 2, 4, 15 or 175 mg/kg/day. The NOEL in this study, based on renal tubular hyperplasia, was a nominal dose of 2 mg/kg bwt./day. Because of the potential for chlorothalonil to bind to diet, the 2 mg/kg bwt./day dose, expressed as unbound chlorothalonil is 1.8 mg/kg bwt./day. The NOEL for hyperplasia and hyperkeratosis of the forestomach was 4 mg/kg bwt./day or a dose of 3.8 mg/kg bwt./day based on unbound chlorothalonil.

d. A 2-year carcinogenicity study, conducted in CD-1 mice with technical chlorothalonil at dietary levels of 0, 750 and 1,500 or 3,000 ppm (equivalent to 0, 107, 214 or 428 mg/kg/day), resulted in a statistically higher incidence of squamous cell carcinoma of the forestomach in both sexes, and a statistically higher incidence of combined renal adenoma/carcinoma in only the male mice receiving the low dose. There were no renal tumors in any female mouse in this study.

e. A 2-year carcinogenicity study in male CD-1 mice for the purpose of establishing the no effect level for renal and forestomach effects associated with technical chlorothalonil, was conducted at dietary levels of 0, 10/15, 40, 175, or 750 ppm (equivalent to 0, 1.4/2.1, 5.7, 25 or 107 mg/kg/day). The NOEL level for renal effects was 40 ppm and the NOEL for forestomach effects was 15 ppm. This study did not duplicate the results from the previous study where a statistically higher incidence of renal tumors, when compared to controls, was observed at 750 ppm. No tumors were observed at this dose level in this study.

f. A chronic feeding/carcinogenicity study with CD rats at doses of 0, 0.5, 3.0, 15, or 30 mg/kg/day has been conducted with the 4-hydroxy metabolite. Because of the severity of the toxicity observed during the first six months of the study, the two highest dose levels were reduced to 10 and 20 mg/kg/day. The animals receiving the highest dose were terminated at 12 months. There were no neoplastic effects at any dose level and the NOEL for chronic toxicity was 3 mg/kg/day. At the higher dose levels, the treatment related effects included microcytic anemia with an increased number of reticulocytes and metarubricytes, hypocellular bone marrow, hemosiderin deposition in liver and bone marrow and serum biochemistry changes and degenerative tissue changes related to hypoxia.

g. A carcinogenicity study in CD-1 mice was conducted at dietary levels of 0, 375, 750 and 1500 ppm of the 4-hydroxy metabolite. The mean body weights of the high dose males and females were 4-15% and 5-18% lower, respectively, when compared to controls. Liver weights were also higher at the highest dietary level. There was no increase in the incidence of any malignant or benign tumor at any dose in this study.

In 1987, the Office of Pesticide Programs' Toxicology Branch Peer Review Committee classified chlorothalonil as a B2 (probable human carcinogen), based on evidence of carcinogenicity in the forestomach and kidneys of rats and mice. The Agency currently regulates chlorothalonil as a B2 carcinogen although ISK Biosciences Corporation has provided a significant amount of mechanistic data indicating that the tumors result from a threshold mechanism. A potency factor, Q_1*, of 0.00766 (mg/kg/day)-1 has been used by the Agency when conducting mathematical modeling to estimate carcinogenic risk to man. ISK Biosciences Corporation believes that because the nephrotoxicity seen in the rat is due to a threshold mechanism, any risk associated with chlorothalonil can be managed using the margin of safety (exposure) approach.

Numerous metabolism and toxicology studies indicate that chlorothalonil is non-genotoxic, and produces a species specific renal toxicity in the rat that eventually may lead to tumor formation through an epigenetic mechanism. Studies comparing metabolism and toxicological effects in dogs with those in rats demonstrate that the renal effects observed in the rat are due to the exposure of the kidney of the rat to significant levels of nephrotoxic thiol metabolites of chlorothalonil.

The 4-hydroxy metabolite was not tumorigenic in either the rat or mouse. Reference Dose (RfD): The no effect level for chlorothalonil in the rat is 1.8 mg/kg bwt. based on the nephrotoxicity observed in the chronic study. The no effect level in the dog was 15 mg/kg bwt. in the 90-day study and 150 mg/kg bwt. based on the one-year study. No effect levels for maternal toxicity from developmental studies are 10 mg/kg bwt. in rabbits and 100 mg/kg bwt. in the rat. The no effect level for pup growth in the reproduction study was 1,500 mg/kg bwt. which would be most conservatively estimated as equating to approximately 75 mg/kg bwt. The data indicate that the nephrotoxicity in the rat is produced through a mechanism for which there is a clear threshold. In a study which measured cell turnover in the rat kidney with BRDU, a NOEL was established at 1.5 mg/kg bwt. Other chronic studies have established the NOEL for hyperplasia in the kidney to be 1.8 mg/kg bwt. If all the available toxicity data in laboratory animals are considered without regard to applicability to humans, the lowest NOEL for any adverse effect would be 1.5 mg/kg bwt./day. Because the mechanism of toxicity which is related to the tumor formation in the kidney has been shown to have a threshold, the use of the normal 100-fold safety factor in conjunction with the 1.5 mg/kg no observable effect level would produce a reference dose which would provide more than adequate safety for all of the possible effects seen in any laboratory animal.

In the two reviews of chlorothalonil by the Joint Meeting of Pesticide Residue Experts, and the review by the World Heath Organization's International Program For Chemical Safety, these esteemed groups concluded that the rat was not the appropriate species to use in consideration of the risk assessment for man. They concluded that the dog was the more appropriate species for determination of subchronic and chronic effects. If the toxicological data for the dog were used, the NOEL would be at least 15 mg/kg bwt., based on the most recent 90-day study in the dog.

The NOEL for the 4-hydroxy metabolite based on the reduction of weight gain late in the lactation period in a reproduction study would be 30 ppm or 1.5 mg/kg/ day. This was not a reproductive effect. The NOEL based on chronic toxicity in the rat would be 3.0 mg/kg bwt/day.

Therefore, under the most conservative scenario, the reference dose for chlorothalonil including its 4-hydroxy metabolite would be 1.5 mg/kg bwt./day divided by a 100-fold safety factor or 0.015 mg/kg bwt./day with a threshold model being used for carcinogenic risk assessment. In the scenario that uses the toxicological data in the dog, the reference dose would be 15 mg/kg bwt./day. divided by a safety factor of 100 or 0.15 mg/kg bwt./day.

C. Aggregate Exposure

The following is a description of the likelihood of exposure to chlorothalonil from various routes:

1. *Dietary exposure (Food).* No residues of chlorothalonil per se will be added to the total exposure of chlorothalonil from consumption of

meat or milk from livestock which were fed chlorothalonil-treated commodities. Residues of 4-hydroxy-2,5,6-trichloroisophthalo-nitrile on crops treated with products containing chlorothalonil are a very low percentage of the total crop residue. Although 4-hydroxy-2,5,6-trichloroisophthalonitrile will transfer to meat and milk, the levels present on feedstuffs which are available for transfer are low. Presently, there are very few uses of chlorothalonil which involve livestock commodities. Meat and milk tolerances for 4-hydroxy-2,5,6-trichloroisophthalonitrile are needed to support the reregistration of chlorothalonil.

2. *Drinking water.* Chlorothalonil was included for monitoring in the National Survey of Pesticides in Drinking Water Wells conducted by EPA. No chlorothalonil residues were detected in any of the 1,300 community water systems and domestic wells (using methodology for chlorothalonil having a limit of detection [LOD] of 0.06 mg/l and limit of quantitation of 0.12 mg/l). The absence of chlorothalonil detections in the National Survey provides adequate information to conclude that chlorothalonil is not a contaminant in drinking water wells and that the population is not exposed to chlorothalonil in these water sources. These findings are consistent with the known physical/ chemical properties of chlorothalonil including low water solubility (0.9 ppm) and high affinity for organic matter including soil. It has also been demonstrated that chlorothalonil does not leach into groundwater from applications made to growing crops.

Aerobic aquatic metabolism studies with chlorothalonil establish a half-life in natural aquatic habitats of less than 10 hours, depending on environmental conditions. Considering the short half-life of chlorothalonil in natural water/ sediment systems and that surface water is filtered and treated prior to consumption, chlorothalonil is not likely to be present in drinking water obtained from natural surface water systems.

If the exposure estimate is based on the surface water concentration recently cited by EPA, it is concluded that the average concentration in surface water would be less than 0.002 ppb. Assuming that everyone in the US consumed untreated surface water, the exposure to chlorothalonil to the general population would be less than $5.8 \times 10_{-7}$ mg/kg bwt./day. This would be a worst case scenario.

The 4-hydroxy metabolite did not leach into ground water in a prospective groundwater study, therefore, no intake of this metabolite would be anticipated from drinking water.

3. *Non-dietary exposure.* Potential non-dietary exposures to chlorothalonil may result from the following uses of chlorothalonil. In each case, the exposure would be from the dermal route and only for an intermittent duration. The two 21-day dermal studies that have been conducted in the rabbit and rat indicate that there is no nephrotoxicity associated with the dermal exposure to chlorothalonil at dose levels up to 600 mg/kg/day. Therefore, the exposures from the uses of chlorothalonil listed below, would not be expected to add to the carcinogenic risk associated with chlorothalonil.

Because the 4-hydroxy metabolite is a soil metabolite, no significant exposure would be anticipated through non-dietary routes. Although some hydrolysis of chlorothalonil to the 4-hydroxy metabolite may occur at a basic pH in some paint or wood treatment products, the anticipated exposure when the products dry would be negligible.

a. Golf course uses. Chlorothalonil products are commonly applied to golf course tees and greens to control a broad complex of turf diseases. Application to golf course fairways is much less common. Golf is not a game played by infants or small children, therefore no exposure to infants and children would be anticipated.

b. Residential owner uses. Applications of chlorothalonil products to home lawns are rare. Thus, there is very little exposure to chlorothalonil related to use on residential turf. Applications to roses and other ornamentals in home gardens is also a minor use of chlorothalonil.

c. Paint. Chlorothalonil is used in paints and stains for control of mildew and molds on exterior surfaces of buildings. Chlorothalonil is also occasionally used for interior paints, but this use represents only a small proportion of the chlorothalonil used in paints. About 2% of the chlorothalonil used in paint is used in interior paint; however, only 0.2% or less of the interior paints in the United States contain chlorothalonil. In paints, chlorothalonil is tightly bound within the matrices of the paint; thus, effective control of mildew may last for several years.

d. Grouts. Chlorothalonil is used in cement tile grouts for control of mildew and molds. Chlorothalonil is bound within the grout matrices and very little is available for exposure. This is a minor use of chlorothalonil and non-occupational dermal exposure of humans to chlorothalonil from this source is extremely low.

e. Wood treatment. Chlorothalonil is not used for pressure-treating wood. It is used for control of sapstain as a surface treatment on rough-cut, newly-sawn lumber to protect it from molds and mildews while drying. Being a surface residue, it is removed during the finishing operations prior to sale of the wood. Chlorothalonil does not occur in structural wood used for residential or occupational scenarios.

D. Cumulative Effects

ISK Biosciences has considered the potential for cumulative effects of chlorothalonil and other substances that have a common mechanism of toxicity. Chlorothalonil is a halogenated benzonitrile fungicide which readily undergoes displacement of the chlorines in the 2, 4 and 6 positions by glutathione and other thiol containing amino acids and proteins. In the rat, the glutathione binding, absorption and subsequent metabolism to form the di- and tri-thiol metabolites occur at sufficient levels to produce a nephrotoxic effect. In dogs where this mechanism does not occur to produce thiol metabolites, nephrotoxicity does not occur. ISK Biosciences does not have any information to indicate that toxic effects observed in rats occur through a mechanism which is common to any other agricultural chemical. Thus, consideration of common mechanisms of toxicity is not appropriate at this time.

Chlorothalonil should not be confused with chemicals classified as chlorinated hydrocarbon pesticides which have significantly different chemical and biological properties.

There would be no cumulative effects expected between chlorothalonil and its 4-hydroxy metabolite because each affects a different toxicological endpoint.

E. Safety Determination

1. *U.S. population.* The majority of exposure to chlorothalonil and its 4-hydroxy metabolite would be expected to occur from the diet. In EPA's Dietary Exposure Analysis for the Use of Chlorothalonil in/on Meat and Milk Products, dated April 23, 1996, the Agency determined that ''Chlorothalonil does not pose a significant chronic or acute dietary risk for uses that are currently published or for uses recommended by CBRS for registration''. The Agency concluded that because of the instability of chlorothalonil in meat and milk, that even in misuse, residues of chlorothalonil would not transfer from

animal feed items to meat and milk. The EPA determined that the 4-hydroxy metabolite would be a residue in meat and milk and that the chronic RfD for chlorothalonil would be sufficient for the metabolite.

The Agency calculated that the Anticipated Residue Contribution when the tolerances for meat and milk are approved, would be 6.8% for the general population and 37% for non-nursing infants (<1 yr. old). In estimating the carcinogenic risk, the Agency indicated that since the 4-hydroxy metabolite was not carcinogenic, and that no residues of chlorothalonil would transfer to meat and milk, the carcinogenic risk calculated for chlorothalonil would not be affected by this tolerance.

The Agency has used a linearized model to estimate the carcinogenic risk associated with chlorothalonil, whereas ISK Biosciences believes that a threshold based model is appropriate.

Because the worst case assumptions for human exposure from drinking water indicate that exposure would be only 1% of the dietary exposure, the risk assessment is not significantly altered by considering the exposure from drinking water.

2. *Infants and children.* There is a complete database for chlorothalonil which includes pre- and post-natal developmental toxicity data as well as mechanistic data related to the rodent specific nephrotoxicity observed in subchronic and chronic studies. The toxicological effects of chlorothalonil in rodents are well understood. Chlorothalonil has a low level of toxicity in dogs.

In a two-generation reproduction study in rats, all reproductive parameters investigated showed no treatment-related effects except pup weight gain. Specifically, the weights of pups exposed to chlorothalonil were comparable to controls at parturition through day four of lactation. It was only after day four of lactation, when the pups begin to consume the test diet, that body weight gain lags behind controls. This only occurred at the highest dose tested, 3,000 ppm. The dose of chlorothalonil the pups would receive would be far in excess of the estimated adult dose of 150 mg/kg (3,000 ppm/20). The doses for the pups could have easily exceeded 500 mg/kg bwt./day. Dose levels of 375 mg/kg bwt. and above have been shown to significantly affect body weight in the rat. Therefore, the reduction of body weight gain observed in the reproduction study is considered to be comparable to the effects that have been observed in older rats. The NOEL for this effect was 1,500 ppm.

In a three generation reproduction study and a subsequent one generation study with the 4-hydroxy metabolite, there were no reproductive effects even at a dose that produced parental toxicity. Although a reduction in pup growth was noted at dietary concentrations of 60 ppm and higher, it could be attributed to an inordinately high dose of the test material received by the pups when compared to adults.

In developmental toxicity studies conducted in the rat and the rabbit, chlorothalonil did not cause any developmental effects even at dose levels that produced significant maternal toxicity. In the rabbit a dose level of 20 mg/kg caused maternal toxicity, but there were no developmental effects, and in the rat a dose level of 400 mg/kg caused maternal toxicity without developmental toxicity.

In a developmental toxicity study conducted with the 4-hydroxy metabolite there were no developmental effects even at doses that produced significant maternal toxicity. A dose of 5 mg/kg produced maternal toxicity but there were no developmental effects.

The extensive database that is available for chlorothalonil and its 4-hydroxy metabolite is devoid of any indication that either material would represent any unusual or disproportionate hazard to infants or children. Therefore, there is no need to impose an additional 10X safety factor for infants or children. The standard uncertainty factor of 100X should be used for all segments of the human population when calculating risks associated with chlorothalonil or its 4-hydroxy metabolite.

F. International Tolerances

A maximum residue level has not been set for the 4-hydroxy metabolite of chlorothalonil in milk and meat by the Codex Alimentarius Commission. The data indicate that no tolerance would be necessary for chlorothalonil on milk and meat since it would not be expected to transfer from animal feed items to these commodities. (PM 22)

2. Novartis

PP 9F3740, PP 5F4424, PP 5F4591, PP 5F4498

EPA has received pesticide petitions (PP) 9F3740, 5F4424, 5F4591, 5F4498 from Novartis Crop Protection Inc., PO Box 18300, Greensboro, NC 27419. The petition proposes, to amend 40 CFR part 180, by establishing a tolerance for the residues of the fungicide Propiconazole, which is a triazole fungicide registered for use on many crops, including bananas, celery, corn, grasses grown for seed, mint (West of the Cascade Mountains), pecans, peanuts, rice, small grains (barley, oats, rye, wheat), stone fruit, and wild rice. Use rates range from 0.07 to 0.22 pound (lb.) active ingredient per acre. Petitions currently pending for propiconazole include: the tree nuts (PP 9F3740); drybean and soybeans (PP 5F4424); berry crop grouping, carrots, and onions (PP 5F4591); and alfalfa and sorghum (PP 5F4498).

A. Residue Chemistry

1. *Metabolism.* Novartis believes the studies supporting propiconazole adequately characterize metabolism in plants and animals. The metabolism profile supports the use of an analytical enforcement method that accounts for combined residues of propiconazole and its metabolites which contain the 2,4-dichlorobenzoic acid (DCBA) moiety.

2. *Analytical methodology.* Novartis has submitted a practical analytical method involving extraction, filtration, conversion, partition, derivitization, and solid phase cleanup with analysis by confirmatory gas chromatography using electron capture detection (ECD). The total residue method is used for determination of propiconazole and its metabolites. The limit of quantitation (LOQ) for the method is 0.05 part per million (ppm).

3. *Magnitude of residue.* Field residue trials have been conducted at various rates, timing intervals, and applications methods to represent the use patterns which would most likely result in the highest residues. For all samples, the total residue method was used for determination of the combined residues of parent and its metabolites which contain the DCBA moiety.

B. Toxicological Profile

The following mammalian toxicity studies have been conducted to support the tolerances of propiconazole:

A rat acute oral study with a LD_{50} of 1,517 mg/kg.

A rabbit acute dermal study with a LD_{50} > 6,000 mg/kg.

A rat inhalation study with a LC_{50} > 5.8 mg/liter air.

A primary eye irritation study in rabbits which showed mild irritation.

A primary dermal irritation study in rabbits which showed slight irritation.

A skin sensitization study in guinea pigs which showed no sensitization.

A 21–day dermal study in the rabbit with a No Observed Effect Level (NOEL) of 200 mg/kg based on clinical signs of systemic toxicity.

A 28–day oral toxicity study in the rat with a No Observed Adverse Effect Level (NOAEL) of 50 mg/kg based on increased liver weight.

A subchronic feeding study in the mouse with a NOEL of 20 ppm (3 mg/kg) based on liver pathologic changes.

A 13–week feeding study in the male mouse with a NOEL of 20 ppm (3 mg/kg) based on liver pathologic changes.

A 90–day feeding study in the rat with a NOEL of 240 ppm (24 mg/kg) based on reduction in body weight gain.

A 90–day feeding study in the dog with a NOEL of 250 ppm (6.25 mg/kg) based on reduced food intake and stomach histologic changes.

A 12–month feeding study in the dog with a NOEL of 50 ppm (1.25 mg/kg) based on stomach histologic changes.

A 24–month oncogenicity feeding study in the mouse with a NOEL of 100 ppm (15 mg/kg). The MTD was exceeded at 2,500 ppm in males based on decreased survival and body weight. Increased incidence of liver tumor was seen in these males but no evidence of carcinogenicity was seen at the next lower dose of 500 ppm in either sex.

A 24–month chronic feeding/oncogenicity study in the rat with a NOEL of 100 ppm (5 mg/kg) based on body weight and blood chemistry. The MTD was 2,500 ppm based on reduction in body weight gain and no evidence of oncogenicity was seen.

An oral teratology study in the rabbit with a maternal NOEL of 30 mg/kg based on reduced food intake but without any fetotoxicity even at the top dose of 180 mg/kg.

An oral teratology study in the rabbit with a maternal NOEL of 100 mg/kg based on reductions in body weight gain and food consumption and a fetal NOEL of 250 mg/kg based on increased skeletal variations at 400 mg/kg.

An oral teratology study in the rat with a maternal and fetal NOEL of 100 mg/kg based on decreased survival, body weight gain, and food consumption in the dams and delayed ossification in the fetuses at 300 mg/kg.

A second teratology study in the rat with a maternal and fetal NOEL of 30 mg/kg based on reductions in body weight gain and food consumption in the dams and delayed development in the fetuses at 90 and 360/300 mg/kg.

A supplemental teratology study in the rat involving eight times as many animals pergroup as usually required and showing no teratogenic potential for the compound.

A 2-generation reproduction study in the rat showing excessive toxicity at 5,000 ppm without any teratogenic effects.

A 2-generation reproduction study in the rat with no effects on reproductive or fetal parameters at any dose level. Postnatal growth and survival were affected at the top dose of 2,500 ppm, where parental toxicity was also evident. The NOEL for development toxicity is 500 ppm.

In vitro gene mutation test: Ames assay - negative; rat hepatocyte DNA repair test - negative; human fibroblast DNA repair test - negative.

In vitro chromosome test: human lymphocyte cytogenetic test - negative.

In vivo mutagenicity test: Chinese hamster bone marrow cell nucleus aunomaly test -negative; Chinese hamster bone marrow cell micronucleus test - negative; mouse dominant lethal test - negative.

Other mutagenicity test: BALB/3T3 cell transformation assay - negative.

C. Threshold Effects

1. *Chronic effects.* Based on the available chronic toxicity data, Novartis believes the Reference dose (RfD) for propiconazole is 0.0125 mg/kg/day. This RfD is based on a 1-year feeding study in dogs with a No-Observed Effect Level of 1.25 mg/kg/day (50 ppm) and an uncertainly factor of 100. No additional modifying factor for the nature of effects was judged to be necessary as stomach mucosa hyperemia was the most sensitive indicator of toxicity in that study.

2. *Acute toxicity.* The risk from acute dietary exposure to propiconazole is considered to be very low. The lowest NOEL in a short term exposure scenario, identified as 30 mg/kg in the rat teratology study, is 24-fold higher than the chronic NOEL (see above). Based on worst-case assumptions the chronic exposure assessment (see below) did not result in any margin of exposure less than 150 for even the most impacted population subgroup. Novartis believes that the margin of exposure for acute exposure would be more than one hundred for any population groups; margins of exposure of 100 or more are considered satisfactory.

3. *Non-threshold effects.* Using the Guidelines for Carcinogenic Risk Assessment published on September 24, 1986 (51 FR 33992), the USEPA has classified propiconazole in group C for carcinogenicity (evidence of possible carcinogenicity for humans). The compound was tested in 24-month studies with both rats and mice. The only evidence of carcinogenicity was an increase in liver tumor incidence in male mice at a dose level that exceeded the maximum tolerated dose (MTD). Dosage levels in the rat study were appropriate for identifying a cancer risk. The Cancer Peer Review Committee recommended the RfD approach for quantitation of human risk. Therefore, the RfD is deemed protective of all chronic human health effects, including cancer.

D. Aggregate Exposure

1. *Dietary exposure.* For the purposes of assessing the potential dietary exposure under the existing, pending, and proposed tolerances for the residue of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid, Novartis has estimated aggregate exposure based upon the Theoretical Maximum Residue Concentration (TMRC). The TMRC is a ''worst case'' estimate of dietary exposure since it assumes 100 percent of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels, resulting in an overestimate of human exposure.

Currently established tolerances range from 0.05 ppm in milk to 60 ppm in grass seed screenings and include: apricots (1.0 ppm); bananas (0.2 ppm); barley grain (0.1 ppm); barley straw (1.5 ppm); cattle kidney and liver (2.0 ppm); cattle meat, fat, and meat by products except kidney and liver (0.1 ppm); celery (5.0 ppm); corn forage and fodder (12.0 ppm); corn grain and sweet (0.1); eggs (0.1 ppm); goat kidney and liver (2.0 ppm); goat meat, fat, and meat by products except kidney and liver (0.1 ppm); grass forage (0.5 ppm); grass hay/straw (40.0 ppm); grass seed screenings (60.0 ppm); hogs kidney and liver (2.0 ppm); hog meat, fat, and meat by products except kidney and liver (0.1 ppm); horses kidney and liver (2.0 ppm); horse meat, fat, and meat by products except kidney and liver (0.1 ppm); milk (0.05 ppm); mint tops (0.3 ppm - regional tolerance west of Cascade Mountains); mushrooms (0.1 ppm); nectarines (1.0 ppm); oat forage (10.0 ppm); oat grain (0.1 ppm); oat hay (30.0 ppm); oat straw (1.0 ppm); peaches (1.0 ppm); peanut hay (20.0 ppm); peanut hulls (1.0 ppm); peanuts (0.2 ppm);, pecans (0.1 ppm); pineapple (0.1 ppm); pineapple fodder (0.1 ppm); plums (1.0 ppm); poultry liver and kidney (0.2 ppm); poultry meat, fat, and meat by products except kidney and liver (0.1 ppm); prunes, fresh (1.0 ppm); rice grain (0.1 ppm); rice straw (3.0 ppm); wild rice (0.5 ppm regional tolerance Minnesota); rye grain (0.1 ppm); rye straw (1.5 ppm); sheep kidney and liver (2.0 ppm); sheep meat, fat, and meat by products except kidney and liver (0.1 ppm); stone fruit crop group 12 (1.0 ppm); wheat grain (0.1 ppm); and wheat straw (1.5 ppm). In addition, time-limited regional tolerances for

sorghum grain and stover at 0.1 ppm and 1.5 ppm, respectively were established to support a section 18 Crisis exemption in Texas (expiration date 10/31/98).

Additional uses of propiconazole have been requested in several pending petitions.

Proposed tolerances include: PP 5F4424 for use of propiconazole on drybean and soybean -- dry bean forage (8.0 ppm); dry bean hay (8.0 ppm); dry bean vines (0.5 ppm); dry bean (0.5 ppm), soybeans (0.5 ppm); soybean fodder (8.0 ppm); soybean forage (8.0 ppm); soybean hay (25.0 ppm); and soybean straw (0.1 ppm).

PP 5F4591 for use of propiconazole on berries, carrots and onions -- berry crop grouping (1.0 ppm); dry bulb onion (0.3 ppm); green onion (8.0).

PP 9F3740 -- tree nut crop grouping (0.1 ppm);

PP 5F4498 -- inadvertent/rotational crop tolerances for alfalfa forage (0.1 ppm), alfalfa hay (0.1 ppm), grain sorghum fodder (0.3 ppm), grain sorghum forage (0.3 ppm) and grain sorghum grain (0.2 ppm). Other potential sources of exposure of the general population to residues of propiconazole are residues in drinking water and exposure from non-occupational sources. Review of environmental fate data by the Environmental Fate and Effects Division of USEPA indicates that propiconazole is persistent and moderately mobile to relatively immobile in most soil and aqueous environments. No Maximum Concentration Level (MCL) currently exists for residues of propiconazole in drinking water and no drinking water health advisory levels have been established for propiconazole.

2. *Drinking water exposure.* The degradation of propiconazole is microbially mediated with an aerobic soil metabolism half-life of 70 days. While propiconazole is hydrolytically and photochemically stable (T1/2 >100 days), it binds very rapidly and tightly to soil particles following application. Adsorption/desorption and aged leaching data indicate that propiconazole and its degradates will primarily remain in the top 0–6 inches of the soil. It has been determined that under field conditions propiconazole will degrade with a half-life of approximately 100 days.

3. *Non-dietary exposure.* Propiconazole is registered for residential use as a preservative treatment for wood and for lawn and ornamental uses. At this time, no reliable data exist which would allow quantitative incorporation of risk from these uses into a human health risk assessment. The exposure to propiconazole from contacting treated wood products is anticipated to be very low since the surface of wood is usually coated with paint or sealant when used in or around the house. The non-occupational exposure from lawn and ornamental applications is also considered to be minor. It is estimated that less than 0.01 percent of all households nationally use propiconazole in a residential setting.

Consideration of a common mechanism of toxicity is not appropriate at this time since there is no reliable information to indicate that toxic effects produced by propiconazole would be cumulative with those of any other types of chemicals. While other triazoles are available on the commercial or consumer market, sufficient structural differences exist among these compounds to preclude any categorical grouping for cumulative toxicity. Consequently, Novartis is considering only the potential risks of propiconazole in its aggregate exposure assessment.

E. Safety Determiniation

1. *U.S. population.* Reference dose. Using the conservative exposure assumptions described above (100 percent stone fruit acres treated and tolerance level residues) and based on the completeness and reliability of the toxicity data base for propiconazole, Novartis has calculated aggregate exposure levels for this chemical. The calculation shows that only 16 percent of the RfD will be utilized for the U.S. population based on chronic toxicity endpoints. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to propiconazole residues.

2. *Infants and children.* Developmental toxicity (e.g., reduced pup weight and ossification) was observed in the rat teratology studies and 2-generation rat reproduction studies at maternally toxic doses. Some of these findings are judged to be nonspecific, secondary effects of maternal toxicity. The lowest NOEL for developmental toxicity was established in the rat teratology study at 30 mg/kg, a level 24–fold higher than the NOEL of 1.25 mg/kg on which the RfD is based.

Reference dose. Using the same conservative exposure assumptions as employed for the determination in the general population, Novartis has calculated that the percent of the RfD that will be utilized by aggregate exposure to residues of propiconazole is 26 percent for nursing infants less than 1 year old, 65 percent for non-nursing infants less than 1 year old, 35 percent for children 1–6 years old, and 23 percent for children 7–12 years old. Therefore, based on the completeness and reliability of the toxicity data base and the conservative exposure assessment, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to propiconazole residues.

F. Estrogenic Effects

Propiconazole does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system.

Developmental toxicity studies in rats and rabbits and reproduction studies in rats gave no indication that propiconazole might have any effects on endocrine function related to development and reproduction. The subchronic and chronic studies also showed no evidence of a long-term effect related to the endocrine system.

G. International Tolerances

International CODEX values are established for almond, animal products, bananas, barley, coffee, eggs, grapes, mango, meat, milk, oat, peanut-whole, peanut grains, pecans, rape, rye, stone fruit, sugar cane, sugar beets, sugar beet tops, and wheat. The U.S. residue definition includes both propiconazole and metabolites determined as 2,4-dichlorobenzoic acid (DCBA), while the CODEX definition is for propiconazole, per se, i.e. parent only. This difference results in unique tolerance expressions with the U.S. definition resulting in the higher tolerance levels. (PM 21)

3. Novartis Crop Protection, Inc.

PP 5E4450, 6F3332, 5F4546, 5F4576, and 6F4613

EPA has received pesticide petitions (PP) 5E4450, 6F3332, 5F4546, 5F4576, and 6F4613) from Novartis Crop Protection, Inc., 410 Swing Road, Greensboro, NC 27419, proposing to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide, cyromazine, and its metabolite, melamine, in or on the raw agricultural commodities of potatoes (potato tubers) at 1.5 ppm, green onions at 3 ppm, dry bulb onions at 0.3 ppm, cottonseed at 0.2 ppm, sweet corn (kernels plus cobs with husks removed, forage, and fodder) at 0.5 ppm, radishes (roots and tops) at 0.5 ppm, and

mangoes at 0.3 ppm. A tolerance of 0.04 ppm is requested for residues of cyromazine in milk; a tolerance of 0.02 ppm is requested for residues of melamine in milk.

Residues of cyromazine and its metabolite, melamine, were determined by Analytical Methods AG-408 and AG-417A which, combined, are the EPA tolerance enforcement method published in the Pesticide Analytical Manual, Volume II. Cyromazine is determined by High Performance Liquid Chromatography (HPLC) on a LiChrosorb-NH2 column at 214 nm. The limit of determination in potatoes is 0.05 ppm.

Method AG-417A has been validated as reported in report ABR-84069 and by the EPA method trial reported in the Pesticide Analytical Manual (PAM). EPA has accepted AG-408, 417A as the regulatory enforcement method for crops.

Storage stability data for cyromazine have been reported in ABR-92019 and Special Study 134/93: Interim Report. Stability of field-incurred residues of cyromazine was demonstrated for 23 months in head and leaf lettuce, 24 months in celery, 9½ months in tomatoes, and 11 months in mushrooms. In Special Study 134/93: Interim report, no degradation of laboratory-spiked cyromazine was observed for 6 months in mangoes (the time period required to validate the mango analyses). No deterioration of cyromazine residues has been observed in any substrate under freezer storage conditions. In this study, the storage period for potatoes ranged from 3.5 to 24 months, which is within the demonstrated freezer stability period.

A. Chemical Uses

Cyromazine, the active ingredient in Trigard Insecticide, is a synthetic insect growth regulator. Cyromazine is highly efficacious against dipterous leafminer larvae developing in the foliage of certain agronomic, vegetable, and ornamental crops, and it can be used to control flies in mushroom houses. Cyromazine is compatible with integrated pest management (IPM) programs.

B. Residue Chemistry

Six field trials were conducted in three mango production areas of Mexico. Residues of cyromazine ranged from less than the detection limit (0.03 ppm) to 0.25 ppm. These data support the proposed tolerance of 0.3 ppm in mangoes.

The maximum combined residue of cyromazine and melamine in cottonseed from cotton grown as a rotational crop following lettuce treated six times at the 1X use rate was 0.18 ppm. These data support the proposed tolerance of 0.2 ppm in cottonseed.

Application of Trigard OMC to onion seed (pelletization) resulted in maximum residues in immature whole onion plants of 2.71 ppm. These data support the proposed tolerances for combined residues of cyromazine and melamine at 3.0 ppm in green onions and 0.3 ppm in dry bulb onions.

Residue data in rotational sweet corn and radishes and potatoes have been previously submitted to EPA for review and have been found by EPA to support tolerances of 0.5 ppm in sweet corn (kernels & cobs with husks removed), sweet corn forage, sweet corn fodder, radish roots and radish tops and to support tolerances of 1.5 ppm in/on potatoes. The proposed 1.5 ppm for the RAC potatoes will cover any expected residues including residues in processed potato wastes.

C. Toxicological Profile

Novartis has submitted toxicology studies in support of tolerances for cyromazine. Cyromazine has low acute toxicity, no indication of irritation potential and no sensitization potential. Cyromazine is not genotoxic, fetotoxic, embryolethal, or teratogenic. It is not a reproductive toxin. High-dose chronic toxicity included bronchiectasis in male and female rats, testicular degeneration in dogs, and decreased body weights in rats, dogs, and mice. No tumorigenic effects were noted in any species tested and EPA has classified cyromazine as Group E, no evidence of carcinogenicity in humans. Therefore, Novartis proposes that a Margin of Exposure (MOE) or percentage of reference dose (RfD) approach be used for characterizing human risk. For cyromazine, Novartis concludes that aggregate MOE's are acceptable for the U.S. population and all population subgroups for both acute toxicity and chronic effects.

The following mammalian toxicity studies were conducted to support proposed tolerances for cyromazine:

A rat acute oral toxicity study with an LD_{50} of approximately 3,387 mg/kg.

A rat acute dermal toxicity study with an LD_{50} >3,100 mg/kg.

A rat acute inhalation study with an LC_{50} >3,600 mg/m^3.

A primary eye irritation study in the rabbit that showed no eye irritation.

A primary dermal irritation study in the rabbit that showed no dermal irritation.

A dermal sensitization study in the guinea pig that showed no sensitization.

A 21-day dermal study in rabbits demonstrated no target organ toxicity at doses up to 2,000 mg/kg/day.

A 13-week rat feeding study demonstrated no specific target organ toxicity and a no observed effect level (NOEL) of 300 ppm (25 mg/kg/day).

A 13-week feeding study in dogs demonstrated no specific target organ toxicity, although some red blood cell parameters were affected in high-dose males. The NOEL was 1,000 ppm (34 mg/kg/day).

A six-month feeding study in dogs showed reversible red blood cell effects and transient changes in clinical parameters in high dose males. No specific target organs were identified histologically, although changes in some organ to body weight ratios were observed. The NOEL was 30 ppm (0.75 mg/kg).

A 24-month feeding study in rats identified no specific target organs. There was no oncogenic effect and the NOEL for the study was 30 ppm (1.5 mg/kg/day).

A 24-month mouse feeding study identified no specific target organs. There was no oncogenic effect and the NOEL was 50 ppm (7.0 mg/kg/day).

A rat teratology study demonstrated no developmental toxicity. The maternal NOEL is 100 mg/kg/day and the developmental NOEL was 300 mg/kg/day.

Several rabbit teratology studies were conducted. Based on a weight of the evidence, no teratogenic effect was demonstrated. The maternal NOEL was 10 mg/kg/day, whereas the developmental NOEL was 60 mg/kg/day.

A multigeneration study in rats demonstrated no impairment of reproductive performance or fetal and/or pup effects, although pup body weights were slightly decreased at the highest dose. The parental NOEL and developmental NOEL's were 1,000 ppm (50 mg/kg/day).

There was no evidence of induction of point mutations in an Ames test.

There was no indication of a mutagenic effect in a dominant lethal test.

There was no evidence of a mutagenic effect in a nucleus anomaly test in Chinese hamsters.

D. Threshold Effects

1. *Chronic effects*. EPA has established a reference dose for cyromazine at 0.0075 mg/kg/day based on the 6 month dog study using the NOEL of 0.75 mg/kg/day (30 ppm) and an uncertainty factor of 100.

2. *Acute toxicity*. Based on the low degree of acute toxicity, it can be

concluded that cyromazine does not pose any acute dietary risks.

Non-threshold effects (Carcinogenicity). Based on the Guidelines for Carcinogenic Risk Assessment published by EPA September 24, 1986 (51 FR 33992), EPA has classified cyromazine as not carcinogenic (Group E). This classification was issued by the Health Effects Division Carcinogenicity Peer Review Committee on September 14, 1994.

E. Aggregate Exposure

1. *Dietary exposure.* For purposes of assessing the potential dietary exposure to cyromazine, Novartis has estimated aggregate exposure based on the TMRC from the use of cyromazine in or on raw agricultural commodities for which tolerances have been established (40 CFR 180.368) or are pending.

The TMRC is obtained by multiplying the tolerance level residue for all these raw agricultural commodities by the consumption data that estimate the amount of these products consumed by various population subgroups. Since these raw agricultural commodities (e.g. soybean forage and fodder) are fed to animals, the transfer of residues in these fed commodities to meat, milk, poultry, or eggs has been calculated and tolerances have either been proposed or established.

In conducting this exposure assessment, Novartis has used either EPA's estimate of market share or used best estimates provided by Novartis Product Management which assume plateau market share values. In addition, the dietary exposure assessment includes residue assumptions for meat and milk that provide very conservative estimates.

2. *Drinking Water.* The environmental fate database for cyromazine indicates that, when used according to label directions, the compound is not likely to be found in ground or surface water at biologically significant concentrations. To date, cyromazine has never been detected in ground or surface water. The primary environmental degradate of cyromazine, melamine, has rarely been detected, and melamine detections have always been less than 0.3 ppb in water. To evaluate the potential impact of exposure to cyromazine in drinking water, Novartis calculated a theoretical lifetime Maximum Contaminant Level (MCL). The theoretical MCL, 50 ppb, is orders of magnitude greater than levels that are likely to be found in the environment under current conditions of use.

3. *Non-dietary exposure.* Non-occupational exposure to the general population is unlikely since cyromazine is not used in or around the home, including home lawns.

F. Cumulative Effects

Novartis considered the potential for cumulative effects of cyromazine and other chemicals in this class that may have a common mechanism of toxicity. Consideration of a common mechanism of toxicity is not appropriate for cyromazine since the existing data do not suggest a common mechanism.

G. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above, and based on the completeness and reliability of the toxicity data, Novartis has concluded that aggregate exposure to cyromazine will utilize approximately 35% percent of the RfD for the U.S. population based on chronic toxicity endpoints. EPA generally has no concern for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, Novartis concludes that there is reasonable certainty that no harm will result from aggregate exposure to cyromazine or residues of cyromazine that may appear in raw agricultural commodities.

2. *Infants and* children. In assessing the potential for additional sensitivity of infants and children to residues of cyromazine, Novartis has considered data from developmental toxicity studies in the rat and rabbit, and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from chemical exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to a chemical on the reproductive capability of mating animals, on postnatal development, and systemic toxicity, particularly to the reproductive system.

Developmental toxicity (reduced mean fetal body weight and an increased incidence of skeletal variations due to delayed ossification) was observed in the rat only at the maternally toxic dose of 600 mg/kg/day. The no observed effect level for developmental toxicity in the rat was 300 mg/kg/day, a dose that was still maternally toxic. Similarly, the developmental no observed effect level in the rabbit (60 mg/kg/day) was higher than the maternal no observed effect level (10 mg/kg/day), which suggests that the developmental toxicity associated with high doses of cyromazine occurs secondarily to maternal toxicity.

A 2-generation reproduction study was conducted with cyromazine at feeding levels of 0, 30, 1,000, and 3,000 ppm. Reproductive performance was unaffected by treatment with cyromazine at feeding levels up to 3,000 ppm. Evidence of parental toxicity, as indicated by decreased body weight gain, was observed in males and females at feeding levels >1,000 ppm. Similar effects were noted in the offspring at 3,000 ppm. The maternal and developmental no observed effect levels were established at 1,000 ppm (50 mg/kg/day).

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. Furthermore, the NOEL of 0.75 mg/kg/day from the chronic dog study used to calculate the RfD, is approximately 100 fold lower than the lowest developmental NOEL in the teratology studies (Rabbit Developmental NOEL = 60 mg/kg/day) and the developmental NOEL (50 mg/kg/day) established in the multigeneration reproduction study. Based on these data, Novartis concludes that there is no evidence to suggest that developing organisms are more sensitive to the effects of cyromazine than are adults.

The percentage of the RfD utilized by the U.S. population for 48 states using aggregate exposure estimates is approximately 70%, if drinking water intake is assumed to be 100% of the MCL for the respective subgroup. It is highly unlikely that concentrations in drinking water will approach the MCL for even short periods of time. Consequently, this calculation of the percentage of the RfD that would be utilized is extremely conservative.

The percentage of the RfD that is utilized is somewhat higher for non-nursing infants if the chronic NOEL is used to estimate exposure using the conservative exposure assumptions described above. Novartis has determined that the percentage of the lowest developmental NOEL (50 mg/kg/day from the rat multigeneration study) utilized by aggregate exposure to residues of cyromazine is approximately 20% for nursing infants less than 1 year old, approximately 21% for non-nursing infants and for children 1 to six years old, and 62% for children 7 to 12 years old.

Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Novartis concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

H. Estrogenic Effects

Cyromazine does not belong to a class of chemicals known to have or suspected of having adverse effects on the endocrine system. No adverse effects on fertility or reproduction were observed in high dose females (3000 ppm) in the rat reproduction study. Although residues of cyromazine have been found in raw agricultural commodities, there is no evidence that cyromazine bioaccumulates in the environment.

I. Environmental Fate

Soil metabolism and soil dissipation studies on various soil types have shown that cyromazine dissipates moderately over time, while melamine is slightly more stable.

J. International Tolerances

Compatibility problems exist between Codex limits, Mexican limits, and the proposed US tolerances. In Codex and Mexican limits, cyromazine is the only residue of concern; the metabolite melamine is not included in the residue expression. There are no established cyromazine limits for the RAC potato, or the processed commodities, potato granules/flakes, or chips, or the feedstuff, processed potato waste. There is a 0.01 ppm (at or about the limit of determination) Codex limit in milk. (PM 13)

[FR Doc. 97–18085 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5857–2]

Water Pollution Control; Program Application by South Carolina to Administer the Sludge Management (Biosolids) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application and public comment period.

SUMMARY: Pursuant to 40 CFR 123.61, the State of South Carolina has submitted an application for EPA to approve the existing South Carolina Domestic Sewage Sludge Permitting Program for authorization to administer and enforce the federal sewage sludge management (biosolids) program. According to the State's proposal, this program would be administered by the South Carolina Department of Health and Environmental Control (SCDHEC).

The application from South Carolina is complete and is available for inspection and copying. Persons wishing to comment upon or object to any aspects of the application from South Carolina or wishing to request a public hearing, are invited to submit the same in writing by August 28, 1997 to the Office of Environmental Assessment, Environmental Protection Agency Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104, Attention: Ms. Lena Scott. The public notice number and reference to the program application by South Carolina to administer the sludge management (biosolids) program should be included in the first page of comments.

FOR FURTHER INFORMATION CONTACT: Mr. Roosevelt Childress, Chief, Surface Water Permits Section, telephone (404) 562–9279, or Mr. Vince Miller, EPA Region 4 Sludge Management Coordinator, telephone (404) 562–9312, or write to the following address: Water Management Division, Surface Water Permits Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104.

SUPPLEMENTARY INFORMATION: Section 405 of the Clean Water Act (CWA), 33 U.S.C. 1345, created the sludge management program, allowing EPA to issue permits for the disposal of sewage sludge under conditions required by the CWA. Section 405(c) of the CWA provides that a state may submit an application to EPA for administering its own program for issuing sewage sludge permits within its jurisdiction. EPA is required to approve each such submitted state program unless EPA determines that the program does not meet the requirements of the EPA regulations implementing those sections.

South Carolina's application for sludge management program approval contains a letter from the Governor requesting program approval, an Attorney General's Statement, copies of pertinent State statutes and regulations, the SCDHEC Program Description, and a draft SCDHEC/EPA Memorandum of Agreement(MOA).

Indian Tribes. The term ''Indian Tribe'' is defined under the Act as ''any Indian Tribe, band, nation, or other organized group of community, including any Alaskan Native village, which is federally recognized as eligible for the special programs, and services provided by the United States to Indians because of their status as Indians.'' EPA notes that South Carolina's application does not, nor does it intend to, include management of sewage sludge on lands within Indian Country. EPA will retain authority for administering the federal sewage sludge management program within Indian Country.

Availability of State Submittal

South Carolina's submittal may be reviewed by the public from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, at the South Carolina Department of Health and Environmental Control, Water Facilities Permitting Division; 2600 Bull Street, South Carolina 29201–1708 or at the EPA Regional Office in Atlanta, Georgia, at the address appearing earlier in this notice.

Copies of the submittal may be obtained at a cost of $0.25 per page by check made payable to the South Carolina Department of Health and Environmental Control. Requests for copies should be addressed to Mr. Michael J. Montebello, South Carolina Department of Health and Environmental Control at the address provided above or at telephone number (803) 734–5226.

EPA's Decision

After the close of the public comment period, EPA will decide whether to approve or disapprove South Carolina's sludge management program. The decision will be based on the requirements of Section 405 of the CWA and EPA regulations promulgated thereunder.

If the South Carolina program is approved, EPA will so notify the State. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of sewage sludge permits in South Carolina (except, as discussed above, for those sewage sludge use or disposal management practices in ''Indian Country''). The State's program will operate in lieu of the EPA-administered program. However, EPA will retain the right, among other things, to object to sewage sludge permits proposed to be issued by South Carolina and to take enforcement actions for violations. If EPA disapproves South Carolina's sludge management program, EPA will notify the State of the reasons for disapproval and of any revisions or modifications to the State program that are necessary to obtain approval.

Review Under Regulatory Flexibility Act and Executive Order 12866

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of entities. The proposed approval of the South Carolina Sewage Sludge Permitting Program does not alter the regulatory control over any industrial category. No new substantive requirements are established by this action. Therefore, I hereby certify that because this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not needed.

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 the Office of Management and Budget's review.

Dated: July 2, 1997.

Beverly H. Banister,

Acting Director, Water Management Division, Environmental Protection Agency, Region 4.

[FR Doc. 97–18248 Filed 7–10–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

July 7, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 11, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0577.

Title: Expanded Interconnection with Local Telephone Company Facilities.

Type of Review: Reinstatement without change of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit.

Number of Respondents: 16.

Estimated Time Per Response: 15 hours.

Cost to Respondents: $10,000. This estimate assumes that the respondent would use mid to senior level personnel to comply with the requirements in pay to the Federal government, thus $35.00 per hour. For example, 16 respondents x 15 hours per response; = $8,400.

Total Annual Burden: 240 hours.

Needs and Uses: Local exchange carriers (LECs) are required to make tariff filings (1) to provide public notice of ''fresh look'' opportunity at their offices and (2) to comply with new Commission standards governing nonrecurring reconfiguration charges, expanded interconnection connection charge rate structure and fresh look.

OMB Approval Number: 3060–0292.

Title: Part 69, Access Charges.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,458.

Estimated Time Per Response: 5.8 hours (avg.).

Cost to Respondents: N/A.

Total Annual Burden: 33,825 hours.

Needs and Uses: Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies on or after January 1, 1984. Part 69 essentially consists of rules or the procedures for the computation of access charges which are not information collections as defined by 5 CFR part 1320. Any reporting or disclosure occurs in connection with particular tariff filings and other reporting requirements with the FCC or other state commissions or with records maintained in accordance to the Uniform Systems of Accounts (USOA). Sections 69.116(c) and 69.117(c) require the semi-annual submission of data by the local exchange carriers to NECA. Requiring this data collection less frequently would undermine the effectiveness of the programs. States of telephone companies filing their plans for Commission certification will be required to do so only once. Section 69.606 is a monthly requirement; however, carriers must supply the data to NECA for billing purposes. The information is used to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without the information.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–18133 Filed 7–10–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Independent Audits.''

DATES: Comments must be submitted on or before September 9, 1997.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW.,

Washington, D.C. 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov]). All comments should refer to ''Independent Audits.''

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Independent Audits.

OMB Number: 3064–0113.

Frequency of Response: Annual and occasional.

Estimated Number of Respondents: 420

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Responses: 1,260.

Estimated Time per Response: 32 hours.

Estimated Total Annual Burden: 40,320 hours.

General Description of the Collection: The FDIC's regulation 12 CFR Part 363 implements section 36 of the Federal Deposit Insurance Act, which is generally intended to facilitate early identification of problems in financial management at larger insured institutions (those with assets of $500 million or more) through annual independent audits, assessments of the effectiveness of internal controls and compliance with designated laws and regulations and more stringent reporting requirements. This collection of information, currently approved by OMB through September 30, 1998, would be modified to delete a requirement that respondents comply with Schedule A to Appendix A of Part 363, ''Agreed Upon Procedures for Determining Compliance with Designated Laws.''

Request for Comment: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 8th day of July, 1997.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary.

[FR Doc. 97–18214 Filed 4–10–97; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. to Tuesday, July 8, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the Corporation's corporate and supervisory activities, (2) reports of the Office of Inspector General, and (3) an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Nicolas P. Retsinas (Acting Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to pubic observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: July 8, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 97–18338 Filed 7–18–97; 5:04 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010979–028.

Title: Caribbean Shipowners Association.

Parties:

Bernuth Lines, Ltd.
Cari Freight Shipping Co. Ltd.
Interline Connection, NV
Seaborad Marine, Ltd.
Tecmarine Lines, Inc.
Crowley American Transport, Inc.
Compagnie Generale Maritime
Seafreight Line, Ltd.
Tropical Shipping & Construction Co., Ltd.
King Ocean Service, S.A.

Synopsis: The proposed amendment would expand the geographic scope of the Agreement to include Trinidad.

Dated: July 7, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–18124 Filed 7–10–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-16690) published on pages 34452 and 33453 of the issue for Thursday, June 26, 1997.

Under the Federal Reserve Bank of St. Louis heading, the entry for Area Bancshares Corporation, Owensboro, Kentucky, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Area Bancshares Corporation, Owensboro, Kentucky; to indirectly acquire Mutual Service Corporation, Somerset, Kentucky, and thereby engage in riskless principal transactions, pursuant to § 225.28(b)(7) of the Board's Regulation Y.

Comments on this application must be received by July 21, 1997.

Board of Governors of the Federal Reserve System, July 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–18222 Filed 7–10–97; 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. The application also will 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 August 7, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Pathfinder Bancorp, MHC, Oswego, New York; to acquire 100 percent of the voting shares of Pathfinder Bancorp, Oswego, New York, and Stock Holding Company, Oswego, New York, and thereby indirectly acquire Oswego City Savings Bank, Oswego, New York.

B. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to acquire up to 20 percent of the voting shares of Sun Bancorp, Inc., Selinsgrove, Pennsylvania, and thereby indirectly acquire Sun Bank, Selinsgrove, Pennsylvania.

In connection with this application, Applicant has also applied to acquire Pennsylvania Sun Life Insurance Company, Phoenix, Arizona, and thereby engage in providing credit life and disability insurance exclusively to customers of Sun Bank, Sun Bancorp, Inc.'s bank subsidiary, pursuant to § 225.28(b)(11) of the Board's Regulation Y.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Maypearl Bancshares, Inc., Maypearl, Texas, and Maypearl Holdings, Inc., Wilmington, Delaware; to become a bank holding companies by acquiring 100 percent of the voting shares of First State Bank, Maypearl, Texas.

Board of Governors of the Federal Reserve System, July 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–18223 Filed 7–10–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, July 16, 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: July 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–18359 Filed 7–9–97; 10:56 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Final Record of Decision

AGENCY: General Services Administration, in cooperation with Food and Drug Administration, Assistance from Leo A Daly Greenhorne and O'Mara, Inc.

DIRECT INQUIRIES TO: Mr. Jag Bhargava, Development Director, General Services Administration, National Capital Region, 7th and D Streets, S.W., Washington, DC 20407, (202) 708–6570.

Abstract

June, 1997

SUPPLEMENTARY INFORMATION:

This Record of Decision formally documents the intent of the General Services Administration and the U.S. Food and Drug Administration to construct new consolidated, state-of-the-art facilities for the U.S. Food and Drug Administration at the former Naval Surface Warfare Center at White Oak in Montgomery County, Maryland. This Record of Decision summarizes the impacts of the proposed development and proposed mitigation measures which are detailed in the Final Environmental Impact Statement. Specific mitigation plans will be developed during the design stage and will consist of those strategies identified in the Final EIS.

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) Regulations (40 CFR Part 1500 and 1508), and the General Services Administration (GSA) Handbook, PBS Preparation of Environmental Assessments and Environmental Impact Statements (PBS P 1095.4B), GSA, in its role as manager of federal government real estate and

space planning, announces its Record of Decision regarding locating the proposed consolidation of the Headquarters component of the U.S. Food and Drug Administration (FDA) at the former Naval Surface Warfare Center at White Oak in Montgomery County, Maryland. GSA will develop the White Oak site with approximately 2,111,421 gross square feet of offices, laboratories and support facilities for approximately 5,947 employees and 500 visitors per day.

I. The Purpose of and Need for the Proposed Action

Purpose of the Proposed Action

The purpose of the proposed action is to provide new, consolidated, state-of-the-art facilities for the headquarters component of FDA on one location in Montgomery County, Maryland. The White Oak site would be used to consolidate the Office of the Commissioner, the Center for Drug Evaluation and Research, the Center for Devices and Radiological Health, and the Center for Biologics Evaluation and Research, the Center for Devices and Radiological Health, and the Center for Biologics Evaluation and Research. (The Center for Veterinary Medicine and the Center for Food Safety and Applied Nutrition would be in separate locations in Prince George's County, Maryland, and have been addressed in separate environmental documents.)

Background of the Proposed Action

In 1990, Congress passed the FDA Revitalization Act, which authorized the Secretary of Health and Human Services and the Administrator of the GSA to plan, design, and construct a consolidated facility for FDA. In the Fiscal Year 1992 Appropriation of funding for the FDA consolidation, Congress directed that the new facilities supporting FDA be constructed on two sites. The directive of the Appropriation split the consolidation between two counties in Maryland. In May of 1995, the U.S. Congress rescinded the funding for the FDA consolidation in Montgomery County. In order to reinstate the funding, GSA and FDA developed a revised program to (1) reduce the size and cost, (2) reduce the construction budget, (3) utilize a smaller site, and (4) find a less remote, more developed location, for the proposed action.

Need for the Proposed Action

The Headquarters components of FDA are current housed in more than 40 federally-owned or leased buildings at 18 locations throughout the Washington D.C. Metropolitan area. The dispersed locations of the FDA have created both administrative and operational inefficiencies, including duplication of services. The fragmentation of and distance between FDA's metropolitan facilities, coupled with inadequate parking at several facilities, make travel between the various components inefficient. Also, many of the buildings occupied by FDA are old, in poor condition, and overcrowded.

The proposed action is needed to provide a consolidated facility for FDA. The consolidation would improve administrative and operational efficiency and would facilitate communication and interaction among staff. The proposed action would provide state-of-the-art laboratories and buildings for FDA. The facilities would provide flexibility for FDA to quickly and economically respond to changing priorities and programs and advances in science and technology through modular planning and systems flexibility. The new facilities would improve safety and reduce potential hazards through careful design of the laboratories, animal rooms, offices, and support spaces, including adequate processing and storage areas for wastes.

The new facilities would improve energy efficiency through heat recovery strategies, central power plant efficiencies, site placement and landscaping, and an efficient building envelop, form, and operation.

The consolidation of the FDA Headquarters at new state-of-the-art facilities would provide a quality workplace environment that would promote creativity and productivity and facilities communication among staff. A quality workplace environment would also improve FDA's opportunities to recruit and retain high quality employees.

II. Alternatives Considered

Description of the Proposed Action

The FDA Consolidation within Montgomery County would consist of constructing approximately 2,111,421 gross square feet (gsf) [190,028 square meters (m^2)] of offices, laboratories, and support facilities for approximately 5,947 employees and 500 visitors per day.

The Office of the Commissioner would have its own office building and each of the centers of FDA Headquarters would have its own research laboratory facilities, in separate structures, to support its regulatory mission. Shared support facilities proposed for the FDA consolidation are listed bellow:

- Agency Crisis Center.
- Auditorium.
- Broadcast Studio.
- Child-Care Center.
- Computer Center.
- Credit Union.
- Custodial Services.
- Employee Assistance.
- Food Services.
- Health Center.
- Library and Resource Center.
- Mailing Center.
- Maintenance Shop.
- Security/Guard Station.
- Shipping and Receiving.
- Training Center.
- Visitor Center.
- Warehouse.
- Waste Storage.

The laboratory portion of the facility would house research laboratories, laboratory support, and offices for the scientists. In order to provide efficient design, the laboratories would likely be medium-rise structures.

Naval Surface Warfare Center at White Oak

The Naval Surface Warfare Center at White Oak in Silver Spring, Maryland is the Selected Alternative for the proposed FDA consolidation. The site has been used by the Navy for research, development, testing, and evaluation since 1946. The Defense Base Closure and Realignment Act of 1995 mandated that the Navy close the White Oak base. The site encompasses 670 acres (268 hectares). The most concentrated area of development would be on the western portion of the site. The site layout would maximize the conservation of existing wetlands, stream valleys, forested areas, and steep slopes. The proposed facilities would include a compact layout, utilizing medium-rise buildings clustered on approximately 130 acres (52 hectares). A 40-acre remote parking lot is proposed, as well as a new access road to Cherry Hill Road.

Reuse of Existing White Oak Facilities

GSA prepared a detailed evaluation of the existing buildings and systems for their potential renovation/reuse in the new development scheme, or alternatively, their demolition. It is known that existing buildings contain hazardous materials, in the form of asbestos and lead paint, which would have to be removed or encapsulated before the buildings could be demolished or renovated. Findings indicated that it would not be cost effective to rehabilitate and reuse the majority of the existing buildings. Two buildings will be reused, Building 1 (the Main Administration Building and Building 100.

No-Action Alternative

Under the No-Action alternative, the FDA, through GSA, would continue to use its existing facilities of more than 40 government-owned and leased buildings at 18 locations in the Washington D.C. Metropolitan area. Additional facilities would be leased as the need arises.

The No-Action alternative would not allow for the improved efficiency resulting from consolidated of the administrative, management, and technical support functions of the Headquarters component of FDA. Higher administrative costs, due to duplication of services in multiple facilities, would continue. The existing facilities would not allow FDA to support the changing technology required to meet its regulatory mission. Expansion and renovation of existing FDA facilities or the leasing of additional facilities would be necessary to alleviate overcrowding. Under the No-Action alternative, the White Oak site studied in this EIS would not be used for the proposed FDA consolidation.

Alternative Sites Considered and Dismissed

Private Sector Site for Construction of New Facilities

The site selection process began with an announcement of March 21, 1994, of GSA's intention to acquire a site for the proposed FDA facilities in Montgomery County, Maryland. Early in the planning for the FDA consolidation, GSA, in consultation with FDA, established criteria for a site on which to construct the new facilities. These criteria were established to meet FDA requirements for office and laboratory space as well as for shared use support areas (see Section 2.2.3).

Nine sites were evaluated to determine compliance with the advertised criteria. These evaluations were based upon not only data received from the offerors, but also upon additional data obtained independently by the Site Selection Team from public agency mapping sources, aerial photo interpretations, physical site investigations, and environmental analyses. The Site Selection Team determined that five of the sites did not meet advertised requirements and one of the sites was withdrawn by the offeror. The sites studied in detail included the King Farm site, the Germantown site, and the Clarksburg Triangle site. These privately-owned sites were dismissed from consideration with the offer of the White Oak, federally-owned property.

Purchase or Lease Additional Facilities

Because the majority of existing FDA facilities cannot accommodate expansion, GSA and FDA also investigated either the leasing or purchasing of additional facilities. Public notices were published, however, none of the offers received could provide sufficient space to meet FDA's needs.

III. Environmental Impact Statement

An EIS was prepared to address the direct, indirect, and cumulative impacts of the Proposed Action, consolidation of FDA at White Oak, and No-Action alternatives. A Draft EIS was issued in March 1996 and the Final EIS was issued in April 1997. Impacts from the No-Action alternative were assessed based on the FDA remaining in currently-used facilities. The environmental issues addressed in the EIS were identified through early public involvement (scoping); through consultations with local, state, and federal agencies; and by the project team, which includes GSA, FDA, and contractor personnel who have had experience with projects of similar scope. For discussion and analysis, the issues are grouped into four categories: natural and physical environment; socioeconomic environment; cultural environment; and infrastructure and waste management. The EIS identified the Proposed Action alternative as the preferred alternative.

IV. Affected Environment

The White Oak site encompasses 670 acres (268 hectares), of which approximately 621 acres (248 hectares) lie within Montgomery County and approximately 49 acres (20 hectares) lie within Prince George's County Maryland. Primary access to the site is from New Hampshire Avenue, approximately 1.15 miles (1.84 kilometers) north of the Capital Beltway, Interstate 495, and 0.75 miles (1.22 kilometers) south of U.S. Highway 29, Colesville Road.

The White Oak site is roughly 10,000 feet (3,048 meters) east-west by 3,300 feet (1,006 meters) north-south. The property was acquired by the Navy in 1944 and utilized until recently for research, development, testing and evaluation of weapons systems. The developed areas of the site are separated by eight wooded stream courses, the largest of which is Paint Branch, bisecting the site from north to south. Existing development is grouped on the western, central and eastern thirds of the site, with the main concentration being on the western third. There are 212 existing structures on site.

V. Environmental Consequences of the Proposed Action and Mitigation Measures

The proposed FDA facilities would be constructed on a compact site layout, utilizing medium-rise buildings clustered on approximately 130 acres (52 hectares) of the western portion of the site. In addition to the 130-acre development area, 40 acres (16 hectares) are proposed for use as remote parking. The majority of the White Oak site, including all buildings, ground and infrastructure, outside the 170 acres (68 hectares) developed for FDA's consolidation, would remain as it exist when the Navy leaves. Future development of currently unoccupied area would be subject to separate environmental reviews. The proposed limits of disturbance for development of the centers, road, and support facilities were used to assess impact for the Proposed Action.

A summary of the impacts to the natural and physical environment, the social environment, the cultural environment, and infrastructure and waste management along with proposed mitigation measures is provided below.

Geology, Soils, and Topography

The construction of the FDA facility would interact with the existing geologic environment as the result of grading activities associated with construction which would alter the topography and soils of the site. Construction in areas with steep slopes will be avoided to the extent possible. Detailed subsurface engineering studies will be undertaken prior to design and construction to ensure that sound building practices are followed. Soil suitability will be determined and appropriate building foundation specifications will be developed. A detailed erosion and sedimentation plan will be developed prior to construction, following the state's ''Erosion and Sediment Control Guidelines for State and Federal Projects'' (Maryland Department of Environment (MDE), 1990), to ensure that appropriate soil erosion and sediment control measures are taken during construction of buildings, roadways, or utility lines to minimize soil loss due to erosion.

Water Resources

Of the ten stream systems on the White Oak site (Paint Branch, Westfarm Branch, and eight unnamed tributaries), five streams could be directly affected by the proposed action. Paint Branch and its tributaries on the White Oak site

are classified by Maryland Department of the Environment as Use II waters and carry the state's most stringent water quality standards. Stormwater management for the proposed development will be designed to meet MDE requirements. Three stormwater management detention (dry) basins and an underground stormwater management facility will provide quantitative control for the main FDA site. Four stormwater management (dry) basins will provide quantitative control for the remote parking area, and another detention (dry) basin will provide quantitative control for the new entrance road connecting existing Dahlgren Road to Cherry Hill Road.

Qualitative stormwater management will be provided by bioretention areas and, if feasible, infiltration trenches throughout the site. Bioretention areas are proposed for many of the islands in the parking lots to treat the runoff from the parking lots. Infiltration trenches will provide qualitative control for the buildings and roads.

Several non-structural best management practices (BMPs) will be incorporated into the design of the project to further mitigate potential water quality concerns. Open section roads (i.e., no curb and gutter) with grass swales and vegetated islands will be used on the site to filter pollutants and reduce thermal impacts. Stream buffers will be maintained to protect stream water quality in accordance with Maryland-National Capital Park and Planning Commission (M-NCPPC) guidelines.

Mitigation measures will be incorporated into the construction to minimize the risk of contaminants entering groundwater. Proper precautions will be taken to prevent transport of contaminants during construction and excavation activities. The amount of mowed lawns will be minimized and integrated pest management techniques will be used during landscaping and turf maintenance practices to reduce the potential for altering groundwater quality.

Wetlands

Based on the proposed limits of disturbance, there will be no direct impacts to vegetated wetlands. Incidental impacts (<50 square feet each) may be necessary for construction of seven stormwater outfalls. Authorizations from the Corps of Engineers and Maryland Department of Environment will be obtained prior to construction of these outfalls, if impacts to the stream channels become necessary.

The increase in impervious surfaces could increase erosion and sedimentation which could indirectly impact wetlands and streams. The vegetated wetland on the site could experience scouring, loss of sediments, and loss of herbaceous vegetation. Increased flooding could expand the wetland boundary in some areas. Increased erosion due to scouring would increase sediment load in the tributaries, which could increase sedimentation and facilitate the conversion of wetlands to uplands. Effective stormwater management and erosion control will minimize indirect impacts. The proposed buffer zones throughout the site will also minimize impacts. There would be some cumulative impacts to wetlands on the White Oak site due to on- and off-site developments. Increases in flooding, erosion, and sediment loads are anticipated to affect existing wetlands.

Vegetation and Wildlife

Based on the proposed limits of disturbance for the proposed action, 35 acres (14 hectares) of mowed lawn and 32 acres (13 hectares) of deciduous forest land would be directly affected. Other areas affected by the proposed construction are previously developed areas which provide minimal wildlife habitat. The majority of proposed forest land impacts are along the edge of the existing forest land and near the existing development. All possible measures will be taken to avoid impacts to forest land. Impacts from human disturbance will be minimal since the areas being developed for the FDA facilities are presently developed.

The White Oak site is surrounded by development and is one of only a few areas of substantial plant and wildlife habitat remaining in the vicinity. Development of this site for the FDA facility and would further decrease the limited amount of plant and wildlife habitat available in this area. Mitigation measures for effects to vegetation and wildlife primarily consist of maintaining large areas of forest, especially along streams, to provide wildlife habitat and movement corridors. Sufficient amounts of forest will be retained under this alternative to comply with county and state forest conservation regulations. Specifically, there will be 25 acres (10 hectares) of forest land remaining on the 170-acre development site. This forest land is contiguous and will continue to buffer streams located on the project site.

Threatened, Endangered, and Sensitive Species

No known direct, indirect, or cumulative impacts are anticipated to any federally-listed or state-listed endangered or threatened species or those proposed for listing with proposed construction on the White Oak site.

Contamination Assessment

Of the seven identified hazardous waste sites, only one (Site #11, Industrial Wastewater Disposal Area 100) is located within the proposed project area. Groundwater will require a remediation program to achieve clean-up objectives. However, the timetable for implementation of the remediation is uncertain. The proposed remediation methodologies will involve extraction and on-site treatment of groundwater. The Navy is responsible for on-going remediation of all of the identified sites, including Site #11. Site investigation and remediation activities have been and will continue to be coordinated by the BRAC clean-up team which is comprised of the Navy (NSWC Detachment White Oak), the MDE, and the U.S. EPA Region III. These activities are communicated to the Restoration Advisory Board which is made up of local government and community members.

Future locations of extraction wells and treatment facilities for the proposed groundwater remediation have not yet been established. The design for the construction of the proposed action will be coordinated with the Navy's plans for design and siting of extraction wells and on-site treatment facilities for the remediation systems.

Contaminated soils are not expected to affect construction. If soil contamination is identified, a permit for soil remediation is required from the MDE Air and Radiation Management Division. In addition, arrangements for the testing, containment and treatment of groundwater will be required if dewatering operations are needed for construction excavations.

Asbestos has been identified in many of the buildings which are designated for demolition or renovation within the proposed action project area. As demolition and renovation activities could cause the release of asbestos to the environment, all friable or potentially friable asbestos will be removed prior to building alterations in accordance with the National Emissions Standard for Hazardous Air Pollutants (NESHAPS) and Maryland Department of the Environment Air Management regulations. Asbestos emissions to the environment from each NESHAPS

source will be minimized through engineering controls and appropriate work practices. All asbestos and asbestos-contaminated debris will be disposed off-site at a permitted disposal facility.

Lead paint is likely to be present in buildings designated for demolition or renovation within the proposed action area. Demolition of buildings must be performed in accordance with MDE regulations (COMAR 26.11.06.03D) requiring that reasonable precaution must be taken to prevent particulate matter, such as fugitive dust from becoming airborne. Demolition and construction debris containing lead-based paint wastes will be segregated and tested to determine lead concentrations and appropriate disposal in accordance with RCRA guidelines.

PCB wastes are not stored within the proposed action area. However, fluorescent light ballasts containing PCBs are likely to be present in many of the buildings within the proposed action area. PCB-containing light ballasts and any remaining PCB-containing transformer equipment will be removed prior to building demolition and disposed at off-site TSCA-approved facilities.

According to the White Oak underground storage tank (UST) inventory, 11 petroleum UST systems are active in the proposed action area. The proposed action will require the removal or closure of all UST systems which are taken out of service. Also, removal of four fuel oil aboveground storage tanks (ASTs) from locations within the proposed action project area will be required by local building codes.

It is anticipated that abatement or closure activities related to remaining asbestos, lead paint, PCBs, and USTs will be carried out prior to or during construction, as appropriate, by demolition or abatement contractors. Project specifications for these actions will require proper off-site disposal of wastes, including hazardous wastes and special solid wastes, at appropriate disposal facilities.

Decommissioning surveys will be completed by the NSWC Health Physics Office in compliance with requirements for termination of permits for radioactive sources under the Navy's Nuclear Regulatory Commission license. Based on the findings of the scoping survey, related to residual Radium 226 contamination, further study will be required to determine how much remediation is necessary and the associated costs. Appropriate remediation will then be conducted by the Navy.

Air Quality

The results of the air quality analysis for both mobile and stationary emission sources indicate that the future scenario with FDA would not significantly affect the ambient air quality in the region. The mobile and stationary sources of the proposed action will not significantly contribute to any violations of the National Ambient Air Quality Standards (NAAQS) for ozone or its precursors such as nitrous oxide (NO_X) or volatile organic compounds (VOCs). The stationary sources at NSWC, including the proposed new boilers, will not impact the attainment of a 15 percent reduction in VOCs, as outlined in the Maryland State Implementation Plan. Upon comparison of the emissions from the automobile exhaust, it was determined that the carbon monoxide, NO_x, and particulate matter emissions were well below the de minimis levels. Therefore, emissions generated from the proposed action are exempt from further analysis as defined in the General Conformity Rule under the Clean Air Act.

The White Oak site is located in an ozone serious nonattainment area, however, the area is in attainment for carbon monoxide. The requirements will include review of criteria pollutants, if any, to be generated from the proposed sources. The permits will be reviewed and approved by the Maryland Air and Radiation Administration. The proposed boilers will require permits from the MDE. During the permitting process for the proposed boilers, the impacts on the ambient air quality will be determined. The air quality model in this case will also determine the minimum stack heights required to effectively disperse the emissions from the proposed boilers.

Federal mandates to reduce emissions include controls for refueling operations, inspection, and maintenance of vehicle emission systems. States and local governments have regulated specific operations and participated in the reformulated gasoline program. Car pooling, employee commute options, mass transit improvements, high occupancy vehicle (HOV) lanes are some of the Transportation Control Measures (TCMs), FDA, since it is a government agency, will be required to implement these measures to reduce emissions.

Noise

Direct, short-term noise impacts would result from construction activities during development of the FDA facility. There would be no direct impacts to area noise levels due to operations of the proposed facility. Noise levels should be similar or slightly lower than those currently at the side due to cessation of current Navy tests involving explosives. Indirect roadway traffic noise will have virtually no impact on noise levels at the identified sensitive receptors.

Noise from construction equipment can be reduced by the construction of temporary noise barriers by avoiding times of day or days of the week when noise exposures will be more objectionable (for example, weekend mornings). The lowest amplitude back-up alarms sufficient for ''audibility'' to meet safety requirements will be used. Equipment will be operated with manufacturer noise control features in working order.

Facilities on the FDA site that would generate noise will be located as far from noise-sensitive receptors as possible. Site topography and layout will be used to provide shielding by hillsides or other structures. For indoor noise sources, buildings will be specified to provide suitable sound attenuation and the equipment operating spaces will be treated to minimize interior sound buildup. Internal combustion engine exhausts and fans drawing from or discharging to the atmosphere will be fitted with silencers. Where possible, installed equipment will be specified to minimize noise generation (for example, fan selection for low noise). Noisy facility operations will be scheduled for times that are least noise-sensitive.

Land Use

The existing zoning for the White Oak site is for residential development; however, the proposed land use is compatible with the existing land use and impact will be minimal.

Population

Because no residential uses are contemplated as part of the proposed FDA consolidation and since the proposed action would result primarily in a consolidation of existing offices and laboratories, implementation of the proposed action on this site should not result in a significant change in county-wide population characteristics or projections.

Housing

Additional housing demand may be generated in the White Oak area due to the relocation of FDA facilities.

Economy, Employment, and Income

The proposed action at White Oak will have positive short-term impacts on

the regional economy. The consolidation of the FDA facilities will not significantly affect the economy of the National Capital Region because neither employment nor procurement is expected to change. However, the White Oak Master Plan area of Montgomery County will benefit from payroll spending by FDA employees at local businesses and income of FDA employees choosing to relocate their place of residence.

Environmental Justice in Minority and Low-Income Populations

The proposed action will not disproportionately impact minority or low-income populations in the White Oak area. Construction of the proposed project will not hinder the continued economic growth or alter the character of the area.

Taxes and Revenue

Taxes and government revenues are not expected to be significantly affected by the proposed action.

Community Facilities and Services

Construction of the FDA facility at White Oak would not result in any direct impacts to existing community facilities and services.

Aesthetics and Visual Resources

The project facilities would permanently affect the existing appearance of the landscape within the project site. Special care will be given to the architectural character of the new buildings so that they are compatible with the surrounding area. Landscaping measures will help mitigate the visual impacts of the proposed facilities from surrounding properties.

Public Health and Safety

Details of the safety, prevention and mitigation procedures that will be employed to protect public health at the FDA facility will be provided by the FDA in a Safety Analysis Report when definitive plans for the site are in place. Extensive prevention and mitigation procedures are practiced by the FDA to prevent occupational hazards and migration of contaminants off site via transport by workers or any other pathway.

These regulations will contain hazardous or infectious substances in a controlled environment, and will prevent exposure of the general public to any agents that may adversely affect human health.

Historic Properties

The Maryland Historic Trust State Historic Sites Inventory Form concluded that the Haval Ordnance Laboratory (NOL) historic district is significant under National Register Criterion A, B, and C, and possesses exceptional significance under National Register Criteria Consideration G, at the national level for its pivotal role as a first-generation Cold-War-period defense weapons research facility.

If the Maryland State Historic Preservation Officer (SHPO) concurs with this finding, then the proposed action will have an Adverse Effect on the Naval Ordnance Laboratory historic district as defined in 36 CFR 800.9 Approximately 70 Contributing historic district resources and 46 Non-contributing resources will be demolished within the 100 Area, and approximately 4 Contributing resources will be taken within the 200 Area. In the event of a finding of Adverse Effect, GSA will follow the requirements found in 36 CFR 800.5e (When the effect is adverse). In compliance with these requirements, GSA will: notify the Advisory Council on Historic Preservation (Council); consult with the SHPO and involve interested persons as participating consulting parties; document the finding of Adverse Effect according to 36 CFR 800.8; inform the public of the finding of Adverse Effect; and execute a Memorandum of Agreement (MOA) with the SHPO specifying how the effects will be taken into account. The MOA is expected to provide an agreement on ways in which GSA will minimize or mitigate these adverse impacts.

Archeological Resources

The Phase I archaeological investigation revealed no prehistoric or historic archaeological remains within the areas of potential effects for the proposed construction activities. Concurrence from the State Historic Preservation Office (Maryland Historical Trust) is pending.

Utilities

Adequate water supply can be provided to the White Oak site from existing service connections. Improvements to the existing sewer system will be required, and the Paint Branch Trunk sewer will likely require relief in the next 5 to 10 years. GSA and FDA will prepare a water conservation plan and policy, install water saving fixtures, and design landscape plans for minimum water usage.

Adequate electrical power and natural gas be supplied to the White Oak site from existing lines. Energy conservation measures will be incorporated into building design. Updated on-site communication systems will be required.

Transportation and Parking

Access to the White Oak site is provided via MD 650 and Cherry Hill Road. The improvements proposed for the main entrance to the site from MD 650 include:

- A single left-turn lane for southbound MD 650 into the site.
- A right-turn lane for northbound MD 650 into the site.
- A right-turn lane from the site to northbound MD 650.
- Three left-turn lanes, including a shared through lane, from the site to southbound MD 650.

A new full entrance is proposed from Cherry Hill Road adjacent to the northeast corner of the property. This entrance will be at a new location close to the Montgomery/Prince George's county line and will include:

- A left-and right-turn lane exiting the site to Cherry Hill Road.
- A right-turn lane for eastbound Cherry Hill Road into the site.
- A left-turn lane for westbound Cherry Hill Road into the site.

Intersection capacity analyses were performed for the AM and PM peak hours at study intersections within the White Oak study area for the projected build-out year of 2005. The results of he analyses indicated that the majority of intersections would not operate at acceptable levels of service with or without the proposed FDA facility.

A Transportation Management Plan (TMP) was developed to aid in the mitigation of traffic impacts from FDA to the extent possible. Transportation management strategies proposed include: provision of employee transportation coordinator; ride-matching service; preferential parking for carpools and vanpools; guaranteed ride home program; flexitime program; flecxiplace program; and bus service to/from Metrorail. In addition to these strategies, the following is a list of roadway improvements that would be necessary to mitigate traffic impacts if the FDA facility is located at the White Oak site.

- *MD 650 at Michelson Road.* These improvements include the addition of a right-turn lane along northbound MD 650 into the site. The total length of the lane, including taper, would be 350 feed (107 meters). the intersection improvements for MD 650 at Michelson Road mitigate the traffic impacts at the intersection in the PM but not the AM peak hour.
- *MD 650 and Schindler Drive/ Mahan Drive (Main Gate.)* These improvements include the addition of a

northbound channelized right-turn lane into the site; and extending the southbound left-turn lane on MD 650. The total length of the northbound right-turn lane, including taper, is 350 feet (107 meters) and the southbound left-turn lane is 400 feet (120 meters). These improvements also include the addition of two additional westbound lanes out of the site. The improvements to the intersection do not mitigate the traffic impact at the intersection in the PM peak hour.

• *MD 650 at Powder Mill Road.* These improvements include the widening of southbound MD 650 to accommodate the turning movements of three left-turn lanes from the east leg of Powder Mill Road. Widening will occur north and south of the intersection to transition the southbound lanes from a lane width of 12 feet to a width of 14 feet. The east leg of Powder Mill road will be restriped to provide double left-turn lanes, a thru/left-turn lane, and a right-turn lane and the traffic signal will be modified.

• *MD 650 at Lockwood Drive.* These improvements involve reconfiguring the intersection to provide an additional left-turn lane on Lockwood Drive's east and west approach to MD 650.

• *Cherry Hill Road at Broadbirch Dr./Calverton Blvd.* These improvements include the addition of a right-turn lane on northbound Cherry Hill Road. The total length of the northbound right-turn lane, including taper, is 350 feet (107 meters).

• *Cherry Hill Road to Powder Mill Road.* These improvements include the provision of separate north-and southbound left-turn lanes. The total length for both the north- and southbound lanes is 150 feet (46 meters).

• U.S. 29 at Lockwood Drive. These improvements involve widening the driveway from the Manor Care property to provide an additional left-turn lane.

The widening of Cherry Hill Road to four lanes from the Montgomery County line to Autoville Drive in College Park is included in the Prince George's County FY 1996–2001 Capital Improvement Program. However, this project is not presently funded. The Subregion 1 Master Plan identifies Powder Mill Road as an arterial highway which will be ultimately built as a four to six-lane divided roadway between the Montgomery County line and U.S. 1 in Beltsville. Construction of these improvements to Cherry Hill Road and Powder Mill Road will improve access to the FDA site and more than mitigate existing and projected levels of service at the intersection of Cherry Hill Road and Powder Mill Road. In addition, access to the FDA site from I–95 will be greatly enhanced.

The following intersections are not mitigated:

• *U.S. 29 at Cherry Hill Road/Randolph Road.*

• *MD 650 at Lockwood Drive.*

• *MD 650 at Elton Road.*

FDA traffic will have a relatively small impact on those intersections at which mitigation was not recommended. Mitigation was not recommended at these intersections due to physical constraints such as existing structures and inadequate rights of way. In addition, these intersections were projected to fail under future conditions without the presence of FDA traffic.

To improve traffic flow in the area surrounding the site, implementation of regional solutions proposed in the Montgomery and Prince George's Counties Master Plans will be necessary. These improvements could include construction of grade separated interchanges on U.S. 29, widening Cherry Hill Road and Powder Mill Road, and construction of a Transitway on U.S. 29. Additional regional solutions would include enhanced bus and feeder service to Metrorail and MARC train stations at Silver Spring and Greenbelt.

Waste Management

Waste types to be generated by FDA include: general waste (including recyclable waste), medical waste, hazardous waste, low-level radioactive waste, and mixed waste. All wastes will be properly handled, stored, and removed from the site in accordance with appropriate state and federal regulations.

VI. Areas of Controversy

The following areas of controversy concerning the proposed action have been identified from public and agency comments: the effects of the FDA facility on area traffic: the availability of adequate public transportation; existing contamination on the White Oak site; effects of the new facility on water quality; and historic preservation. The actions taken to resolve these areas of controversy are presented below.

Traffic

A traffic analysis was completed comparing the projected future traffic conditions for area intersections without FDA to those conditions projected for the proposed action. The results of the traffic analysis indicated that the majority of intersections would not operate at acceptable levels of service under either future scenario. To mitigate the impacts to area traffic from the FDA facility, off-site road improvements have been proposed as well as the implementation of transportation demand management strategies to reduce the number of vehicles accessing the White Oak site as detailed in Section V of this report.

Public Transportation

The Silver Spring, Forest Glen, and Wheaton stations along the Metrorail Red Line are located approximately three miles from the White Oak site, and the Greenbelt and College Park stations of the Metrorail Green Line are located approximately four miles from the White Oak site. The MARC train also services stations in Silver Spring, Greenbelt, and College Park. There are several Metrobus on Ride On bus routes that service the White Oak area; however, the current services schedules are infrequent and some existing bus stops are not conveniently located.

A component of the Transportation Management Plan is to provide bus service between the FDA facility and the Silver Spring Metro station. GSA will discuss bus service options with Montgomery County.

Existing Contaminated Areas

The Navy is responsible for on-going remediation of all of the identified contaminated sites. Remediation activities will continue to be coordinated by the BRAC clean-up team which is comprised of the Navy (NSWC Detachment White Oak), the MDE, and the U.S. EPA Region III. These activities are communicated to the Restoration Advisory Board which is made up of local government and community members.

Water Quality Impacts

Paint Branch and its tributaries on the White Oak site are classified by Maryland Department of the Environment as Use III waters and carry the state's most stringent water quality standards. Mitigation measures will include stream valley buffers, the utilization of best management practices for maximum pollutant removal efficiency, and state-of-the-art stormwater management techniques. Several stormwater management facilities are located within the stream valley buffers; however, they are within areas already disturbed.

Historic Preservation

If the Maryland State Historic Preservation Officer concurs with the designation of the Naval Ordinance Laboratory as a historic district, then the proposed action will have an Adverse Effect. In the event of a finding of Adverse Effect, GSA will follow the

requirements found in 36 CFR 800.5e (When the effect is adverse). In compliance with these requirements, GSA will: notify the Advisory Council on Historic Preservation (Council); consult with the SHPO and involve interested persons as participating consulting parties; document the finding of Adverse Effect according to 36 CFR 800.8; inform the public of the finding of Adverse Effect; and execute a Memorandum of Agreement (MOA) with the SHPO specifying how the effects will be taken into account. The MOA is expected to provide an agreement on ways in which GSA will minimize or mitigate these adverse impacts.

VII. Environmental Planning Process

The Scoping process including the publication of the Notice of Intent in the **Federal Register** on October 25, 1995 followed by a series of scoping meetings held to identify issues of concern to the community and government agencies. A public scoping meeting was held on November 7, 1995 at the Naval Surface Warfare Center in White Oak, and an agency scoping meeting was held on November 21, 1995.

The National Environmental Policy Act of 1969 (NEPA), as amended, requires that the public and affected agencies be provided the opportunity to review and comment on the Environmental Impact Statement (EIS). A 75-day review period of the draft EIS, commenced on March 15, 1996 and concluded on May 31, 1996 in order to comply with these requirements. During this period, a public hearing was held on April 16, 1996 at the Naval Surface Warfare Center at the site of the Proposed Action to receive comments from the public.

A Final Environmental Impact Statement was prepared to address comments made on the Draft EIS, and was filed with the U.S. EPA on May 2, 1997. The Final EIS was also made available to the public and affected agencies for an additional 30-day review period (May 2, 1997 through June 2, 1997). Comments on the Final EIS were taken into consideration by GSA and FDA in the preparation of this Record of Decision.

GSA believes that there are no other outstanding environmental issues to be resolved with respect to the proposed construction on the White Oak site with approximately 2,111,421 gsf of offices laboratories and support facilities, and 4,500 parking spaces for approximately 5,947 employees and 500 visitors per day. The mitigation program for the development of the White Oak site will be developed during the design phase. Mitigation measures will be developed from those recommended in the Final EIS or other state-of-the-art practices. Questions regarding the EIS prepared for this action should be directed to Mr. Jag Bhargava, P.E., Development Director, General Services Administration National Capital Region, Room 2120, 7th and D Streets, SW, Washington, DC 20407, telephone 202–708–6570.

Dated: June 26, 1997.

Nelson Alcalde,

Regional Administrator, General Services Administration.

[FR Doc. 97–18135 Filed 7–10–97; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0283]

Akzo Nobel Chemical Co.; Filing of a Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Akzo Nobel Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of monoester of α-hydro-ω-hydroxy-poly(oxyethylene) poly(oxypropylene) poly(oxyethylene) (15 mole minimum) blocked copolymer derived from low erucic acid rapeseed oil as a component of defoaming agents used in the washing of sugar beets for processing into sugar.

DATES: Written comments on the petitioner's environmental assessment by August 11, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3167.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6A4494) has been filed by Akzo Nobel Chemical Co., 5 Livingstone Ave., Dobbs Ferry, NY 10522–3407. The petition proposes to amend the food additive regulations in § 173.340 *Defoaming agents* (21 CFR 173.340) to provide for the safe use of monoester of α-hydro-ω-hydroxy-poly (oxyethylene) poly(oxypropylene) poly(oxyethylene) blocked copolymer derived from low erucic acid rapeseed oil as a component of defoaming agents used in the washing of sugar beets for processing into sugar.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 11, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 13, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–18126 Filed 7–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0284]

Eastman Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Eastman Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,4-cyclohexanedimethanol as a polyhydric alcohol for use in polyester resins intended for coatings in contact with food.

DATES: Written comments on the petitioner's environmental assessment by August 11, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4547) has been filed by the Eastman Chemical Co., P.O. Box 1994, Kingsport, TN 37662. The petition proposes to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of 1,4-cyclohexanedimethanol as a polyhydric alcohol for use in polyester resins intended for coatings in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 11, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 24, 1997.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–18127 Filed 7–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96E–0386]

Determination of Regulatory Review Period for Purposes of Patent Extension; ALLEGRA™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ALLEGRA™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ALLEGRA™ (fexofenadine hydrochloride). ALLEGRA™ is indicated for the relief of symptoms associated with seasonal allergic rhinitis in adults and children 12 years of age and older. Symptoms treated effectively include sneezing, rhinorrhea, itchy nose/palate/throat, itchy/watery/red eyes. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ALLEGRA™ (U.S. Patent No. 4,254,129) from Hoechst Marion Roussel, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 7, 1997, FDA advised the Patent and Trademark office that this human drug product had undergone a regulatory review period and that the approval of ALLEGRA™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ALLEGRA™ is 996 days. Of this time, 635 days occurred during the testing phase of the regulatory review period, while 361 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: November 4, 1993.

FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on November 4, 1993.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: July 31, 1995. FDA has verified the applicant's claim that the new drug application (NDA) for ALLEGRA™ (NDA 20–625) was initially submitted on July 31, 1995.

3. *The date the application was approved*: July 25, 1996. FDA has verified the applicant's claim that NDA 20–625 was approved on July 25, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 677 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 9, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 7, 1998, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 30, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–18125 Filed 7–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Radiological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on August 18, 1997, 9:30 a.m. to 4:30 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: John C. Monahan, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12526. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss general issues and make recommendations concerning an original premarket approval application for an ultrasound bone density device.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 11, 1997. Oral presentations from the public will be scheduled between approximately 9:45 a.m. and 10:45 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 11, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 7, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–18213 Filed 7–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Officer on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Area Health Education Centers (AHEC) and Health Education Training Centers (HETC): Managed Care Inventory Project—New—Section 746(a) of the Public Health Service Act authorizes Federal assistance to schools of medicine (allopathic and osteopathic) which have cooperative arrangements with one or more public or nonprofit private area health education centers (AHECs) for the planning, development and operation of area health education center programs. Section 746(f) of the PHS Act authorizes Federal assistance to schools of allopathic and osteopathic medicine, or parent institutions on behalf of such schools, or a consortium of such schools to plan, develop, establish, maintain or operate HETCs. The support is designed to improve the supply, distribution, quality, and efficiency of (a) personnel providing health services in the State of Florida or along the border between the United States and Mexico and (b) personnel providing, in other urban and rural areas of the U.S., health services to any population group, including Hispanic individuals and recent refugees, that have demonstrated serious health care needs. Program support is also used to encourage health promotion and disease prevention through public education.

A telephone survey is proposed of federally funded AHEC and HETC programs to determine the variety and

extent of managed care training activities that are ongoing or planned in the near future. The survey results will be used to formulate recommendations for managed care training, and to help guide the AHEC/HETCs in planning and directing training programs and clinical experience in managed care. The burden estimates are as follows:

Type of center	Number of respondents	Responses per respondent	Hours per response	Total burden hours
AHECs	36	1	2	72
HETCs	10	1	2	20
TOTAL	46	1	2	92

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 7, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–18212 Filed 7–10–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health Proposed collection; Comment Request; Gila River Indian Community Demographic Information

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Gila River Indian Community Demographic Information. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This study will identify current residents of the Gila River Indian Community of Arizona, including place of residence, name and date of birth of each individual, familial relationships, degree of Indian blood and tribal heritage. The findings will facilitate current research into the causes of diabetes mellitus in Indians of the southwestern United States, particularly with respect to the genetic determinants of the disease. *Frequency of Response:* One-time collection. *Affected Public:* Individuals or households. *Type of Respondents:* Individuals, Parents, or Guardians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 11,500; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .25; and *Estimated Total Annual Burden Hours Requested:* 958. The annualized cost to respondents is estimated at: $9,583. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, 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) 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.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Richard M. Bryan, Administrative Officer, Phoenix Epidemiology & Clinical Research Branch, DIR, NIDDK, NIH, Building 1, 4212 North Sixteenth Street, Phoenix, AZ 85014, or call non-toll-free number (602) 200–5221 or E-mail your request, including your address to: mbryan@phx.niddk.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received by September 9, 1997.

Dated: July 2, 1997.

Clifford Moss, Jr.,

Executive Officer, NIDDK.

[FR Doc. 97–18150 Filed 7–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, September 4–5, 1997, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland.

The Council meeting will be open to the public on September 4 from 8:30 a.m. to approximately 12:00 p.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., section 10(d) of Public Law 92–463, the meeting will be closed to the public from approximately 1:00 p.m. on September 4 to adjournment on September 5, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge

Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18147 Filed 7–10–97;8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review a contract proposal.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: July 14, 1997 (Telephone conference).

Time: 2:00 p.m.

Place of Meeting: Willco Building, 6000 Executive Blvd., Rockville, MD 20852.

Contact Person: Sean O'Rourke, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: July 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18142 Filed 7–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Expanded International Research on Emerging and Re-emerging Diseases (Telephone Conference Call).

Date: July 24, 1997.

Time: 10:30 a.m. to Adjournment.

Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 1A–01, Rockville, MD 20892, (301) 496–2550.

Contact Person: Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: July 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18145 Filed 7–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meeting:

Purpose/Agenda: To evaluate and review contract proposals.

Name of Committee: NIDA Special Emphasis Panel (Contract Review).

Date: July 22, 1997.

Time: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: July 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18146 Filed 7–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

The meeting will be open to the public to provide concept review of proposed contract solicitations.

Individuals who plan to attend and need special assistance, such a sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of SEP: Development and Implementation of a Plan to Assess the Neurodevelopment of Infants and Children Exposed to Drug *in utero* (TELECONFERENCE).

Date: July 29, 1997.

Time: 2:00 p.m. (est)–adjournment.

Place: 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20852.

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

Purpose: To provide concept review of proposed contract solicitations.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health)

Dated: July 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18148 Filed 7–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 11, 1997.

Time: 1:30 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Lawrence E. Chaitkin, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 14, 1997.

Time: 3:30 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Lawrence E. Chaitkin, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 17, 1997.

Time: 11 a.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Lawrence E. Chaitkin, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 21, 1997.

Time: 8 a.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 25, 1997.

Time: 8 a.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 28, 1997.

Time: 8:30 a.m.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Lawrence E. Chaitkin, Parklawm, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 30, 1997.

Time: 8 a.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in sections 552b(b)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meeting timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18149 Filed 7–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: July 22–23, 1997.

Time: 7:00 p.m.

Place: Dupont Plaza Hotel, Washington, DC.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1265.

Name of SEP: Biological and Physiological Sciences.

Date: July 24, 1997.

Time: 2:30 p.m.

Place: NIH, Rockledge 2, Room 4178, Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 29, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4178, Telephone Conference.

Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 30, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4178, Telephone Conference.

Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Chemistry and Related Sciences.

Date: August 7, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4168, Telephone Conference.

Contact Person: Dr. John Bowers, Scientific Review Administrator 6701 Rockledge Drive, Room 4168, Bethesda, Maryland 20892, (301) 435–1725.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Chemistry and Related Sciences.

Date: July 30, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4168, Telephone Conference.

Contact Person: Dr. John Bowers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4168, Bethesda, Maryland 20892, (301) 435–1725.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as

patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: July 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18143 Filed 7–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments; Substances, Mixtures and Exposure Circumstances Proposed for Listing in or Delisting (Removing) From the Report on Carcinogens, Ninth Edition

Background

The National Toxicology Program (NTP) announces its intent to review additional substances, mixtures and exposure circumstances for possible listing in or delisting (removing) from the Report on Carcinogens, Ninth Edition. This Report (previously known as the Annual Report on Carcinogens) is a Congressionally-mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (HHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, (HHS), shall publish a report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

The review of the substances, mixtures or exposure circumstances for listing in or delisting from the Ninth Report will involve a multiphased, peer review process involving two Federal scientific review groups and one non-government, scientific peer review body (a subcommittee of the NTP Board of Scientific Counselors) which will meet in an open, public meeting that will provide for public comments. All available data relevant to the criteria for inclusion or removal of candidate agents, substances, mixtures or exposure circumstances in the Report will be evaluated by the three scientific review committees. The criteria to be used in the review process and the detailed description of the review procedures, including the steps in the formal review process, can be obtained by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, MD WC–05, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–2242, email: jameson@niehs.nih.gov.

Public Comment Requested

The NTP will be considering 14 substances, mixtures and exposure circumstances in 1997, for either listing or delisting (removing) from, or changing the current listing from reasonably anticipated to be a human carcinogen to the known human carcinogen category in the Ninth Report. These substances, mixtures or exposure circumstances are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and pending review action.

The NTP solicits public input on these 14 substances, mixtures and exposure circumstances and asks for relevant information anyone may have on carcinogenesis from completed, ongoing, or planned studies by others, as well as current production data, use patterns, and human exposure information for any of the substances, mixtures or exposure circumstances listed in this announcement. Comments concerning the review of these substances, mixtures or exposure circumstances for listing in or delisting from the Ninth Report will be accepted for a period of 45 days from the date of the publication of this announcement in the **Federal Register**. Comments or questions should be directed to Dr. C. W. Jameson at the address listed above.

Public Nominations for Delisting or Listing Encouraged

The NTP solicits and encourages the broadest participation from interested individuals or parties in nominating agents, substances, or mixtures for listing in or delisting from the ninth and future Reports on Carcinogens. Petitions should contain a rationale for listing or delisting. Appropriate background information and relevant data (e.g. Journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.) which support a petition should be provided or referenced when possible.

A detailed description of listing/delisting procedures, including the steps in the formal review process, can be obtained by contacting Dr. Jameson at the address listed above.

Attachment:

Kenneth Olden,

Director, National Toxicology Program.

Summary for Substances, Mixtures or Exposure Circumstances Nominated for Consideration of Listing in or Delisting From the Ninth Report on Carcinogens

Substance or exposure circumstance/CAS No.	Primary uses or exposures	To be reviewed for
BENZIDINE-BASED DYES AS A CLASS.	Benzidine-based dyes are used primarily for dyeing textiles, paper and leather products. More than 250 benzidine-based dyes have been reported by the Society of Dyers and Colorists.	Listing in the 9th Report.
1,3-BUTADIENE/106–99–0	Used primarily as a chemical intermediate and polymer component in the manufacture of synthetic rubber.	Change current listing to the Known to be a Human Carcinogen category.
CADMIUM and CADMIUM COMPOUNDS/7440–43–9.	Used in batteries, coating and plating, plastic and synthetic products and in alloys.	Change current listing to the Known to be a Human Carcinogen category.
CHLOROPRENE/126–99–8	Used as a monomer for neoprene elastomers, industrial rubber products, and as a component of adhesives in food packaging.	Listing in the 9th Report.

Substance or exposure circumstance/CAS No.	Primary uses or exposures	To be reviewed for
PHENOLPHTHALEIN/77–09–8	Used as a laboratory reagent and acid-base indicator and as a cathartic drug in over-the-counter laxative preparations.	Listing in the 9th Report.
SACCHARIN/218–44–9	Used primarily as a nonnutritive sweetening agent	Delisting from the Report on Carcinogens.
SMOKELESS TOBACCO	Oral use of smokeless tobacco products	Listing in the 9th Report.
SULFURIC ACID MIST/7664–93–9	Sulfuric acid is the one of the most widely used of all industrial chemicals. Used in the manufacture of fertilizers, rayon and other fibers, pigments and colors, explosives, plastics, coal-tar products such as dyes and drugs, storage batteries, synthetic detergents, natural and synthetic rubber, pulp and paper, cellophane and catalysts. It is also used in petroleum refining, pickling iron, steel and other metals and in ore concentration.	Listing in the 9th Report.
TAMOXIFEN/10540–29–1	Used as an anti-estrogen drug and in the palliative treatment of.	
2,3,7,8-TETRACHLORODIBENZO-P-DIOXIN (TCDD)/1746–01–6	breast cancer Not used commercially, used only as a research chemical	Listing in the 9th Report. Change current listing to the Known to be a Human Carcinogen category.
TETRAFLUOROETHYLENE/116–14–3.	Used in the production of polytetrafluoroethylene (Teflon) and other polymers. Has also been used as a propellant for food product aerosols.	Listing in the 9th Report.
TOBACCO SMOKE	Inhalation of tobacco smoke	Listing in the 9th Report.
TRICHLOROETHYLENE/79–01–6	Used as an industrial solvent for vapor degreasing and cold cleaning of fabricated metal parts. Has also been used as a carrier solvent for the active ingredients of insecticides and fungicides, as a solvent for waxes, fats, resins, and oils, as an anesthetic for medical and dental use, and as an extractant for spice oleoresins and for caffeine from coffee.	Listing in the 9th Report.
UV RADIATION	Solar and artificial sources of ultraviolet radiation	Listing in the 9th Report.

[FR Doc. 97–18141 Filed 7–10–97; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Supplement to the Cooperative Agreement With the National Association of State Alcohol and Drug Abuse Directors, Inc.

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of planned single-source supplemental award.

SUMMARY: SAMHSA plans to supplement an ongoing cooperative agreement between SAMHSA and the National Association of State Alcohol and Drug Abuse Directors, Inc. (NASADAD). The supplement augments an effort already underway, and will fund a detailed inventory of prevention activities funded by the ''20 percent set-aside'' within the Substance Abuse Prevention and Treatment Block Grant, as well as a detailed inventory and analysis of each State's data capability. Consistent with the goal of the existing cooperative agreement between SAMHSA and NASADAD, these projects will support the States in their efforts to establish, improve, and maintain viable and effective substance abuse systems that meet the needs of their clients.

SAMHSA has based its decision to fund these projects through the cooperative agreement on NASADAD's unique position as an association of Single State Agencies (SSAs) for substance abuse services. As the only National organization representing State substance abuse agencies, NASADAD's membership is composed of the State officials directly responsible for the administration of public substance abuse policies and services in the respective States. NASADAD includes State membership of all but one of the Substance Abuse Prevention and Treatment (SAPT) Block Grant recipients, as well as full and continuous communication with the leadership and staff of these agencies. Its membership also administers the 20 percent of the States' allotments from the SAPT Block Grant that are required by law to be used for substance abuse prevention efforts. NASADAD enjoys the confidence of its member States, providing the requisite access to carry out the activities of these supplements.

In view of the above considerations, SAMHSA has determined that a supplement to the existing cooperative agreement is the most effective way to assist the States by developing a detailed inventory of prevention activities and an inventory and analysis of each State's data capability. The prevention set-aside supplement would address the needs of State and local government officials, the service provider community, other members of the affected public and the Federal government for further information regarding the use of the set aside. While the overall use of illicit drugs has declined in recent years, there has been an increase in the use of marijuana by youth in the United States. This increase is of great concern to the public and the State and Federal governments. In response, the Office of National Drug Control Policy has developed a National Drug Abuse Strategy, the first goal of which is designed to reduce illicit drug abuse by youth. Similarly, the Department of Health and Human Services has designed a Secretarial Initiative addressing this important issue. While Federal efforts can make an important contribution to reducing illicit drug use by youth, States and local governments realize it is essential that they refine and add to the existing base of prevention programs. For maximum effectiveness, these State and local efforts must be science-based and coordinated with other programs. This project will assist States and communities to design more effective programs, and will complement other

SAMHSA initiatives to assist the States and service providers such as the Center for Substance Abuse Prevention's (CSAP) State Incentive Grant Program, as well as CSAP's new Regional Centers for the Application of Prevention Technology. The project will also foster technology transfer by making available to all a detailed analysis of each State's prevention activities.

The supplement related to State data capability is intended to address the States' need for information regarding each State's capability to collect, analyze, and report data on the need for, and provision of, substance abuse treatment and prevention services. The States are currently engaged in a variety of related data collection activities funded directly by, or under the maintenance of effort requirements of, the SAPT Block Grant. These activities include prevention and treatment needs assessments, evaluation of managed care activities, treatment outcome performance pilot studies, a prevention minimum data set, the uniform facilities data set, the treatment episode data set, and numerous data systems initiated and maintained by individual States. By providing information on data activities in all States, this project will allow each State to learn from the experience of others and improve the availability and quality of substance abuse prevention and treatment services.

The Federal government is moving aggressively in the direction of assessing performance by measuring outcomes. In this context, the inventory and analysis of State data capability will assist the States in addressing two critical needs. First, it will help them efficiently use Federal funds for data collection activities, thereby improving the performance of the data systems themselves. Second, it will clarify the States' capabilities to measure the performance of their service programs. This project will assist each State in improving its data structure and will provide both the States and the Federal government with the information necessary to plan a realistic transition to performance-based measurement.

This notice is not a request for applications; only NASADAD is eligible to apply for the supplement to the existing cooperative agreement. If the NASADAD supplemental application is recommended for approval by the Special Review Committee and the SAMHSA National Advisory Council, funds will be made available.

Authority: The supplement will be made under the authority of Sections 501(d)(5) and 1935(b)(1)(C) of the Public Health Service Act, as amended (42 U.S.C. 290aa and 42 U.S.C. 300x–35).

The Catalogue of Federal Domestic Assistance number for this program is 93.119.

Availability of Funds

Up to $200,000 in total costs (direct and indirect costs) will be available for the prevention inventory, and up to $200,000 total costs (direct and indirect costs) will be available for the evaluation of State data capabilities.

FOR FURTHER INFORMATION CONTACT: Stephen G. Wing, SAMHSA Office of Policy and Program Coordination, Room 12C–05 Parklawn Building, (301–443–0593). The mailing address is: 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: July 7, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–18123 Filed 7–10–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings and Correction of Meeting Notice

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel II in July and correction of meeting notice for the Special Emphasis Panel II meeting in June.

With regard to the SEP II meetings being announced, a summary of the meetings may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussions may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (3), (4), and (6) and 5 U.S.C. App. 2, Section 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: July 14, 1997.

Place: Washington Hilton, 1919 Connecticut Avenue, N.W., Barcroft Room, Washington, DC 20009.

Closed: July 14, 1997, 9:00 a.m.—adjournment.

Contact: Arthur Leabman, 17–89, Parklawn Building, Telephone: 301–443–4783 and FAX: 301–443–3437.

Committee Name: Special Emphasis Panel II (SEP II).

Meeting Date: July 21, 1997.

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chase Room, Bethesda, MD 20815–4495.

Closed: July 21, 1997 9:00 a.m.–4:00 p.m.

Contact: Sandra E. Stephens, 17–89, Parklawn Building, Telephone: 301–443–9915 and FAX: 301–443–3437.

Summary of Correction Notice

Public notice was given in the **Federal Register** on June 20, 1997 (Volume 62, Number 119, Page 33667) that the Special Emphasis Panel II (SEP II) meeting would be held on June 30, 1997 at 1:00 p.m.—4 p.m. The date and time of this meeting has subsequently changed to July 9, 1997, from 2 p.m. to 4 p.m. The agenda, citation for closing, location of the meeting, and the Contact for additional information remain as announced.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: July 7, 1997.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–18122 Filed 7–10–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–11]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 7, 1997.

Fred Karnas, Jr.,

Acting Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–18137 Filed 7–10–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. 829461

Applicant: Sally M. Walters, Oakland, California

The applicant requests a permit to take (harass by survey; capture and release; collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing their survival.

Permit No. 797267

Applicant: H. T. Harvey & Associates, Fresno, California

The applicant requests an amendment to his permit to take (capture, measure, hair-clip, and release) the giant kangaroo rat (*Dipodomys ingens*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and Fresno kangaroo rat (*Dipodomys nitratoides exilis*) in conjunction with population studies in Kings County, California for the purpose of enhancing their survival.

Permit No. 829554

Applicant: Barbara E. Kus, San Diego State University, San Diego, California

The applicant requests a permit to take (locate and monitor nests, capture, band, color-band, and release) the least Bell's vireo (*Vireo bellii pusillus*) and take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with population studies and removal of brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests of these species throughout the species range in California for the purpose of enhancing their survival. The activities for the least Bell's vireo (locate and monitor nests, removal of brown-headed cowbird eggs and chicks, capture, band, color-band, and release) have been previously authorized under subpermit SDSUDB–7.

Permit No. 830219

Applicant: Michael Ussher Evans, San Diego, California

The applicant requests a permit to take (harass by survey, locate and monitor nests, capture, band, and release) the California least tern (*Sterna antillarum browni*) in conjunction with population monitoring, and take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), coastal California gnatcatcher (*Polioptila californica californica*), and least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys, population monitoring, and removal of brown-headed cowbird (*Molothrus ater*) eggs from parasitized nests of these species in southern California for the purpose of enhancing their survival.

Permit No. 801998

Applicant: California Department of Water Resources, Sacramento, California

The applicant requests an amendment to their permit to take (harass by survey) the salt marsh harvest mouse (*Reithrodontomys raviventris haliocetes*) in conjunction with presence or absence surveys in Solano County, California for the purpose of enhancing its survival.

Permit No. 814222

Applicant: California Department of Parks and Recreation, San Diego, California

The applicant requests an amendment to their permit to take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with population monitoring and removal of brown-headed cowbird (*Molothrus ater*) eggs from parasitized nests of this species in southern California for the purpose of enhancing its survival.

Permit No. 830990

Sapphos Environmental, Pasadena, California

The applicant requests a permit to take (harass by survey) the El Segundo blue butterfly (Euphilotes (=*Shijimiaeoides*) *battoides allyni*) in conjunction with population monitoring and ecological research in Los Angeles County, California for the purpose of enhancing its survival.

Permit No. 788074

Applicant: Ellen T. Bauder, San Diego, California

The applicant requests an amendment to her permit to remove and reduce to possession specimens of *Chorizanthe orcuttiana* (Orcutt's spineflower) on federal lands in San Diego County, California, in conjunction with ecological research for the purpose of enhancing its survival.

Permit No. 800929

Applicant: City of San Diego, Environmental Services, San Diego, California

The applicant requests an amendment to their permit to take (harass by survey, capture and release) the San Diego fairy shrimp (Brachinecta sandiegonensis) in conjunction with population monitoring in vernal pools in San Diego County, California for the purpose of enhancing its survival.

Permit No. 831207

Karen Kirtland, Riverside, California

The applicant requests a permit to take (harass by survey) the Stephens' kangaroo rat (*Dipodomys stephensi*) and Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with presence or absence surveys in Riverside, San Bernardino, San Diego, Orange, Los Angeles, and Ventura Counties, California for the purpose of enhancing their survival.

Permit No. 808242

Scott Cameron, San Diego, California

The applicant requests an amendment to his permit to take (harass by survey)

the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys in San Bernardino and Riverside Counties, California for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received by August 11, 1997.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; FAX: 503–231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: 503–231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: July 3 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–18203 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Trademark

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: The U.S. Geological Survey (USGS), a bureau of the U.S. Department of the Interior, is, and intends to continue, using the logo shown below on its products and on literature describing its services, and hereby gives notice that unauthorized use or duplication of said mark is prohibited under Title 18, Section 701, of the United States Code.

FOR FURTHER INFORMATION CONTACT: For information related to the authorized use of the USGS trademark or service mark, please telephone the USGS Technology Transfer Office at (703) 648–4344 or write to the following address: U.S. Geological Survey, Mail Stop 104 National Center, Reston, VA 20192.

Dated: June 27, 1997.

Barbara J. Ryan,

Associate Director for Operations.

BILLING CODE 4310–31–M

[FR Doc. 97–18241 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–31–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–07–1990–00]

Call for Nominations for the Bureau of Land Management's California Desert District Advisory Council

SUMMARY: The Bureau of Land Management's California Desert District is soliciting nominations from the public for six members of its District Advisory Council to serve on the 1998–2000 three-year term. Council members provide advice and recommendations to BLM on the management of public lands in southern California. Public notice begins with the publication date of this notice. Nominations will be accepted through August 31, 1997. The three-year term would begin January 1, 1998.

The six positions to be filled include:

—One wildlife representative;
—One environmental protection representative;
—Two public-at-large representatives;
—Two renewable resources representatives.

Council members serve three-year terms and may be nominated for reappointment for an additional three-year term. Five council members are eligible for reappointment. One renewable resources representative, which represents botanical interests on the council, will retire December 31, 1997. The nominee selected for this position will serve an initial two-year term.

The California Desert District Advisory Council is comprised of 15 private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 10 million acres of public land in southern California. The Council meets in formal session three to four times each year in various locations throughout the California Desert District.

Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM administered lands. The Secretary also selects council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and BLM will try to find qualified representatives from each area. The California Desert District covers portions of eight counties, and includes 10 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Council members serve without compensation except for reimbursement of travel expenditures incurred in the course of their duties. Any group or individual may nominate a qualified person for any position, based upon their education, training, and knowledge of BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves.

Nominees may contact BLM public affairs at (909) 697–5215 or write to the address below and request a copy of the nomination form. Nominations must include the name of the nominee; work and home addresses and telephone numbers; a biographical sketch that includes the nominee's work, public service record, and applicable outside interests that qualify him or her for the position; and the specific category of interest in which the nominee is best qualified to offer advice and council.

All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information form, and any other information that demonstrates the nominees qualifications. Individuals nominating themselves must provide at least one letter of recommendation. Advisory Council members are appointed by the Secretary of the Interior Bruce Babbitt, generally in December.

Nominations should be sent to the District Manager, Bureau of Land

Management, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, BLM California Desert District Public Affairs at (909) 697–5215.

Dated: July 7, 1997.

Henri R. Bisson,

District Manager.

[FR Doc. 97–18194 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–1420–01–25–7D]

Notice of Availability of Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management, Cedar City District, has completed an Environmental Analysis/Finding of No Significant Impact of the Proposed Plan Amendments to the Cedar, Beaver Garfield, Antimony RMP and the Pinyon Management Framework Plan.

DATES: The protest period for these Proposed Plan Amendments will commence with the date of publication of this notice and last for 30 days. Protests must be received on or before August 11, 1997.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street NW., Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Gina Ginouvas, Resource Advisor, Cedar City District Office, 176 East D. L. Sargent Drive, Cedar City District, Utah, 84720, (801) 586–3053.

Copies of the Environmental Assessment and Proposed Plan Amendments are available for review at the Cedar City District Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The Proposed Amendment is subject to protest from any party who has participated in the planning process. Protests must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.

—A statement of the issue(s) being protested.

—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps etc., of the Proposed Plan Amendment.

—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.

—A concise statement as to why the protester believes the BLM State Director is incorrect.

Dated: July 3, 1997.

G. William Lamb,

State Director, Utah.

[FR Doc. 97–18134 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV 910 0777 30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management.

ACTION: Resource Advisory Council's Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: Approval of minutes of the previous meetings, update on land sales-exchanges-trades, Standards and Guidelines, wild horses and range condition in the Diamond Mountain Complex, Columbia River Basin Draft Environmental Impact Statement, hydrologic modeling for mining, Bureau of Land Management water rights and policy in Nevada, Coordinated Resource Management group reports for elk and fire management planning, range improvement projects (8100 program funds), identification of additional issues to be resolved and determination of the subject matter for future meetings.

Day two of this meeting will be a field tour. The tour will depart from and return to the Eureka Opera house, Eureka, Nevada. Those attending should wear clothing and footwear suitable for walking through rugged, brush covered terrain. Food and beverages will be an individual responsibility; sack or small ice cooler lunches including an equivalent of one gallon of water per person are recommended.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the District Manager at the Battle Mountain District Office, 50 Bastion Road, P.O. Box 1420, Battle Mountain, Nevada, 89820, telephone (702) 635–4000.

DATES, TIMES, PLACE: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, Eureka Opera House (lower floor conference room), Eureka, Nevada, 89316; August 4, 1997, starting at 9:00 a.m.; public comments will be at 11:00 a.m. and 3:00 p.m.; tentative adjournment for the day at 5:00 p.m. A field tour of the Diamond Mountain Complex (north of Eureka) will be conducted on August 5, 1997. starting at 8:00 a.m. and ending approximately 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Team Leader for the Northeastern Resource Advisory Council, Ely District Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Dated: June 30, 1997.

Lee Douthit,

Associate District Manager, Battle Mountain.

[FR Doc. 97–18233 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1220–00]

Call for Nomination to Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Nomination to Bakersfield Resource Advisory Council.

SUMMARY: The purpose of this notice is to solicit public nominations to replace a member of the Resource Advisory Council for the Bakersfield District of the Bureau of Land Management. The Council provides advice and recommendations to BLM on the management and use of public lands within the Bakersfield District. Nominations will be considered for 30 days after the publication of this notice. Resource Advisory Council members are divided among three categories which are representative of the various interests concerned with the management of public lands. The current vacancy is in Category Three, which includes representatives of State and Local government, Native American tribes, academicians involved in natural sciences, and the public-at-large. Nominations should be sent to Ron Fellows, Bakersfield District Manager, 3801 Pegasus Drive, Bakersfield, CA 93308.

SUPPLEMENTARY INFORMATION: The current vacancy exists because the representative of Native American tribes was no longer able to attend Council meetings. The successful nominee will be appointed by the Secretary of the Interior to fill out the balance of the term which expires in August of 1998. The nominee will then be eligible for appointment to a regular three year term. Council members serve without pay, but are reimbursed for expenses. Advisory Councils are authorized by the Federal Land Policy and Management Act (FLPMA), and the Federal Advisory Committee Act (FACA).

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 805–391–6010.

Dated: July 3, 1997.

Ron Fellows,

District Manager.

[FR Doc. 97–18295 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1430–01; WYW–139495]

Realty Actions; Sales, Leases, etc; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Direct sale of public lands in Sweetwater County.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713.

Sixth Principal Meridian, Sweetwater County, Wyoming

T. 19 N., R. 109 W.,
Section 32,
S½S½NE¼E½W½N½N½NW¼,
E½SE¼E½W½W½N½N½NW¼,
E½W½SE¼E½W½N½N½NW¼,
W½W½SE¼E½N½N½NW¼,
S½NW¼W½E½N½N½NW¼,
SW¼W½E½N½N½NW¼,
S½N½NE¼W½E½N½N½NW¼,
S½NE¼W½E½N½N½NW¼,
N½S½SE¼W½E½N½N½NW¼,
S½N½NW¼E½E½N½N½NW¼,
N½SE¼W½E½N½N½NW¼,
S½NW¼E½E½N½N½NW¼,
N½SW¼E½E½N½N½NW¼.

The above lands aggregate 13.75 acres.

FOR FURTHER INFORMATION CONTACT: Becky D. Heick, Realty Specialist, Kemmerer Resource Area, Rock Springs District, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming 83101, 307–877–3933, extension 106.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate to General Chemical Corporation pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713. General Chemical Corporation wishes to acquire the area for a landfill in conjunction with their sodium lease. The proposed direct sale to General Chemical Corporation would be made at fair market value.

The proposed direct sale, located within General Chemical Corporation's sodium lease boundary (WYW–095425), is consistent with the Kemmerer Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The planning document and environmental assessment are available for review at the Bureau of Land Management, Kemmerer Resource Area Office, Kemmerer, Wyoming. Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

There will be no cancellation of existing federal grazing rights. Those AUMs associated with the above referenced parcel will be absorbed by the operators in the balance of the Granger Lease allotment.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication whichever comes first. For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Rock Springs District office, 280 Highway 191 North, Rock Springs, WY 82901. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: July 3, 1997.

Mark Hatchel,

Acting Area Manager.

[FR Doc. 97–18191 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–22–P–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–6–1430–02]

Notice of Availability; Michigan Proposed Resource Management Plan Amendment/Environmental Assessment

AGENCY: Bureau of Land Management, Milwaukee District.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Milwaukee District Office, has completed the Michigan Proposed Resource Management Plan Amendment (RMPA) and Environmental Assessment (EA) for the Disposal of U.S. Coast Guard Lighthouse Properties. The RMPA/EA assesses the impacts of transferring eight tracts of public land to the State of Michigan, other Federal agencies and non-profit organizations.

This notice is issued pursuant to 43 CFR 1610.5–1.

Any person who has participated in the planning process and has an interest which is or may be adversely affected by

the approval of the plan amendment may protest such approval in accordance with 43 CFR 1610.5–2. A protest may raise only those issues which were submitted for the record during the planning process.

DATES/ADDRESSES: Protests must be submitted in writing to the BLM Director at the following address, postmarked no later than August 11, 1997: Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Howard Levine, Planning and Environmental Coordinator, (414) 297–4463, or Larry Johnson, Realty Specialist, (414) 297–4413.

Dated: July 2, 1997.

James W. Dryden,

District Manager.

[FR Doc. 97–17852 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey

The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., July 1, 1997.

The plat representing the dependent resurvey of portions of the east and north boundaries and of the subivisional lines, the subdivision of section 1, and an informative traverse of the southerly shoreline of the Snake River in section 1, T. 8 S., R. 13 E., Boise Meridian, Idaho, Group No. 944, was accepted July 1, 1997.

The plat representing the dependent resurvey of portions of the west boundary, of the subdivisional lines, and of the 1893 meanders of the left bank of the Snake River, and the subdivision of section 7, T. 8 S., R. 14 E., Boise Meridian, Idaho, Group No. 944, was accepted July 1, 1997.

These plats were prepared to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho 83709–1657.

Dated: July 1, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–18234 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1030–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. July 1, 1997.

The plat representing the dependent resurvey of portions of the west and north boundaries and of the subdivisional lines, and the subdivision of certain sections, T. 47 N., R. 5 W., Boise Meridian, Idaho, Group No. 972, was accepted July 1, 1997.

This plat was prepared to meet certain administrative needs of the Coeur d'Alene Tribe, Lands Service Department and of the Bureau of Indian Affairs, Northern Idaho Agency.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: July 1, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–18235 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–942–07–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION:

1. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 1, 1997:

The supplemental plat, showing amended lottings in sec. 13, Township 13 North, Range 45 East, Mount Diablo Meridian, Nevada, was accepted April 1, 1997.

This plat was prepared at the request of the U.S. Forest Service.

2. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 1, 1997:

The supplemental plat, showing amended lottings in the S½ of sec. 14 and in the N½ of sec. 23, Township 13 North, Range 45 East, Mount Diablo Meridian, Nevada, was accepted April 1, 1997.

This plat was prepared at the request of the U.S. Forest Service.

3. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 1, 1997:

The supplemental plat, showing amended lottings in sec. 24, Township 13 North, Range 45 East, Mount Diablo Meridian, Nevada, was accepted April 1, 1997.

This plat was prepared at the request of the U.S. Forest Service.

4. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 1, 1997:

The supplemental plat, showing amended lottings in sec. 19, Township 13 North, Range 46 East, Mount Diablo Meridian, Nevada, was accepted April 1, 1997.

This plat was prepared at the request of the U.S. Forest Service.

5. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 1, 1997:

The supplemental plat, showing a subdivision of certain quarter sections in sec. 6, Township 32 North, Range 70 East, Mount Diablo Meridian, Nevada, was accepted April 8, 1997.

This plat was prepared to meet certain needs of the Bureau of Land Management.

6. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 8, 1997:

The supplemental plat, showing a subdivision of certain quarter sections in secs. 30 and 31, Township 33 North, Range 70 East, Mount Diablo Meridian, Nevada, was accepted April 8, 1997.

This plat was prepared to meet certain needs of the Bureau of Land Management.

7. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on May 8, 1997.

The plat, representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 15, and the metes-and-bounds survey of a portion of U.S. Highway No. 395, Township 11 North, Range 21 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 756, was accepted May 6, 1997.

This survey was executed to meet certain needs of the Bureau of Indian Affairs.

8. The Plat of Survey of the following described lands was officially filed at the Nevada State office, Reno, Nevada on June 12, 1997:

The plat, representing the dependent resurvey of portions of the south and east boundaries, subdivisional lines and subdivision-of-section lines of section 36, and the subdivision of section 35 and further subdivision of section 36, Township 19 South, Range 59 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 745, was accepted June 10, 1997.

This survey was executed to meet certain needs of the Bureau of Land Management.

9. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on June 19, 1997:

The plat, representing the dependent resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey in section 4, Township 29 North, Range 48 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 766, was accepted June 17, 1997.

This survey was executed to meet certain needs of Ms. Laura M. Scott, Eureka County and the Bureau of Land Management.

10. The above-listed surveys are now the basic records for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: June 30, 1997.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 97–18190 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Indian Arts Research Center, School of American Research, Santa Fe, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Indian Arts Research Center, School of American Research, Santa Fe, NM which meet the definition of ''sacred objects'' and ''objects of cultural patrimony'' under Section 2 of the Act.

The 25 cultural items are Katsina Spirit Friends including Shalako Taka, two Anakatsina, Tasap, Alo Mana, Makto, Anakatsinamaana, two Humiskasina, Shalako Mana tablita, Sio Humis tablita, Sio Humis Katsina, six unnamed katsina friends, and seven mask attachments.

In 1925, Mr. Frank Applegate collected these Kaakastinam and mask attachments at the Hopi villages. Eight Kaakastinam were donated to the Indian Arts Fund, Inc. in 1925 and transferred to the School of American Research in 1972. The remaining items were purchased by the Indian Arts Fund, Inc. in 1925 and transferred to the School of American Research in 1972.

The cultural affiliation of these items is clearly Hopi based on the accession information and consultation with Hopi representatives. Representatives of the Hopi Tribe and acting on behalf of the Katsinmomngwit (Hopi traditional religious leaders) have stated that the above Kaakatsinam and mask attachments are sacred objects needed by traditional religious leaders for the practice of traditional Native American religion by present day adherents. Representatives of the Hopi Tribe and acting on behalf of the Katsinmomngwit (Hopi traditional religious leaders) have also stated that the above Kaakatsinam and mask attachments have ongoing historical, traditional, and cultural importance central to the Hopi Tribe, and could not have been alienated by any individual.

Based on the above-mentioned information, officials of the School of American Research have determined that, pursuant to 25 U.S.C. 3001 (3)(C), these 25 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the School of American Research have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), these 25 cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Lastly, officials of the School of American Research have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these items and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Mr. Michael Hering, Director, or Ms. Christy Sturm, Associate Collections Manager, Indian Arts Research Center, School of American Research, P.O. Box 2188, Santa Fe, NM 87504, telephone (505) 982–3584 before August 11, 1997. Repatriation of these objects to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: July 1, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–18232 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Hawaii in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA; and in the Control of the Academy of Natural Sciences, Philadelphia, PA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from Hawaii in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA; and in the control of the Academy of Natural Sciences, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna 'O Hawai'i Nei. The following human remains were indefinitely loaned to the University of Pennsylvania Museum by the Academy of Natural Sciences in 1966. The Academy of Natural Sciences has authorized the University of Pennsylvania Museum of Archaeology and Anthropology to repatriate these human remains pursuant to NAGPRA.

In 1966, human remains representing four individuals were loaned to the University of Pennsylvania Museum of Archaeology and Anthropology by the Academy of Natural Sciences. Archival documentation at the Academy of Natural Sciences indicates these individuals were removed from ''old burying grounds on the plains of Wimanalo, Oahu'' by William H. Jones, M.D., U.S.N., U.S.S. Portsmouth in 1873. No known individuals were identified. No associated funerary objects are present.

In 1966, human remains representing one individual were loaned to the University of Pennsylvania Museum of Archaeology and Anthropology by the Academy of Natural Sciences. Accession information indicates this individual is a ''Sandwich Islander'' from the island of Oahu. The original date, collector, and circumstances of collection are not known. No known individual was identified. No associated funerary objects are present.

Accession information and other documentation indicate these human remains are from the island of Oahu, Hawaii. There is no morphological evidence to indicate these human remains are not Native Hawaiian.

Based on the above information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), that these human remains represent the physical remains of five individuals of Native American ancestry. Officials of the University of Pennsylvania Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and Hui Malama I Na Kupuna 'O Hawai'i Nei, the O'ahu Island Burial Council, and the Office of Hawaiian Affairs.

In 1966, human remains representing two individuals were loaned to the University of Pennsylvania Museum of Archaeology and Anthropology by the Academy of Natural Sciences. Accession information and other documentation indicate that in 1893, these remains were removed from a lava cave on the island of Hawaii by Dr. J.M. Whitney and donated to the Academy of Natural Sciences by Dr. C.N. Pierce at an unknown date. No known individuals were identified. No associated funerary objects are present.

Accession information and other documentation indicate these human remains are from the island of Hawaii. There is no morphological evidence to indicate these human remains are not Native Hawaiian.

Based on the above information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Pennsylvania Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Hawai'i Island Burial Council, Hui Malama I Na Kupuna 'O Hawai'i Nei, and the Office of Hawaiian Affairs.

In 1966, human remains representing one individual were loaned to the University of Pennsylvania Museum of Archaeology and Anthropology by the Academy of Natural Sciences. These remains were donated to the Academy of Natural Sciences at an unknown date by an unknown person(s). Information with these remains states that this individual is a ''Sandwich Islander.'' The original date, collector, and circumstances of collection are not known. No known individual was identified. No associated funerary objects are present.

Information indicates these human remains are from Hawaii. There is no morphological evidence to indicate these human remains are not Native Hawaiian.

Based on the above information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Pennsylvania Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and Hui Malama I Na Kupuna 'O Hawai'i Nei and the Office of Hawaiian Affairs.

This notice has been sent to officials of the Hawai'i Island Burial Council, Hui Malama I Na Kupuna 'O Hawai'i Nei, the O'ahu Island Burial Council, and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Jeremy A. Sabloff, the Charles K. Williams II Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104–6324; telephone: (215) 898–4051, fax (215) 898–0657, before August 11, 1997. Repatriation of the human remains to the Hawai'i Island Burial Council, Hui Malama I Na Kupuna 'O Hawai'i Nei, the O'ahu Island Burial Council, and the Office of Hawaiian Affairs as listed above may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: July 3, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–18231 Filed 7–10–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Office of the Secretary

Submission For OMB Review; Comment Request

July 8, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley (202) 219–5096 ext. 143 or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday—Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhanced the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Contribution Operations.

OMB Number: 1205–0178 (extension).

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 53 respondents.

Estimated Time Per Respondent: 8 hours.

Total Burden Hours: 1,696.

Total Annualized capital/startup costs.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This information collections provides quarterly data on State agencies' volume and performance in wage processing, number and promptness of liable employer registration, number delinquent in filing contribution reports, number and extent of tax delinquency and results of field audit program.

Agency: Mine Safety and Health Administration.

Title: Fire Protection (Underground Coal Mines) (reinstatement, no change).

OMB Number: 1219–0054.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1,117.

Number of Responses: 332,852.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 85,292.

Total Annualized capital/startup costs: $1,880.00.

Total annual costs (operating/maintaining systems or purchasing services): 0

Description: This provision requires that a Mine Safety and Health Administration approved program for the instruction of miners in fire fighting and evacuation procedures be adopted by the mine operator; fire extinguishers be examined every 6 months and that fire drills be conducted every 90 days; automatic fire sensors and warning device systems be examined weekly and tested annually; and that fire hydrants and hoses be tested at least once a year.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–18282 Filed 7–10–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,190]

Allied Signal Incorporated Parsippany, New Jersey; Notice of Revised Determination on Reconsideration

On May 15, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 29, 1997 (62 FR 29151).

The workers were denied eligibility to apply for trade adjustment assistance because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met based on results from a customer survey.

In a letter dated April 11, 1997, a company official requested administrative reconsideration of the Department's Notice of Negative Determination for workers of the subject firm, alleging that customers are importing articles that are ''like or directly competitive'' with articles produced by Allied Signal.

To investigate this claim, the Department conducted a survey the subject firm's major customer. New findings on reconsideration show that this customer is relying on imported amorphous metal strips which are directly competitive with the product produced at the Parsippany, New Jersey plant of Allied Signal.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Allied Signal Incorporated in Parsippany, New Jersey were adversely affected by increased imports of articles like or directly competitive with amorphous metal strips produced at the subject firm.

All workers of Allied Signal Incorporated in Parisppany, New Jersey engaged in employment related to the production of amorphous metal strips, who became totally or partially separated from employment on or after January 27, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 24th day of June 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–18273 Filed 7–10–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the appendix to this notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manger of the Office of Trade Adjustment Assistance (OTTA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may be request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Program Manager of OTAA not later than July 21, 1997.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than July 21, 1997.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 24th day of June, 1997.

Russel T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Big River Luggage (Wkrs)	Coepus Christi, TX	05/12/97	NAFTA–1,647	Luggage.
Honeywell (UERMW)	Arlington Heights, IL	05/12/97	NAFTA–1,648	Computer boards.
Medite Corporation (Wkrs)	Medford OR	05/09/97	NAFTA–1,649	Lumber.
C-Cor Electronics (Wkrs)	Reedsville, PA	05/12/97	NAFTA–1,650	Power supplies assemblies.
Louisiana Pacific (Co.)	Chilco, ID	05/12/97	NAFTA–1,651	Lumber, plywood, windows and doors.
Guardian Industries (ABGW)	Newport, OR	05/12/97	NAFTA–1,652	Stock sheet float glass mirrors.
Wellington Sears (Co.)	Tarboro, NC	04/09/97	NAFTA–1,653	Woven upholstery fabric.
Standard Industries (IUE)	San Antonio, TX	05/16/97	NAFTA–1,654	Car batteries.
C and P Cedar Sales (Co.)	Copalis Crossing, WA	05/14/97	NAFTA–1,655	Shakes.
Square D Company (Co.)	Huntington, IN	05/14/97	NAFTA–1,656	Low voltage transformers.
Johnstown America (USWA)	Johnstown, PA	05/14/97	NAFTA–1,657	Railroad cars.
Sandvik Rock Tools (Co.)	Houston, TX	05/16/97	NAFTA–1,658	Hammer parts.
CNI (Wkrs)	Port Huron, MI	05/15/97	NAFTA–1,659	Head and arm rests.
Nu World Marketing LTD (Wkrs)	Mascoutah, IL	05/16/97	NAFTA–1,660	Retailer verification.
Raldwin Piano and Organ (Wkrs)	Trumann, AR	05/16/97	NAFTA–1,661	Complete pianos.
Springlift Corporation (Wkrs)	Monticello, AR	05/19/97	NAFTA–1,662	Gas springs.
Nu-Kote (Wkrs)	Connellsville, PA	05/20/97	NAFTA–1,663	Electrostatic toners.
Allied Signal (Wkrs)	Fort Lauderdale, FL	05/22/97	NAFTA–1,664	Electronics parts for airlines.
American Magnetics (Co.)	Carson, CA	05/22/97	NAFTA–1,665	Magnetic card reader systems.
Frigidaire Company (IUE)	Athens, TN	05/19/97	NAFTA–1,666	Gas and electric ranges.
Special Plastic Products (Wkrs)	Fair Haven, MI	05/21/97	NAFTA–1,667	Plastic injection molded parts.
Greater Texas (Wkrs)	El Paso, TX	05/23/97	NAFTA–1,668	Laundry jeans.
Tyco—Mattel (Co.)	Beaverton, OR	05/21/97	NAFTA–1,669	Games.
Anvil Knitwear (Wkrs)	Mullins, SC	05/27/97	NAFTA–1,670	T-shirts and tank tops.
Trinity Industries (UAW)	Greenville, PA	05/27/97	NAFTA–1,671	Railroad cars.
Thomas and Betts (Wkrs)	Horseheads, NY	05/27/97	NAFTA–1,672	TV and cable connector assembly.
Florida Specialties (Wkrs)	Princeton, FL	05/27/97	NAFTA–1,673	Eggplants.
Produce Sale of South Florida (Wkrs)	Homestead, FL	05/27/97	NAFTA–1,674	Produce packing and shipping.
William Wrigley, Jr. Co. (Wkrs)	Santa Cruz, CA	05/29/97	NAFTA–1,675	Gum.
Rugged Sport (Co.)	Littleton, NC	05/28/97	NAFTA–1,676	Fleece and jersey sportswear.
Suckle (IUE)	Scranton, PA	05/29/97	NAFTA–1,677	Metal computer frames and components.
Gould's Pump (USWA)	Ashland, PA	05/29/97	NAFTA–1,678	Stainles steel industrial pump.
Burlington Industries (Co.)	Monticello, AR	05/29/97	NAFTA–1,679	Rugs.
Holland Atlantic Hitch (Co.)	Denmark, SC	05/30/97	NAFTA–1,680	Trailer landing gear.
Universal Overall (Wkr)	Medaryville, IN	05/19/97	NAFTA–1,681	Men's work clothing.
Butterick (Wkrs)	Altoona, PA	06/03/97	NAFTA–1,682	Dress patterns.
Bariod Drilling Fluids (OCAW)	Potos, MO	06/03/97	NAFTA–1,683	Mining.
Tubafor Mill (WCIW)	Marton, WA	05/14/97	NAFTA–1,684	Ceder wood fencing.
Impact Furniture Co. (Comp)	Hickory, NC	06/09/97	NAFTA–1,685	Bedroom Furniture & Living Room Tables.
Landmark USA (Wrks)	Berlin, WI	06/05/97	NAFTA–1,686	Moccasins—Slippers, Sandals.
Angelica Image Apparel (Wrks)	Summersville, MO	06/04/97	NAFTA–1,687	Uniforms, Shirts.
Hearth Technologies (Comp)	Savage, MN	06/06/97	NAFTA–1,688	Fireplaces.
Emess Lighting( )	Ellwood City, PA	06/09/97	NAFTA–1,689	Lamps & Shades.
Rancher (Comp)	Leadore, ID	06/05/97	NAFTA–1,690	Beef Cattle.
AMP, Inc (Comp)	Middletown, PA	06/09/97	NAFTA–1,691	Cable Assemblies.
J.R. Simplot Co (Comp)	Wyoming, MI	05/21/97	NAFTA–1,692	Frozen Potato Products.
Angelica Image Apparel (UFCW)	Mt. View, MO	06/12/97	NAFTA–1,693	Uniforms.
I.C.I. Exposives (OCAW)	Tamaqua, PA	06/08/97	NAFTA–1,694	Igniters for air bags.
Florida Fresh (Wkr)	Fla City, FL	06/10/97	NAFTA–1,695	Farming.
Compaq Company (Wkrs)	Austin, TX	06/12/97	NAFTA–1,696	Computer Keyboards.
Miller Group (The) (Co.)	Port Carbon, PA	06/13/97	NAFTA–1,697	T-shirts and sweatshirts.
Nu-Kote International (Co.)	Rochester, NY	06/17/97	NAFTA–1,698	Ribbon cassettes.
Pro Line Cap (Wkrs)	Bowie, TX	06/17/97	NAFTA–1,699	Caps.
International Wire (IBT)	Rolling Prairie, IN	06/05/97	NAFTA–1,700	Appliance wire.
C and H Apparel (Co.)	Milan, TN	06/16/97	NAFTA–1,701	Men's and boys shorts.
Bel Tronics Limited (Co.)	Covington, GA	06/11/97	NAFTA–1,702	Swingmate (Circuit board assembly).
Micro Energy (Wkrs)	Memphis, MO	06/06/97	NAFTA–1,703	Wire harness assembly.
APV Crepaco (USWA)	Lake Mills, WI	06/13/97	NAFTA–1,704	Food processing equipment.
Best Power (Wkrs)	Necedah, WI	06/16/97	NAFTA–1,705	Uninterruptible power systems.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Sam S. Accursio and Sons Packing (Wkrs).	Homestead, FL	05/27/97	NAFTA–1,706	Tomatoes, pickles, squash.
Sugar Cane Services (Wkrs)	Pahokee, FL	05/27/97	NAFTA–1,707	Corn and sugar cane.
Joiner and Son (Wkrs)	Florida City, FL	05/06/97	NAFTA–1,708	Grow squash, beans and peppers.
Eagle Lake Harvesting (Wkrs)	La Belle, FL	05/27/97	NAFTA–1,709	Citrus.
Black Gold Farms (Co.)	Belle Glade, FL	05/27/97	NAFTA–1,710	Cane planting, sweetcorn harvest.
D and K Harvesting (Wkrs)	Labelle, FL	05/27/97	NAFTA–1,711	Citrus.
Osceola Farms (Wkrs)	Pahokee, FL	05/27/97	NAFTA–1,712	Sugar cane.
R.C. Hatton Farms (Wkrs)	Pahokee, FL	05/27/97	NAFTA–1,713	Sweetcorn harvest.
McNeill Contracting (Wkrs)	Belle Glade, FL	05/27/97	NAFTA–1,714	Pick corn, farm services.
B. Barb Farms (Wkrs)	Belle Glade, FL	05/27/97	NAFTA–1,715	Sugar cane and corn, farm services.
MSSC (Wkrs)	Clewiston, FL	05/06/97	NAFTA–1,716	Sugar cane.
R.R. Taylor (Wkrs)	Hobe Sound, FL	05/06/97	NAFTA–1,717	Sweet corn.
Jet Farms (Wkrs)	Lozahatchee, FL	05/06/97	NAFTA–1,718	Corn and beans.
M and N Fruit (Wkrs)	Waverly, FL	05/27/97	NAFTA–1,719	Citrus.
Diamond I. Farms (Wkrs)	Fla City, FL	05/22/97	NAFTA–1,720	Snap beans and tomatoes.
Di Mare Homestead (Wkrs)	Florida City, FL	05/24/97	NAFTA–1,721	Tomatoes, beans, cucumbers.
Sapp Farms (Wkrs)	Fla City, FL	05/22/97	NAFTA–1,722	Beans.
Alger Farms (Wkrs)	Homestead, FL	05/22/97	NAFTA–1,723	Corn, potatoes.
Thomas Produces (Wkrs)	Boca Raton, FL	05/27/97	NAFTA–1,724	Peppers, cucumbers.
Trendline Home Fashions (Wkrs)	Miami, FL	05/24/97	NAFTA–1,725	Pillows and chair pads.
Southern Bean Packer (Wkrs)	Homestead, FL	05/06/97	NAFTA–1,726	Beans and corn.
Kern Carpenter Farm (Wkrs)	Homestead, FL	05/06/97	NAFTA–1,727	Tomatoes.
Flowers Industries (IBT)	Erie, PA	06/17/97	NAFTA–1,728	Lunch box pies.
J.E.M. (Wkrs)	West Palm Beach, FL	05/27/97	NAFTA–1,729	Parsley, sweet corn.
DOMI ARG (Wkrs)	Belle Glade, FL	06/16/97	NAFTA–1,730	Sugar cane and citrus.
Mecca Farms (Wkrs)	Lantana, FL	05/27/97	NAFTA–1,731	Cucumbers, peppers and tomatoes.
Pero Family Farms (Wkrs)	Delray, FL	05/27/97	NAFTA–1,732	Eggplant, cucumber, bell peppers.
C and B Farms (Wkrs)	CLewiston, FL	05/27/97	NAFTA–1,733	Watermelon harvest.
A.J. Apparel (Co.)	Rocky Mount, NC	06/18/97	NAFTA–1,734	T-shirts, tank tops.
Cargill (UPIU)	Jefferson Junction, WI	06/17/97	NAFTA–1,735	Barley malt.
Okeelanta Corp. (Co.)	South Bay, FL	05/27/97	NAFTA–1,736	Sugar cane, corn, citrus.
Georgia Pacific (Wkrs)	Pearson, GA	06/18/97	NAFTA–1,737	Lumber chips.
Brainard Rivet (Co.)	Girard, OH	06/09/97	NAFTA–1,738	Cold headed fasteners.
ABL Engineering (Co.)	Mentor, OH	06/09/97	NAFTA–1,739	Video transmission equipment.
Plaid Clothing (Co.)	Cincinnati, OH	06/09/97	NAFTA–1,740	Suits, sport coats and slacks.
Bristol Myers Squibb (Wkrs)	Warsaw, IN	06/18/97	NAFTA–1,741	Orthopedic products.

[FR Doc. 97–18275 Filed 7–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,324]

Chock Full O' Nuts, Linden, New Jersey; Notice of Revised Determination on Reopening

At the request of the State Agency, the Department reviewed the Termination of Investigation regarding worker eligibility to apply for trade adjustment assistance. The termination notice applicable to workers of the subject firm located in Linden, New Jersey, was signed on April 1, 1997 and published in the **Federal Register** on April 15, 1997 (62 FR 18364).

Workers at Chock Full O' Nuts, Linden, New Jersey produced instant coffee and were covered under a previous worker certification, TA–W–29,923, which expired September 21, 1996. The basis for the certification was an increase in company imports.

The company reports that although all production workers at the Linden plant were separated from employment when it closed in 1994, supervisory personnel continued employment to assist with the subject firm's transition to a contract relationship with their Mexican supplier. All layoffs at Linden were completed December 31, 1996.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of instant coffee contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of Chock Full O' Nuts, Linden, New Jersey who became totally or partially separated from employment on or after September 22, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 20th day of June 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–18276 Filed 7–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and

are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than July 21, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 21, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 16th day of June, 1997.

Linda G. Poole,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 06/16/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,564	Hudson Valley Tree (Comp)	Newburgh, NY	05/05/97	Christmas Wreaths.
33,565	Concord Fabrics, Inc (Comp)	New York, NY	06/03/97	Woven & Knitted Fabrics.
33,566	Fleet Service Corp. (Wrks)	Charlestown, MA	06/03/97	Irrevocable Letter of Credit.
33,567	Lee Sportswear, Inc (Comp)	Plantersville, MS	05/29/97	Medical Uniforms.
33,568	Burlington Industries (Comp)	Monticello, AR	05/28/97	Area Rugs & Similar Floor Coverings.
33,569	EG&G Instruments, Inc. (Wrks)	Trenton, NJ	05/30/97	Research—Electrochemistry.
33,570	Butterick Co., Inc.	Altoona, PA	05/27/97	Dress Sewing Patterns.
33,571	PCC Composites, Inc. (Wrks)	Pittsburgh, PA	05/30/97	Precision Cast Parts.
33,572	Agnatech, Inc. (Wrks)	Cookeville, TN	05/22/97	Denim Garments.
33,573	Bethlehem Corp (The) (Comp)	Easton, PA	06/03/97	Parcupine Processor.
33,574	Active Products Corp (UAW)	Marion, IN	06/02/97	Auto Part Stampings.
33,575	Landmark USA (Wrks)	Berlin, WI	06/04/97	Moccasins, Slippers, Sandles.
33,576	Micro Energy, Inc. (Wrks)	Memphis, MO	06/02/97	Computer Power Parts.
33,577	North Safety Products (Comp)	Rockford, IL	06/05/97	First Aid Kits & Medical Scrubs.
33,578	Simpson Paper Co. (Wrks)	Anderson, CA	06/05/97	Pulp & Paper.
33,579	AMP, Inc. (Comp)	Middletown, PA	06/06/97	Custom Cable Assemblies.
33,580	Imapct Furniture Co. (Comp)	Hickory, NC	06/04/97	Bedroom Furniture & Living Room Tables.

[FR Doc. 97–18277 Filed 7–10–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–A–33,333]

Siebe, Incorporated; A/K/A Ranco North America; A/K/A Ranco Industries; A/K/A Rantrol Corporation; Quality Control Department; Brownsville, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 21, 1997, applicable to all workers of Ranco North America, Quality Control Department, Brownsville, Texas. The notice was published in the **Federal Register** on May 9, 1997 (62 FR 25659).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of temperature and pressure controls. The investigation findings show that Siebe, Incorporated is the parent firm of Ranco North America. Findings also show that workers separated from employment at Ranco North America had their wages reported under four separate unemployment insurance (UI) tax accounts, Siebe, Incorporated, Ranco North America, Ranco Industries, and Rantrol Corporation. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–33,333 is hereby issued as follows:

All workers of Siebe, Incorporated, also known as Ranco North America, also known as Ranco Industries, also know as Rantrol Corporation, Quality Control Department, Brownsville, Texas, who became totally or partially separated from employment on or after March 7, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of June, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–18274 Filed 7–10–96; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 068]

Smith & Wesson Springfield, MA; Notice of Revised Determination on Reconsideration

On May 13, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration, applicable to all workers of Smith & Wesson, located in Springfield, Massachusetts. The notice was published in the **Federal Register** on May 29, 1997 (FR 62 29152).

Initial investigation findings show that the workers produce handguns. The workers were denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974 because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally determined through a survey of the workers' firm's major declining customers.

On April 17, 1997, Smith & Wesson requested administrative reconsideration of the Department's findings.

Findings on reconsideration revealed that major customers of the subject firm increased their purchases of important handguns in 1996 compared to 1995.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Smith & Wesson, located in Springfield, Massachusetts were adversely affected by increased imports of articles like or directly competitive with handguns produced at the subject firm.

All workers of Smith & Wesson, located in Springfield, Massachusetts who became totally or partially separated from employment on or after December 13, 1995 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of June 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–18279 Filed 7–10–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,155]

Springlift Corporation Division of Attwood Corporation, Monticello, Arkansas; Notice of Revised Determination on Reopening

At the request of the State agency, the Department has reviewed the findings of the subject case.

The initial investigation resulted in the determination that workers of Springlift Corporation engaged in the production of gas springs were denied eligibility to apply for TAA, while all other workers of the subject firm were eligible to apply for TAA. The notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm will soon be published in the **Federal Register**.

New information reported by adversely affected workers of the subject firm show that workers at Springlift Corporation are not separately identifiable by product line. All workers at the Monticello plant were engaged in the production of gas springs and seat pedestals.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with articles produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of Springlift Corporation, Division of Attwood Corporation, Monticello, Arkansas who became totally or partially separated from employment on or after January 22, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, D.C. this 12th day of June 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–18278 Filed 7–10–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

School-to-Work Opportunities Act: Out-of-School Youth

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Application (SGA).

SUMMARY: All information required to submit a proposal is contained in this announcement. The U.S. Department of Labor, Employment and Training Administration (DOL/ETA), in collaboration with the U.S. Department of Education and the National School-to-Work Office, announces the availability of $1,270,000 to award competitive grants to youth employment and/or education program providers that currently have a solid foundation of serving out-of-school youth in a school-to-work framework. The purpose of the grants will be to support the adaptation of school-to-work principles by existing out-of-school youth initiatives and to connect their efforts to the Federally-funded school-to-work systems in their states. This project is not designed to help existing youth programs plan how to serve out-of-school youth in a school-to-work framework. Rather, the purpose is to select a variety of types of youth initiative that already are implementing school-to-work elements for out-of-school youth, and to help them build on this foundation. Applications are required to demonstrate that they have already designed and begun implementation of a substantial number of the components and strategies of a school-to-work system, as described in the School-to Work Opportunities Act of 1994, to be considered.

DATES: The closing date for receipt of proposals at the Department of Labor shall be August 14, 1997, at 2:00 P.M., Eastern time. Any proposal not received at the designated place, date and time of delivery specified will not be considered.

ADDRESSES: Proposals shall be mailed to: Division of Acquisition and Assistance, Attention. Ms. Brenda Banks, Reference SGA/DSS 97–017, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, N.W., Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Brenda Banks or Laura Cesario, Division of Acquisition and Assistance. Telephone (202) 219–8694 (**Note**: This is not a toll-free telephone number. This solicitation will also be published on the Internet at ''http/www.doleta.gov.'' To gain access to the solicitation, click on ''What's Hot.''

SUPPLEMENTARY INFORMATION: This announcement consists of four parts: Part I Background/Description, Part II Application Process, Part III Statement of Work, and Part IV Evaluation Criteria for Award.

Part I. Background/Description

The School-to-Work Opportunities Act of 1994 is intended to create statewide systems to help all students attain high academic and occupational standards and identify and navigate paths to rewarding roles in the workplace ''All student'' is defined in the Act as ''both male and female students from a broad range of background and circumstances, including disadvantaged students, students with diverse racial, ethnic or cultural backgrounds, American Indians, Alaska Natives, Native Hawaiians, students with disabilities,

student with limited-English proficiency, migrant children, out-of-school youth, and academically talented students''

Experience in implementing the School-to-Work Opportunities Act has shown that out-of-school youth—including school dropouts and those high school graduates who are not adequately prepared for careers—are extremely difficult to serve under school-to-work precisely because they are not in the school buildings that have been the major focus of school-to-work activities to date. A major problem for many young people, especially those who leave high school without a degree, is their inability to secure full-time career-track employment and their lack of preparation for further education or training. School-to-work is designed to respond to these problems.

In addition, there are currently many effective employment and training programs for school dropouts and other out-of-school youth. The purpose of this solicitation is to focus these programs on ways to better serve these youth which incorporate the twin school-to-work goals of high academic achievement and progressive mastery of career competencies and which include these programs in State and local school-to-work systems.

Part II. Application Process

A. Eligible Applicants. This competition is open to current youth employment and education program providers who can clearly demonstrate that their programs meet a majority of the ''threshold criteria'' in Appendix C. Applications are encouraged from Adult High Schools. Adult High Schools are defined as schools offering full-time high school curricula to youth 16 years of age or older who are officially designated as school dropouts. Entities described in section 501(c)(4) of the Internal Revenue Code who engage in lobbying activities are not eligible to receive funds under this SGA. The new Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, which became effective January 1, 1996, prohibits the award of federal funds to these entities if they engage in lobbying activities. Applicants must complete the IRS Form (Appendix D) and include it in Section I of the offeror's proposal.

B. Initial Screening. Applicants are required to demonstrate that they have already designed and begun implementation of a substantial number of the components and strategies of a school-to-work system, as described in the School-to-Work Opportunities Act of 1994, to be considered. Before proposals are accepted for full review, an initial screening will be conducted to determine that the applicant's current program meets a majority of the threshold criteria in Appendix C. For screening purposes, ''a majority'' shall mean (more than 50%) of each of the partnership, programmatic and measurement criteria and at least one of each of the workbased learning, and connecting activities criteria. Only applicants that meet this criterion and include all four attachments listed in D.5 (below) will be accepted for review.

C. Grant Awards. The Department has allocated approximately $1,270,000 for grants awarded under this SGA and expects to award approximately 10 grants in a range of $75,000 to $150,000. The maximum award will not be greater than $150,000. Proposals in excess of $150,000 will not be considered. DOL/ETA expects to select a variety of types of existing programs that serve out-of-school youth and a variety of approaches. The Department expects to award at least $200,000 of the $1,270,000 to Adult High Schools. The Period of Performance shall not exceed fifteen (15) months from the date of execution by the Government.

D. Submission of Proposal. An original and three (3) copies of the application shall be submitted. The application shall consist of three (3) separate Sections and should not be bound or stapled together.

Section I shall address the ''threshold criteria.'' List and briefly describe the threshold criteria (see Appendix C) the project currently meets. (Maximum of 2 Pages)

Section II shall contain the IRS Status Form, (Appendix D; Standard Form (SF) 424, ''Application for Federal Assistance,'' (Appendix A); and ''Budget Information Sheet.'' (Appendix B). All copies of the SF 424 shall have original signatures. The budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet.

Section III shall contain technical data that demonstrate the applicant's capabilities in accordance with the requirement of this solicitation. This section of the proposal shall follow the outline below:

1. Foundation of School-to-Work Elements. Provide a *brief* description of the existing youth program and the school-to-work elements, as laid out in the STWOA, that are currently a part of the program and services for out-of-school youth. The description should provide qualitative and quantitative information about current activities, keyed to the threshold criteria, and sufficient to demonstrate substantial conformance with the threshold criteria. If the program receives funds under the School-to-Work Opportunities Act, describe the level of service currently provided to out-of-school youth. Describe the program's major sources of funding, e.g., Federally-funded State or local school-to-work program (STWOA), State average daily attendance (ADA) funds, Adult High School, Job Corps (JTPA), Youth Fair Chance (JTPA), YouthBuild, alternative education program, JTPA Title IIC.

2. *Proposed Activities.* Applicants must be specific in describing (1) which school-to-work elements, components or strategies are being proposed for implementation or enhancement under the grant, (2) how the project will build on the current program(s) and (3) how the activities proposed are or will coordinate appropriately the activities of youth-serving organizations with Federally-funded school-to-work activities in the State or local area. Applicants are advised to be specific about the proposed processes, products and outcomes of the proposed out-of-school youth/school-to-work project.

3. *Systemic Connections between organizations serving out-of-school youth and Federally-funded State or local school-to-work systems.* Describe how the proposed activities will connect youth service delivery organizations to Federally-funded school-to-work systems. Describe previous collaborations between the applicant and the local school-to-work partnership.

4. *Capability of Staff.* Describe the proposed staff's relevant knowledge and expertise.

5. *Attachments.* Attach the following required documents in the order they are listed.

a. A memorandum of understanding with the local school-to-work partnership specifying the role of each party in the project. In the applicant is a local partnership, the memorandum shall be with local providers of services to out-of-school youth.

b. A letter from the State school-to-work implementation or planning director indicating (1) the proposal was made available for review and comment and (2) the comments or suggestions made by the State. If a response from the State is not available by the application due date, the offeror may attach a copy of the letter to the State requesting such a review.

c. Letters of support from local secondary post-secondary institutions.

d. Letters of support from local employers demonstrating commitment to the principles of school-to-work and the strategies for serving out-of-school youth proposed by the offeror and the

employer's willingness to collaborate with the offeror in addressing the needs of out-of-school youth.

E. Page Count. Section III of the applications (technical proposal) shall not exceed a maximum of 12 pages (not including attachments); the ''threshold criteria'' shall not exceed two (2) pages. The application should be typed with a font size no smaller than 10cpi or 12pt print size, with 1 inch default margins (i.e., for top, bottom, left, and right margins).

F. Hand Delivered Proposals. Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they shall be received at the designated place by 2:00 p.m., Eastern Time, not later than August 14, 1997. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time. Telegraphed and/or faxed proposals will not be honored.

Note: Failure to adhere to the above instructions could be a basis for a determination of nonresponsiveness.

G. Late Proposals. Any proposal received at the office designated in the solicitation, after the exact time specified for receipt, will not be considered unless it is received before award is made and was sent by either: (1) U.S. Postal Service registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed by the 15th; or (2) U.S. Postal Service Express Mail Next Day Service—Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service Registered or Certified Mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

H. Period of Performance. The period of performance shall not exceed fifteen (15) months from the date of execution by the Government. The first three months will be devoted to project planning and the technical assistance review described in Part III, C of this solicitation.

Part III. Statement of Work

The Department of Labor has a strong interest in assisting youth programs to apply school-to-work principles and components to their out-of-school youth strategies and to connect their efforts to the Federally-funded school-to-work systems in their States. In addition, the Departments of Education and Labor, which jointly administer the School-to-Work Opportunities initiative, have a strong interest in ensuring that school-to-work systems being developed and implemented in the States and local communities are designed to provide the same opportunities and benefits to out-of-school youth as they do for youth who are attending school. This project will demonstrate a variety of comprehensive approaches for serving out-of-school youth effectively in a school-to-work framework.

A. Out-of-School Threshold Criteria. The expectation is that most, but not necessarily all, of the strategies and essential elements of a school-to-work system, as laid out in the School-to-Work Opportunities Act, will be present in the existing youth initiatives selected for funding. The degree to which each is present will vary from project to project, however. The intention is to demonstrate a variety of more fully developed models for serving out-of-school youth in a school-to-work framework than is now available. The out-of-school youth/school-to-work project is not intended to help out-of-school youth initiatives *begin* to design school-to-work systems; nor is it intended to fund existing State or local school-to-work initiatives that have not already begun to implement strategies for out-of-school youth. Applications that do not show a strong, appropriate connection between programs serving out-of-school youth and existing school-to-work components and systems will not be selected for funding. Appendix C contains the threshold criteria that the Departments and the National School-to-Work Office consider a baseline of activity for effectively serving out-of-school youth in a school-to-work framework.

B. Allowable Activities. The objective of the out-of-school youth/school-to-work initiative is to encourage existing programs serving out-of-school youth to adapt and adopt school-to-work elements, principles and strategies and to assist school-to-work systems to learn more effective ways to serve out-of-school youth as they design and implement school-to-work systems for all students. Thus, activities to be funded under the out-of-school youth/school-to-work project must be related to components and activities in the School-to-Work Opportunities Act (most of which are referred to in Appendix C), must be designed to serve out-of-school youth more effectively, and must show a connection—that is appropriate to the status of school-to-work implementation in the State or locality—between the organization(s) delivering services to out-of-school youth and the Federally-funded school-to-work system. Appropriate activities might include: implementing a school-to-work element, principle or strategy not currently part of the project, enhancing a school-to-work feature which the project already possesses and activities designed to better link the existing out-of-school youth program with a Federally-funded school-to-work system.

C. Other Activities. A Request for Proposals (RFP) will be issued by the Departments for an evaluation of this demonstration program. Grantees will participate in the evaluation by cooperating with evaluation contractor personnel during at least two site visits and providing other information as requested. Grantees will also participate in monthly telephone calls with the Grant Officer's Technical Representative (GOTR) assigned to the project, the evaluation contractor's project officer and the evaluation contractor.

We anticipate that, no later than the third month of the period of performance, the evaluation contractor, in collaboration with the GOTR for each demonstration project, will conduct an on-site review of each project. The purpose of this review is to assist both the contractor and the grantee in identifying areas in which the existing project does not conform to school-to-work elements or principles and, thereby, identify areas where the project might benefit from technical assistance and establish a baseline against which the project's progress can be evaluated. A written report based on this review will be submitted to the contractor's project officer, the GOTR, and the grantee. The grantee will assist the contractor in conducting this review and participate in a telephone debriefing on the report. No later than

the fourth month of the period of performance, the grantee will submit an implementation plan based on the review.

Pending the availability of funds, the grantees funded under this procurement may have access to a technical assistance line of credit with the School-to-Work Learning and Information Center. The evaluation contractor will assist the grantees in identifying appropriate sources of technical assistance upon request.

Grantees will participate in up to two grantee conferences to be arranged by the evaluation contractor and scheduled during the period of performance. The first such conference is tentatively scheduled for November, 1997 in Chicago. Project budgets should include travel, lodging and per diem for a maximum of four attendees at each of the conferences.

Part IV—Evaluation Criteria for Award

Prior to the formal review, applications will be screened to insure that *all* the information requested in this grant application is provided and complete. Complete applications will be reviewed against the criteria listed below by a rating panel from the Departments. The panel's recommendations are advisory in nature to the Grant Officer.

A. Foundation of School-to-Work Elements. (25 Points)

- The extent to which the *current* program provides service to out-of-school youth using school-to-work components and elements described in the School-to-Work Opportunities Act and reflected in the threshold criteria (Appendix C).
- The extent to which the *current* program demonstrates that it substantially meets threshold criteria in the 3 criteria areas—partnerships, programmatic and measurement.
- The extent to which the activities proposed are designed to provide youth who are no longer in school the opportunities and benefits envisioned in the STWOA and reflected in attached threshold criteria.

B. Plans for Adding New School-to-work Component(s) or Accelerating the Development of an Existing Promising Practice in School-to-work. (35 Points)

- The extent to which the proposed activities will lead to an out-of-school youth/school-to-work system which meets all the threshold criteria by the end of the period of performance.
- The extent to which the proposed activities will promote higher academic achievement and greater mastery of career competencies.
- The extent to which proposed activities will improve out-of-school youth's prospects for career-track jobs and/or further education.

C. Systemic Connections Between Organizations Serving Out-of-school Youth and Federally-funded State or Local School-to-work Systems. (25 Points)

- The degree to which the proposed activity(ies) appropriately connects youth service delivery organizations with a Federally-supported school-to-work system(s) in the State and local communities so that existing promising practices, strategies, and curricula for effectively serving youth in a school-to-work framework are incorporated into the out-of-school youth/school-to-work project, and the lessons learned as a result of the out-of-school youth/school-to-work project are shared.
- The extent to which the applicant and the local school-to-work partnership have collaborated in establishing a network for reaching out to and engaging employers in school-to-work.

D. Capability of Staff. (15 Points)

- The extent to which the staff proposed have the knowledge and expertise in school-to-work and in serving out-of-school youth required to successfully complete the project.

Final selections will be made based upon the panel's review and such other factors as type of current program, diversity of programmatic approaches, and geographic balance and what is in the best interest of the Government.

Signed at Washington, D.C., this 7th day of July, 1997.

Janice E. Perry,

Grant Officer.

Appendices

A. SF–424, Application for Federal Assistance
B. Budget Information Sheet
C. Threshold Criteria (5 Pages)
D. IRS Status Form

Appendix C—Serving Out-of-School Youth in a School-to Work Framework Threshold Criteria

Partnerships

1. There is a strong community-wide partnership that is committed to preparing young people for the world of work and/or further educational and occupational training by providing appropriate activities and services which reflect the fact that youth learn best by learning in context and being actively engaged in their own learning.

2. There is strong support for the existing initiative and for the school-to-work concept from appropriate out-of-school youth/school-to-work stakeholders—such a secondary schools, alternative high schools, adult high schools, parents, young people, employers, community-based organizations, labor, post-secondary institutions, private industry councils, government agencies—as well as strategies for maintaining their support and involvement. In particular, a strong leadership role played by CBOs and, where appropriate, adult high schools as stakeholders in the school-to-work initiative should be demonstrated.

3. Collaborative agreements exist among a variety of institutions, including: those serving out-of-school youth (e.g., CBOs, adult high schools, Job Corps); public post-secondary and secondary schools; vocational education entities; employees and employer organizations; labor organizations; apprenticeship agencies; local government agencies; and JTPA private industry councils.

4. Employers play strong and active roles in the planning and governance of the existing initiative, and provide a range of services for the out-of-school youth component, such as providing a variety of worksite learning experiences, developing assessment criteria, and participating in career exposure activities.

5. Resources from a variety of sources (e.g. school-to-work, federal categorical, State and local education funds, private sector) are systematically used in an integrated manner, to effectively address the work and learning needs of out-of-school youth.

6. A realistic and coherent strategy is in place to collaborate with the statewide school-to-work system, as well as any existing school-to-work systems.

Programmatic Criteria:

1. Effective strategies are in place for recruiting, retaining, and serving out-of-school youth in the school-to-work framework.

2. A system of integrated school-based learning, work-based learning and connecting activities is present in the existing out-of-school youth initiative, and is responsive to the cultural diversity of the youth it serves.

3. Learning is organized around an appropriate system of career pathways that are consistent with emerging industry and State standards for mastery of academic competencies and occupational skills.

4. Learning includes activates that offer students exposure to all aspects of an industry.

5. Work-Based Learning activities include the following:

a. A variety of different types of high quality work experiences and on-the-job training tailored to the individual needs of each out-of-school youth served.

b. Adult worksite mentors. Attainment of skill certificates and academic credits.

6. School-Based Learning activities include:

a. A commitment to high academic standards for all out-of-school youth participants.

b. Workplace basics and learning in applied context integrated with academic learning.

c. Opportunities for post-secondary education—including both academic and further occupational/job training opportunities (e.g., dual enrollment option so that students can earn both high school and college credits simultaneously).

7. Connecting Activities include:

a. Ongoing professional development for worksite and ''school-based'' staff to ensure understanding of school-to-work components and the provision of high quality services for out-of school youth.

b. A range of strategies that serve to effectively connect school-based and work-based learning activities, including dedicated staff that serve as school-based, work-based liaisons/coordinators.

c. The conduct of outreach and public relations for all stakeholders involved in out-of-school youth activities, including:

- Parents.
- Youth.
- Community-Based Organizations.
- Local elected officials.
- School Boards/School Administrators.
- Employers.
- Alternative schools and Adult High Schools.

d. Linkage between human resource service organizations and academic institutions to meet the needs of individual youth (e.g. pregnant and parenting teens).

e. The provision of transportation and other support services specific to the needs of out-of-school youth.

f. Strategies that develop the interpersonal skills of students, such as personal responsibility, teamwork, and conflict resolution.

Measurement Criteria Includes

Specific goals and objectives and outcomes (or progress indicators) as they relate to the provision of services to out-of-school youth in a school-to-work framework.

2. The ability to implement and adjust improvement plans based on the continuous measurement of progress of the goals, objectives and outcomes, as indicated above.

3. The use of various types of ''assessment tools'' that would measure not only student mastery of skills, but also whether the student is able to integrate, apply and perform the learned knowledge, skills and abilities in real life situations, and that would serve as predictors of readiness for a variety of work, community college, advanced training and other real life situations.

BILLING CODE 4510–30–M

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 the 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:

1 7 - 2 4 9

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

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

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 ave 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:	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 this 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) as 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 title of the program under which assistance is required.
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 the 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 disallowances, 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.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

IRS STATUS REQUIREMENT

ISSUE:

The Lobbying Disclosure Act of 1995 was signed by President Clinton and became effective January 1, 1996. Section 18 of the Act explains that an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 which ***engages in lobbying activities*** *shall not be eligible for the receipt of Federal funds constituting an award, grant or loan. The subject Act provides a definition of lobbying. Copies of the Act and related information may be obtained from either of the following offices:*

Clerk of House of Representatives
Legislative Resources
1036 Longworth House Office Bldg.
Washington, D.C. 20515 (202-225-1300)

United States Senate
Office of Public Records
SH232, Washington, D.C.
(202-224-0758)

ACTION REQUESTED:

Current grantees of the U.S. Department of Labor, Employment and Training Administration should complete and return this form to the Grant Officer who signed your award(s) at the following address:

Ms. Janice E. Perry, Grant Officer
U. S. Department of Labor
Employment & Training Administration
200 Constitution Avenue, N.W., Room S-4203
Washington, D.C. 20210,
ATTENTION: Ms. Laura Cesario

GRANTEE ATTESTATION FORM

1. Organization Name/Address:	*2. Grant/Agreement Number:*
3. Contact Person:	*4. Contact's Phone Number:*
5. Please check one of the following that indicates your IRS classification status: ____ *Our IRS status is 501 (c)(3).* ____ *Our IRS status is 501 (c)(4); however, our activities do not meet the definition of lobbying.* ____ *Our IRS status is 501 (c)(4) and we do engage in lobbying activities.* ____ *None of the above.*	*6. As the designated individual that can legally bind the forenamed entity, I do hereby attest the information provided herein is accurate and true to the best of my knowledge.* *AUTHORIZED SIGNATURE / DATE*

FR Doc. 97–18259 Filed 7–10–97; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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CA970112 (Feb. 14, 1997)
CA970113 (Feb. 14, 1997)
CA970114 (Feb. 14, 1997)
CA970115 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

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Signed at Washington, D.C. this 3rd day of July 1997.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–17937 Filed 7–10–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Survey of Occupational Injuries and Illnesses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 9, 1997. The Bureau of Labor Statistics 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.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 24(a) of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. The Commissioner of Labor Statistics has been delegated the responsibility for ''Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and

publication of occupational safety and health statistics.'' The Bureau of Labor Statistics (BLS) fulfills this responsibility, in part, by conducting the Survey of Occupational Injuries and Illnesses in conjunction with participating State statistical agencies. The BLS Survey of Occupational Injuries and Illnesses provides the nation's primary indicator of the progress towards achieving the goal of safer and healthier workplaces. The survey produces the overall rate of occurrence of work injuries and illnesses by industry which can be compared to prior years to produce measures of the rate of change. These data are used to improve safety and health programs and measure the change in work-related injuries and illnesses.

II. Current Actions

OMB clearance is being sought for the upcoming Survey of Occupational Injuries and Illnesses which will include a reduction in the sample. Approximately 230,000 establishments will be surveyed annually. The clearance will include survey prenotification materials for employers who are normally exempt from recording injuries and illnesses.

Type of Review: Revision of currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045.

Affected Public: Business or other for-profit, not-for-profit institutions; farms; State, Local or Tribal Government.

Frequency: Annually.

Form	Total respondents	Total responses	Estimated time per response (hour)	Estimated total burden hours
BLS 9300	230,000	230,000	.83	190,625
Prenotification Package	150,000 out of 230,000	150,000 out of 230,000	.11	16,666
Totals	230,000	230,000	.90	207,291

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $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 also will become a matter of public record.

Signed at Washington, D.C., this 7th day of July, 1997.

Rebecca S. Kraus,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 97–18280 Filed 7–10–97; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations: Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons

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 extension and reinstatement of information collection requirements related to Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons. In addition, MSHA is soliciting comments concerning existing paperwork requirements related to Availability of Mine Rescue Teams which have not been previously approved by OMB. 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 below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before September 9, 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. Ms. Silvey can be reached on (703) 235–1910 (voice) or (703) 234–5551 (facsimile).

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

Section 115(e) of the Federal Mine Safety and Health Act of 1977 required the Secretary of Labor to publish proposed regulations which provide that mine rescue teams be available for rescue and recovery work to each

underground mine in the event of emergency. Congress considered the ready availability of mine rescue teams in the event of an accident to be vital protection for miners.

In responding to Congressional concerns, MSHA promulgated 30 CFR part 49, Mine Rescue Teams. These regulations set standards related to the availability of mine rescue teams; alternate mine rescue capability for small and remote mines and mines with special mining conditions; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates.

II. Current Actions

This request for review consolidates all paperwork requirements related to mine rescue teams, arrangements for emergency medical assistance, and arrangements for transportation for injured persons into a single paperwork package under Office of Management and Budget (OMB) control number 1219–0078. The consolidated package includes all paperwork requirements which were formerly approved under OMB control numbers 1219–0077, 1219–0078, and 1219–0093, as well as certain paperwork requirements which are currently approved under OMB control number 1219–0049. In addition, paperwork requirements under 30 CFR § 49.2 which have not been approved by OMB have been included in this consolidated package to eliminate the need for an additional package.

Type of Review: New, extension, and reinstatement (without change).

Agency: Mine Safety and Health Administration.

Title: Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons.

OMB Number: 1219–0078.

Recordkeeping: One year.

Affected Public: Business or other for-profit institutions.

Estimated Burden Hours:

Cite/reference	Total respondents	Frequency	Total responses	Average time per responses	Burden
49.2	1,285	On occasion	89	1.00 hour	89 hours.
49.3 and 4	72	On occasion	10	2.00 hours	20 hours.
49.6	311	Bimonthly	33,588	0.31 hour	10,263 hours.
49.7	311	Annually	3,732	2.13 hours	7,931 hours.
49.8	311	Annually	17,310	0.60 hours	10,452 hours.
49.9	1,357	On occasion	98	2.00 hours	197 hours.
75.1713–1	1,117	On occasion	67	2.00 hours	135 hours.
77.1702	1,781	On occasion	90	2.00 hours	180 hours
Totals	3,138		54,984	0.53 hour	29,267 hours.

Estimated Burden Hour Cost: $1,007,898.

Estimated Burden Cost (capital/startup): $0.

Estimated Burden Cost (operating/maintaining): $559,260.

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: July 7, 1997.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 97–18281 Filed 7–10–97; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–09685, et al.]

Proposed Exemptions; EBPLife Insurance Company, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the notice of proposed exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

EBPLife Insurance Company Located in Minneapolis, Minnesota

[Application No. D–09685]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transaction

If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply, effective April 15, 1994, to the reinsurance of risks and the receipt of premiums therefrom by EBPLife Insurance Company (EBPLife) in connection with certain stop-loss policies (the Stop-Loss Policy or Stop-Loss Policies) issued by unrelated third party insurance carriers (the Carriers or Carrier) to employers (the Employers or Employer) any of whose employees were covered by various employee welfare benefit plans (the Plans or Plan) [1], when at the time EBPLife reinsured risks and received premiums, Affiliates of EBPLife, as defined in paragraph (a) of section III below or the predecessors of such Affiliates also provided non-discretionary administrative services to such Plans for a fee, provided that the conditions set forth in section II below were satisfied.

[1] The Department, herein, is not proposing relief for transactions involving any plans sponsored by EBPLife or its affiliates (the Affiliates), as defined in paragraph (a) of section III below, or any predecessors of such Affiliates. In this regard, EBPLife represents that it may have issued or may issue stop-loss or other insurance contracts in connection with welfare benefit plans that cover or may have covered employees of EBPLife, its Affiliates or predecessors of such Affiliates. However, in all cases, EBPLife represents that it either satisfies the requirements of the statutory exemption provided by section 408(b)(5) of the Act, or it ensures that the insurance contracts are not ''plan assets'' within the meaning of the Act.

Section II—Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements, as of the effective date of this proposed exemption and thereafter:

(a) Each transaction was effected by EBPLife in the ordinary course of its business as an insurance company;

(b) The terms of each transaction were at least as favorable to the Plans as those negotiated at arm's-length with unrelated third parties under similar circumstances;

(c) The combined total of all fees and other consideration received by EBPLife, its Affiliates, and predecessors of such Affiliates for the provision of services to Employers and their Plans and in connection with the purchase of insurance contracts was not in excess of ''reasonable compensation'' within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

(d) EBPLife, its agents or Affiliates, or the predecessors to such Affiliates have not served as: (1) Trustees to any of the Plans (other than as non-discretionary trustees, as defined in paragraph (f) in section III below, who do not render investment advice with respect to any of the assets of such Plans); (2) plan administrators, within the meaning of section 3(16)(A) of the Act; (3) fiduciaries who are expressly authorized in writing to manage, acquire, or dispose of the assets of any of the Plans; or (4) employers any of whose employees are covered by any of the Plans.

(e) EBPLife, its Affiliates, or the predecessors of such Affiliates have not acted as fiduciaries in connection with the decision by the Employer to purchase Stop-Loss Policies reinsured by EBPLife;

(f) As of the effective date of this exemption, if an Employer executed an agreement (the Administration Agreement) with the Affiliates of EBPLife or with the predecessors of such Affiliates to provide services to an Employer or Plan; and such Employer also purchased or renewed a Stop-Loss Policy reinsured by EBPLife for the purpose of funding a Plan, then the fiduciaries of such Plan (the Plan Fiduciaries or Plan Fiduciary), as defined in paragraph (g) of section III below, must have received prior to the decision which resulted in the retention of Affiliates of EBPLife or the predecessors of such Affiliates to provide services and stop-loss insurance reinsured by EBPLife, a full and detailed written disclosure, including but not limited to a copy of the Administration Agreement which, among other things, disclosed whether EBPLife reinsured risk under a Stop-Loss Policy issued to the Employer of such Plan and described all of the services provided by EBPLife, its Affiliates, or the predecessors of such Affiliates to such Plan or such Employer. Such disclosures have been provided by EBPLife or its Affiliates or by the predecessors of such Affiliates, in a form calculated to be understood by such Plan Fiduciaries who have no special expertise in insurance.

(g)(1) As of the effective date of this exemption, and prior to the execution of a transaction described in this exemption, following receipt of the disclosures, described in paragraph (f) of this section II, the Plan Fiduciary, by signing the Administration Agreement, acknowledged receipt of such disclosures and acknowledged that the decision to engage in a transaction which is the subject of this exemption was a decision made in a fiduciary capacity, and that such Plan Fiduciary approved of the subject transaction.

(2) With respect to the renewal by Employers of expired Stop-Loss Policies reinsured by EBPLife where Affiliates of EBPLife or the predecessors of such Affiliates were parties in interest with respect to a Plan by reason of the provision of services to such Plan, the written disclosures required under paragraph (f) of this section II need not have been repeated, unless—

(A) More than three years had passed since such disclosures were made with respect to the same kind of services provided by the Affiliates of EBPLife or by predecessors of such Affiliates or the same kind of reinsurance of the risk on the Stop-Loss Policies, or

(B) The reinsurance of the risk on such Stop-Loss Policies by EBPLife or the receipt of compensation for services by Affiliates of EBPLife or by predecessors of such Affiliates thereto was materially different from that for which approval described in paragraph (g) of this section II was obtained.

(h) The Plans have paid no commission with respect to the reinsurance by EBPLife of the Stop-Loss Policies.

(i) Each of the Plan Fiduciaries have not received, directly or indirectly (i.e. through any Affiliates), any compensation or other consideration for his or her own personal account from EBPLife, any of its Affiliates, any predecessors of such Affiliates, or other party dealing with any of the Plans in connection with a transaction described in this exemption.

(j) EBPLife and its Affiliates and any predecessors of such Affiliates followed

the standard claims processing practices regarding any claims submitted with respect to benefits under any of the Plans covered by any of the Stop-Loss Policies reinsured by EBPLife;

(k) The Employer had final authority regarding the payment or nonpayment of any and all claims submitted with respect to benefits under any of the Plans covered by the Stop-Loss Policies reinsured by EBPLife;

(l) EBPLife or its Affiliates or the predecessors of such Affiliates have made available upon request by the Employers of each of the Plans at no additional charge full and detailed written reports which detail any and all of the following information:

(1) The average turn-around time from the date that a claim was initially received to the date that the claim was processed for payment;

(2) The percentage of claims processed within the target period, as set forth in the Administration Agreement;

(3) The average turn-around time from the date that a claim was received to the date that a claim was actually paid; and

(4) A summary of pending claims that were received but not paid accompanied by a code indicating the reason why each claim had not yet been paid.

(m) Regarding its operations and reserves, EBPLife complied with all applicable requirements of law and insurance regulations of the State of Oklahoma, where it is domiciled and licensed to do business;

(n) EBPLife has been subject to a financial audit by the Department of Insurance of the State of Oklahoma, where it is domiciled and licensed to do business no less frequently than once every three years;

(o) The issuing Carriers of the Stop-Loss Policies are fully liable for all claims covered by the Stop-Loss Policies in excess of the applicable stop-loss limits under such Stop-Loss Policies;

(p) Where the Stop-Loss Policies are reinsured by EBPLife, EBPLife, as reinsurer, is fully liable for the payments of claims under such Stop-Loss Policies;

(q) Independent insurance consultants (the Consultants), who were unrelated to EBPLife, its Affiliates, or to the predecessors of such Affiliates, solicited bids for administrative services and/or Stop-Loss Policies on behalf of Employers and served as brokers or agents to Employers with respect to the purchase by Employers of Stop-Loss Policies reinsured by EBPLife;

(r)(1) EBPLife or its Affiliates retain or the predecessors of such Affiliates have retained for a period of six (6) years from the date of any transaction covered by this exemption, the records necessary to enable the persons, as described in paragraph (s) of this section II, to determine whether the conditions of this exemption have been met. Such records shall include, but not be limited to, the following information:

(A) A copy of the information disclosed by EBPLife, its Affiliates, or by the predecessors of such Affiliates to the Plan Fiduciaries, pursuant to paragraph (f) of section II above;

(B) A copy of the Administration Agreement which discloses, among other things, whether EBPLife reinsures risk under a Stop-Loss Policy issued to an Employer;

(C) Any additional information or documents provided to any Plan Fiduciary with respect to a transaction covered by this exemption;

(D) Evidence of the written acknowledgment of receipt of disclosures by the Plan Fiduciary as described in paragraph (g) of this section II.

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of EBPLife, its Affiliates, or the predecessors of such Affiliates, such records were or are lost or destroyed prior to the end of the six (6) year period.

(3) No party in interest, other than EBPLife, its Affiliates, and the predecessors of such Affiliates, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, if the records are not maintained, or are not available for examination as required by paragraph (s) of this section II; and

(S)(1) Except as provided in paragraph (s)(2) of this section II and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) of section II above are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor;

(B) Any fiduciary of each of the Plans or any duly authorized employee or representative of such fiduciary; and

(C) Any Employer of Plan participants and beneficiaries, any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary; any employee organization any of whose members are covered by a Plan.

(2) None of the persons described in paragraph (s)(1) (B) and (C) of section II shall be authorized to examine trade secrets of EBPLife, its Affiliates, or the predecessors of such Affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(a) An ''Affiliate'' or ''Affiliates'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term, ''relative,'' means a ''relative'' as that term is defined in section 3(15) of the Act, or a brother, a sister, or a spouse of a brother or a sister.

(e) The term ''non-discretionary services'' means custodial services and services ancillary to custodial services, none of which services are discretionary.

(f) The term ''non-discretionary trustee'' of a Plan means a trustee whose powers and duties with respect to any assets of the Plan are limited to (1) the provision of non-discretionary trust services, as defined in paragraph (e) of this section III, to the Plan, and (2) duties imposed on the trustee by any provision or provisions of the Act.

(g) The term ''Plan Fiduciary'' or ''Plan Fiduciaries'' means a person(s) who are independent of EBPLife, its Affiliates, and any predecessors of such Affiliates, are sufficiently knowledgeable with respect to administration, benefits, funding, and any matters related thereto concerning such Plan, are capable of making an informed and independent decision, and are responsible for executing the Administration Agreement and for deciding to purchase or renew the Stop-Loss Policies reinsured by EBPLife.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective, as of April 15, 1994, the date the application was filed.

Summary of Facts and Representations

1. Employee Benefit Plans, Inc. (EBP), incorporated under the laws of Delaware in February 1986, is a managed healthcare company headquartered in Minneapolis, Minnesota. Prior to the fall of 1995, EBP was the holding company for a number

of subsidiaries, including EBPLife and EBPHealth Plans, Inc. (EBPHealth), described more fully below. The common stock of EBP along with its subordinated debentures, are traded on the New York Stock Exchange. As of December 31, 1993, EBP and its Affiliates had aggregate assets of approximately $200 million and provided products and services for approximately 2,600 Employers who sponsor self-funded employee welfare benefit plans nationwide.

2. EBPLife, a wholly owned subsidiary of EBP, was formed from the merger of two companies, First Security Life Insurance Company and Sooner Life Insurance Company, after such companies were acquired by EBP in 1986 and 1991, respectively. EBPLife is a life and health insurance company domiciled in the State of Oklahoma and is subject to the insurance laws and regulation of that state which requires EBPLife to maintain minimum capital and surplus ratios and minimum reserves. In addition, it is represented that EBPLife is currently licensed to sell health and life insurance in forty (40) other states and is seeking licensure in most of the remaining states in the United States.

As of December 31, 1993, EBPLife had assets of approximately $110 million, including insurance loss reserves of approximately $22 million. It is represented that EBPLife has received Standard and Poor's highest rating for capital adequacy. Further, EBPLife, as of December 31, 1993, maintained a level of risk-based capital percentage in excess of the amount required under rules promulgated by the National Association of Insurance Commissioners. It is represented that in July 1996, EBPLife was issued a B+ rating by the A.M. Best Company, the leading national rating organization that evaluates the financial strength of insurance companies.

As of December 31, 1993, the investment portfolio of EBPLife consisted primarily of investment grade bonds, all of which are rated A or higher by Standard & Poor's, with an average duration of 4.7 years. It is represented that the investment policy of EBPLife is generally more restrictive than that required under applicable insurance laws and regulations.

EBPLife directly issues stop-loss insurance and offers fully insured group health insurance, group term life insurance, accidental death and dismemberment insurance, and individual major medical and life insurance conversion policies.[2] In addition, EBPLife reinsures Stop-Loss Policies issued by other Carriers in connection with self-funded health benefit programs offered by Employers to their employees. It is represented that all of the insurance policies issued or reinsured by EBPLife are offered for one-year periods, with annual repricing and renewals.

3. Until 1996, EBPHealth was a wholly owned subsidiary of EBPLife and a contract administrator to approximately 1,700 Employers who sponsored self-funded welfare benefit plans covering approximately 775,000 plan participants nationwide.

It is represented that the principal business of EBPHealth as contract administrator consisted of providing administrative services to Employers in connection with the establishment and operation of Plans. The administrative services provided by EBPHealth included benefit claims processing, benefit disbursement, data analysis. For its services as contract administrator, EBPHealth received a fee generally in the form of a fixed monthly amount per eligible employee. In this regard, the Employers, and not the Plans, paid directly for claims administration services provided by EBPHealth. It is represented that EBPHealth did not act as a plan administrator. In this regard, it is represented that the provisions of Administration Agreements between EBPHealth and Employers made clear that EBPHealth did not have final authority to adjudicate benefit claims.

It is represented that prior to 1996, EBPHealth had divisions operating in the western, central, northeast, and southeast regions of the United States and employed approximately 855 employees at thirteen (13) claims processing service centers in these regions. It is represented that EBPHealth processed claims for health, dental, disability, vision, and prescription drug programs in excess of $2 billion annually for its clients.

EBPHealth also engaged in the preparation of utilization and claims experience reports, and offered to Employers the services of several computerized claims processing and reporting systems which generated statistical reports. It is represented that these reports provided information on benefit utilization, claims processing activity, and accounting data, and other summary and detailed information for use by Employers. In addition, EBPHealth developed a computerized database system that permitted customers who elected to participate, among other things, to review preliminary benefit eligibility determinations and to create reports comparing health claims expenditures with other statistical data maintained by EBPHealth.

It is represented that EBPHealth maintained a separate training and claims auditing staff which conducted routine internal audits of claims examiners and monitored and updated claims processing methods and procedures consistent with industry standards. In addition, EBPHealth was subject to audit by Employers and the Carriers whose Stop-Loss Policies are reinsured by EBPLife.

4. It is represented that in 1995 and 1996, EBP, EBPLife, and EBPHealth were the subjects of several mergers and acquisitions. In this regard, on October 19, 1995, First Financial Management Corporation (FFMC), a Georgia corporation, acquired EBP and its Affiliates, EBPLife and EBPHealth. As a result of this merger, EBP became a wholly-owned subsidiary of FFMC, while EBPLife and EBPHealth remained wholly-owned subsidiaries, respectively, of EBP and EBPLife.

Subsequently, through a stock merger approved by shareholders on October 25, 1995, FFMC and its Affiliates, EBP, EBPLife, and EBPHealth, were acquired by First Data Corporation (FDC). FDC, a Fortune 100 company, is engaged in over 102 countries in providing a variety of services, including information and financial transaction processing services, health claims administration, data imaging and information management.

As a result of the merger on October 25, 1995, FFMC became a wholly-owned subsidiary of FDC, while EBP and EBPLife, and EBPHealth remained subsidiaries of FFMC. As of November 21, 1995, it was estimated that FFMC and FDC had combined annual earnings of more than $400 million and employed approximately 36,000 persons. It is represented that, as of December 12, 1996, FDC has assets in excess of $12.2 billion.

It is represented that prior to the mergers described above that FFMC had a subsidiary known as First Health Strategies (TPA), Inc. (First Health), a Utah corporation which was formerly known as Alta Health Strategies, Inc. (ALTA).[3] First Health from its corporate

[2] It is represented that where EBPLife issued or issues any of these policies directly to employee benefit plans, the sale of the insurance policy is eligible for exemptive relief under PTCE 84–24. The applicant is not requesting relief for such transactions, nor is the Department, herein, proposing such relief.

[3] It is represented that ALTA and ALTA Reinsurance Company (ALTA RE) were granted

headquarters in Salt Lake City, Utah, and from a number of separate processing centers around the country, employs sophisticated technology to integrate claims administration, data analysis, medical case management, and other services. Subsequent to the mergers described above, FDC converted all of EBPHealth's clients to the integrated and automated claim and administration computer system provided by First Health. It is represented that the conversion required the execution of new Administration Agreements between First Health and Employers. In addition, as a result of the conversion, EBPHealth's clients became eligible to participate in all of the health-related services and benefits offered by First Health. Accordingly, upon completion of the conversion in 1996, EBPHealth was formally merged into First Health and ceased to operate as a third party administrator.

It is represented that after the conversion and the two mergers were completed, the new corporate structure of FDC consisted of a new health services group comprised of: (1) GENEX Services, Inc., a workers' compensation managed care company; (2) VIPS, Inc., an information systems development and consulting company; (3) First Health, a provider of integrated health care cost management services to private, self-funded, and government markets; and (4) EBPLife, a risk-bearing organization through which stop-loss insurance products, group life insurance products, and other health-related insurance products are provided to clients of First Health.

Notwithstanding the changes that resulted from the conversion and mergers, as described above, it is represented that EBPLife did not change its name nor its domicile. EBPLife intends to maintain its headquarters in Minneapolis, Minnesota and will continue to maintain its underwriting, contracts, compliance, premium and billing, finance and accounting, and insurance claim processing departments separate from the claim administration functions maintained by First Health.

5. It is represented that Employers who sponsor self-funded Plans[4] often choose to limit exposure to claims by purchasing stop-loss insurance. Some such stop-loss insurance may be issued by unrelated Carriers, may be issued directly by EBPLife, or may be issued by Carriers with which EBPLife has an active reinsurance arrangement.[5] It is represented that where EBPLife is the issuing carrier, the acquisition of the stop-loss insurance is eligible for exemptive relief under PTCE 84–24, to the extent such relief is required.[6] If stop-loss insurance is issued by a Carrier with which EBPLife has an active reinsurance arrangement, EBPLife may choose to reinsure all or a major portion of the risk under such policy under two circumstances: (1) Where EBPLife is not licensed to issue such insurance directly in the state where an Employer does business; or (2) where the Carrier has greater name recognition. It is represented that often simultaneous with the purchase or renewal of Stop-Loss Policies insured or reinsured by EBPLife, Employers have chosen Affiliates of EBPLife or have chosen predecessors of such Affiliates to provide services to their Plans. In this regard, it is represented that, as of August 2, 1994, approximately 70 percent (70%) of the clients of EBPHealth purchased Stop-Loss Policies which were insured or reinsured by EBPLife. Further, it is represented that, as of the same date, approximately 55 percent (55%) of the Stop-Loss Policies reinsured by EBPLife were sold to Employers who sponsored Plans with respect to which EBP or its Affiliates were retained to provide claims administration or other services, although EBP or its Affiliates might not have been providing such services at the time such Stop-Loss Policy was reinsured by EBPLife.

6. It is represented that prior to the mergers described above, EBP focused on selling products and services to smaller Employers. For this purpose, EBP employed a sales force of approximately fifty (50) employees who marketed products and services offered by EBPLife and by EBPHealth primarily to unaffiliated Consultants who served as brokers or agents to such Employers. These Consultants received as compensation for the sale of a Stop-Loss Policy a commission based on a percentage of gross premiums. In addition, these Consultants may have received a fee from the Employer for services performed on behalf of such Employer.

The products and services offered by EBP or its Affiliates included benefit plan design and consulting, claims administration and processing, data analysis and reporting, medical cost containment programs, and underwriting of insurance coverage, including Stop-Loss Policies issued directly by EBPLife and Stop-Loss Policies issued by other Carriers but reinsured by EBPLife. It is represented that EBPLife reinsured the risk under the Stop-Loss Policies, pursuant to the terms of a reinsurance agreement between the Carrier and EBPLife which provided that the Carrier issuing the Stop-Loss Policy cede to EBPLife all or most of the balance of the premiums paid to the Carriers after various fees, commissions, and taxes had been paid. In this regard, it is represented that EBPLife paid the issuing Carrier a fee ranging from one percent (1%) to three and a half percent (3½%) of the applicable premium.

7. After the conversion and mergers described above, it is represented that First Health focused on selling products and services to larger Employers, generally companies with over 250 employees. In this regard, almost all of the Employers who were interested in maintaining a self-funded Plan retained Consultants to advise them on the purchase of services and products necessary to maintain such Plans. Once retained by the Employer, these Consultants who were independent of First Health put together a request for proposal (RFP) for submission to multiple vendors of services and products, including stop-loss insurance, for self-funded Plans. It is represented that First Health may have been one of these vendors.

Upon receipt of a RFP, First Health sales representatives determined the appropriate pricing for administrative and managed care services offered through First Health. These services included claims administration, preferred provider networks, medical utilization management programs, pharmacy card benefits, and disability

Prohibited Transaction Exemption 89–75 (PTE 89–75; 54 FR 35959, Aug. 30, 1989; proposed 54 FR 26266, June 22, 1989) by the Department for certain reinsurance transactions involving stop-loss insurance.

[4] It is represented that Plans involved in the transactions which are the subject of this exemption are maintained by Employers unrelated to EBPLife, its Affiliates, or the predecessors of such Affiliates. In this regard, however, the applicant represents that it could not supply a list of Plans or any specific information on such Plans in the application, because the Employers and the Plans change from time to time, and because of the large number of Employers and Plans nationwide for which EBPLife, its Affiliates provide products or services or for which the predecessors of such Affiliates have provided products or services.

[5] It is represented that the unaffiliated insurance Carriers with whom EBPLife, as of December 12, 1996, had reinsurance arrangements are Insurance Company of North America, and the CNA Insurance Companies. It is further represented that in the past EBPLife has also had reinsurance arrangements with ITT/Hartford Insurance Company, and Fortis Benefits Insurance Company.

[6] The applicant states that because PTCE 84–24 covers the purchase of any ''insurance or annuity contract'' from an insurance company, the purchase of Stop-Loss Policies by the Employers should be eligible for exemptive relief thereunder where EBPLife is the issuing carrier of such a policy. The Department is expressing no opinion, herein, whether such transaction satisfies the conditions as set forth under PTCE 84–24, nor is the Department, herein, proposing any relief for such transaction.

management services. In addition, First Health sales representatives may have contacted several stop-loss insurers for quotations for stop-loss coverage. In this regard, Employers or their Consultants could have identified an insurance company from which they wished First Health to obtain a quotation as part of First Health's proposal. The quotations collected by First Health may often have included Stop-Loss Policies directly issued by EBPLife; may have included Stop-Loss Policies issued by Carriers with which EBPLife had a reinsurance relationship; or may have included Stop-Loss Policies issued by insurance companies completely unrelated to EBPLife. In addition, Consultants were free to obtain quotations themselves from any other insurance company.

Once First Health sales representatives received stop-loss premium quotations from insurers, it reviewed these quotations for price as well as other policy variables, such as limitations on coverage. Depending on these variables, it is represented that Stop-Loss Policies issued or reinsured by EBPLife may or may not have been included in a proposal by First Health. If First Health's proposal included a quote for a Stop-Loss Policy reinsured by EBPLife, it is represented that such information was disclosed in the proposal.

It is represented that Consultants reviewed the proposals provided by First Health, by other vendors, by third party administrators, or by other insurers. Based on this review, the Consultants advised Employers in selecting an insurance company to provide stop-loss coverage, as well as other products and services. In this regard, the Consultants may have recommended a different vendor to provide each service and product. In the event an Employer determined to purchase administrative services from First Health, the Administration Agreement included a disclosure of the relationship, if any, between First Health and the issuer of the Stop-Loss Policy purchased by the Employer. It is further represented that no employees of First Health received commissions as a result of the reinsurance arrangement between EBPLife and an issuing Carrier where an Employer for which First Health provided services also purchased a Stop-Loss Policy reinsured by EBPLife.

8. It is represented that subsequent to the mergers described above, instances in which First Health deals directly with an Employer accounts for less than one percent (1%) of all sales of EBPLife's products. In this regard, it is represented that any direct dealing with Employers usually involved one of First Health's larger clients. First Health maintains that it did not have an opportunity to influence any Employer's decision to purchase a Stop-Loss Policy reinsured by EBPLife, because First Health did not offer Stop-Loss Policies reinsured by EBPLife in any instance in which it dealt directly with an Employer.

9. EBPLife requests retroactive exemptive relief, effective April 15, 1994, to ensure that the purchase by Employers of Stop-Loss Policies reinsured by EBPLife, as of such effective date, have not resulted in a prohibited use of ''plans assets'' for the benefit of parties in interest.[7] The purchase by the Employer of a Stop-Loss Policy reinsured by EBPLife may have constituted a prohibited use of the assets of such Plans for the benefit of EBPLife, as described in section 406(a)(1)(D), because under a reinsurance arrangement all or most of the balance of the premiums after various fees were subtracted were paid to EBPLife, as reinsurer.

It is represented that neither EBPLife nor its Affiliates, including First Health, have acted as fiduciaries, nor have the predecessors of such Affiliates acted as fiduciaries in connection with the decision by any Employer to purchase a Stop-Loss Policy reinsured by EBPLife. Moreover, it is represented that First Health has not had discretionary authority, nor has EBPHealth had any discretionary authority over the funds of the Employers or the funds of the Plans. For this reason, EBPLife maintains that none of the concerns addressed by the prohibitions of section 406(b) of the Act have arisen, nor will such prohibitions arise under the circumstances as described, and no relief from section 406(b) of the Act is requested by the applicant.[8]

10. It is represented that prior to the conversion and the mergers, described above, EBP and its Affiliates had implemented procedures designed to ensure that, where exemptive relief was needed, full and detailed written disclosures had been provided by EBP or its Affiliates to the Consultants, where such Consultants who solicited bids for services and insurance were retained as agents by the Employer. In this regard, such disclosure, included but was not limited to information concerning the services provided by EBP and its Affiliates to the Employer and the Plan, the Carriers which issued the Stop-Loss Policies and, if applicable, the reinsurance arrangements between such Carriers and EBPLife. Further, EBP encouraged Consultants to disclose to Plan Fiduciaries the commissions and fees to be earned by such Consultants in a manner consistent with the terms and conditions as set forth in PTCE 84–24. In addition EBPLife provided Employers with information required to be reported on the Schedule A filed as part of the form 5500 Series.

Subsequent to the conversion and mergers, First Health and EBPLife have provided to the independent Consultant or broker a complete description of all services, commissions, and fees paid by the Plan or by the Employer. In addition, First Health and EBPLife have disclosed the relationship between EBPLife and the issuing Carrier, if any. Specifically, EBPLife represents that it has disclosed any reinsurance arrangements and its affiliation with First Health in each stop-loss insurance proposal. Further, First Health also has disclosed these relationships in each Administration Agreement. It is represented that the proposal and the Administration Agreement are provided to the broker or the Consultant in every case where a prospective client has retained such parties. In these cases, EBPLife represents that it confirmed in writing with the broker or the Consultant that such parties have delivered information outlining the disclosure of EBPLife's relationship to First Health and any and all reinsurance arrangements to the prospective client prior to the making of a decision to purchase services performed by First Health and any Stop-Loss Policy reinsured by EBPLife. It is represented that this written record has been and will be kept in EBPLife's files for at least six (6) years.

11. It is represented that the proposed exemption is subject to a number of conditions that protect the interests of the Plans. In this regard, the Plan Fiduciaries must have acknowledged in writing receipt of the information, required to be disclosed by EBPLife and its Affiliates, or required to have been disclosed by predecessors of such Affiliates, and must have approved any

[7] In this regard, it is represented that FDC and FFMC have been parties in interest, respectively, by reason of direct or indirect ownership of First Health. While it is represented that prior to the conversion and mergers in 1995 and 1996, as described above, EBPLife was also a party in interest by reason of its direct ownership of EBPHealth, after the corporate restructuring, the applicant maintains that EBPLife is not a party in interest with respect to the Plans for which First Health provided services, because EBPLife and First Health are related solely through a brother-sister controlled group relationship not described in section 3(14) of the Act.

[8] The Department is proposing relief, pursuant to section 408(a) of the Act, only for those transactions described herein and expresses no opinion whether fiduciary violations of section 406(b) of the Act may arise, or have arisen, under the circumstances.

transaction which is the subject of this exemption. In this regard, because the disclosures were made in writing in the Administration Agreement, if a Plan Fiduciary signed such agreement, such Plan Fiduciary will be deemed to have acknowledged receipt of such disclosures and have acknowledged that, as of the effective date of this exemption, the decision to engage in transactions which are the subject of this exemption was a decision made in a fiduciary capacity, and that, as of the effective date of this exemption, such Plan Fiduciary approved of the subject transaction. It is represented that the Plan Fiduciaries were independent of EBPLife and its Affiliates, and were independent of predecessors of such Affiliates, and were sufficiently knowledgeable with respect to administration, benefits, funding, and any matters related thereto concerning the Plans. Further, it is represented that the Plan Fiduciaries were capable of making informed and independent decisions on matters affecting the Plans and were responsible for deciding whether to hire Affiliates of EBPLife or have been responsible for hiring predecessors of such Affiliates to provide non-discretionary administrative services to Plans where such fiduciaries have also purchased or renewed Stop-Loss Policies reinsured by EBPLife.

Where Affiliates of EBPLife or predecessors of such Affiliates provided services to an Employer or Plan, in the event Employers purchased Stop-Loss Policies reinsured by EBPLife after the initial purchase of such a policy or renewed expired Stop-Loss Policies reinsured by EBPLife, the written disclosures initially required need not have been repeated, unless—more than three (3) years had passed since such disclosures were made or unless the services, products, or compensation involved were materially different from that for which approval was originally obtained.

12. In addition to the safeguards discussed in paragraph eleven (11) above, the exemption is conditioned upon the satisfaction of various additional requirements. First, each transaction must have been effected by EBPLife in the ordinary course of its business as an insurance company on terms that were at least as favorable to Plans as those obtainable in an arm's length transaction with an unrelated party. Second, the combined total of all fees and other consideration which was received by EBPLife and its Affiliates and by predecessors of such Affiliates for the provision of services to Employers and their Plans and in connection with the purchase of insurance contracts has not exceeded ''reasonable compensation'' within the meaning of section 408(b)(2) and 408(c)(2). Third, EBPLife, its agents or Affiliates, or the predecessors of such Affiliates, have not been trustees, plan administrators, fiduciaries with discretionary authority over the assets of the Plan, or Employers of the Plans. Neither EBPLife nor its Affiliates, nor the predecessors of such Affiliates have acted as fiduciaries in connection with the decision by the Employer to purchase Stop-Loss Policies reinsured by EBPLife where Affiliates of EBPLife or predecessors of such Affiliates also provided services. Fourth, the Plans have paid no commissions with respect to the reinsurance of the Stop-Loss Policies, nor have the Plan Fiduciaries received, directly or indirectly (i.e. through any Affiliates), any compensation or other consideration for their own personal account from EBPLife, any of its Affiliates, any predecessor of such Affiliates, or other party dealing with any of the Plans in connection with a transaction described herein. Finally, EBPLife is currently licensed and regulated by the State of Oklahoma and forty (40) other states in which it does business. It is represented that EBPLife has complied with all applicable state insurance laws and regulations, regarding its operations and reserves in the State of Oklahoma where it is domiciled and licensed to do business and has been subject to financial audit by the State of Oklahoma Department of Insurance no less frequently than once every three years.

13. It is represented that the reinsurance arrangement as described herein provides additional protection to the Plans. In this regard, the issuing Carriers of the Stop-Loss Policies are primarily liable for all claims covered by such Stop-Loss Policies in excess of the applicable stop-loss limits under such Stop-Loss Policies. However, EBPLife is also liable for the payment of claims covered by the Stop-Loss Policies where such policies have been and are reinsured by EBPLife. In this way, it is represented that the Plans have been and will be protected by the financial strength of two insurance companies rather than one. Further, because in the event of EBPLife's insolvency, the Carriers remain fully liable for any unpaid claims against the Stop-Loss Policies, it is represented that these Carriers have every incentive to ensure that EBPLife has not engaged in and does not engage in questionable practices which might affect the reinsurance of the risk associated with the Stop-Loss Policies. For this reason, EBPLife has been and will be subject to the continuous oversight of the Carriers that issue the Stop-Loss Policies reinsured by EBPLife.

With respect to practices regarding claims submitted under reinsured Stop-Loss Policies, it is represented that EBPLife and its Affiliates, and any predecessors of such Affiliates have followed standard claims processing procedures. In this regard, it is represented that the Employer has had the final authority regarding the payment or nonpayment of each claim. Further, it is represented that EBPHealth did not exercise fiduciary authority with respect to the authorization or disallowance of any benefit claims.

In order to assist the Employer: (1) To monitor the performance of EBPHealth in the processing of claims, prior to the conversion, and to monitor the subsequent performance of FIRST HEALTH in the processing of claims; (2) to prevent possible abuse involving claims avoidance; and (3) to provide additional safeguards against possible conflicts of interest, it is represented that EBPLife and its Affiliates have made and will make available, or the predecessors of such Affiliates have made available upon request by the Employers of each of the Plans at no additional charge full and detailed written reports. Such reports have provided and will provide certain information which permits Employers to verify that EBPLife has not and does not delay its processing or payment of claims in order to avoid coverage under the Stop-Loss Policies that it reinsures.

Further, First Health maintains that the larger Employers with which it does business can be assumed to be more sophisticated and therefore more likely to monitor the provision of claims administration services provided by First Health and to understand the issues involved in this exemption. In addition, First Health represents that the conversion of EBPHealth, as described above, eliminated the possibility that First Health could exercise discretion in a manner intended to reduce the potential liability of EBPLife under the Stop-Loss Policies. In this regard, it is represented that the claims processing program currently adopted by First Health and the implementation of its automated claims processing system ensures that claims administration cannot in any way be affected by the identity of the insurer or reinsurer of the Stop-Loss Policies.

14. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) Each transaction was effected by EBPLife in the ordinary course of its business as an insurance company;

(b) The terms of each transaction were at least as favorable to the Plans as those negotiated at arm's-length with unrelated third parties under similar circumstances;

(c) The combined total of all fees and other consideration received by EBPLife, its Affiliates, and by the predecessors of such Affiliates for the provision of services to the Employers and their Plans and in connection with the purchase of insurance contracts was not in excess of ''reasonable compensation'' within the meaning of sections 408(b)(2) and 408(c)(2) of the Act;

(d) Neither EBPLife, its agents, its Affiliates, nor the predecessors of such Affiliates have served as trustees (other than as non-discretionary trustees who do not render investment advice with respect to any of the assets of such Plans), plan administrators, fiduciaries with discretionary authority over the assets of any of the Plans, or Employers any of whose employees are covered by any of the Plans;

(e) Neither EBPLife, its Affiliates, nor the predecessors of such Affiliates have acted in connection with the decision by the Employer to purchase Stop-Loss Policies reinsured by EBPLife;

(f) Plan Fiduciaries who are independent of EBPLife and its Affiliates, and independent of the predecessors of such Affiliates; who are sufficiently knowledgeable with respect to administration, benefits, funding, and any matters related, thereto concerning such Plans; and who are capable of making an informed and independent decision, have been responsible for deciding to purchase or renew the Stop-Loss Policies reinsured by EBPLife and for executing the Administration Agreement with Affiliates of EBPLife or have been responsible for executing Administration Agreements with predecessors of such Affiliates to provide services to such Plans;

(g) Plan Fiduciaries have received full and detailed written disclosures, including but not limited to a copy of the Administration Agreement which among other things disclosed whether EBPLife reinsured risk under a Stop-Loss Policy issued to the Employer or a Plan and described all of the services provided by Affiliates of EBPLife, or by the predecessors of such Affiliates to such Plan or such Employer, prior to the decision which caused Affiliates of EBPLife or the predecessors of such Affiliates to provide services to the Plan or the Employer where the Employer also purchased or renewed a Stop-Loss Policy reinsured by EBPLife;

(h) Plan Fiduciaries acknowledged in writing receipt of disclosures with respect to the transactions described herein, and acknowledged that the decision to engage in such transaction was a decision made in a fiduciary capacity, and, as of the effective date of this exemption, approved the subject transaction;

(i) The Plans paid no commissions with respect to the reinsurance by EBPLife of the Stop-Loss Policies.

(j) The Plan Fiduciaries did not receive, directly or indirectly (i.e. through any Affiliates), any compensation or other consideration for his or her own personal account from EBPLife, any of its Affiliates, any predecessor of such Affiliates, or other party dealing with any of the Plans in connection with a transaction described in this exemption.

(k) EBPLife and its Affiliates, and any predecessors of such Affiliates followed standard claims processing practices regarding any claims submitted with respect to benefits under any of the Plans covered by any of the Stop-Loss Policies reinsured by EBPLife;

(l) The Employer had final authority regarding the payment or nonpayment of any and all claims submitted with respect to benefits under any of the Plans covered by the Stop-Loss Policies reinsured by EBPLife;

(m) EBPLife and its Affiliates have made and will make available, or the predecessors of such Affiliates have made available upon request by the Employers of each of the Plans at no additional charge certain information to Employers;

(n) Regarding its operations and reserves, EBPLife has complied with all applicable requirements of law and insurance regulations of the State of Oklahoma, where it is domiciled and licensed to do business;

(o) EBPLife has been subject to a financial audit by the Department of Insurance of the State of Oklahoma, where it is domiciled and licensed to do business no less frequently than once every three years;

(p) The issuing Carriers of the Stop-Loss Policies are fully liable for all claims covered by the Stop-Loss Policies in excess of the applicable stop-loss limits under such Stop-Loss Policies;

(q) Where the Stop-Loss Policies are reinsured by EBPLife, EBPLife, as reinsurer, is fully liable for the payments of claims under such Stop-Loss Policies; and

(r) Consultants who were unrelated to EBPLife, its Affiliates, or to the predecessors of such Affiliate, solicited bids for administrative services and/or Stop-Loss Policies on behalf of Employers and served as brokers or agents to Employers with respect to the purchase by Employers of Stop-Loss Policies reinsured by EBPLife;

(s) As of December 12, 1996, EBPLife, its Affiliates, and the predecessors and successors of such Affiliates have not and will not offer Stop-Loss Policies reinsured by EBPLife in any instance where EBPLife or its Affiliates deal directly with Employers, rather than with Consultants representing such Employers, in providing services to such Employers or their Plans;

(t) EBPLife, its Affiliates have retained or shall retain, or cause to be retained, or the predecessors of such Affiliates have retained or caused to be retained for a period of six (6) years from the date of any transaction the records necessary to enable certain parties to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include the Employers who sponsor the Plans and the Plan fiduciaries of such Plans for which First Health and/or EBPHealth provided non-discretionary administrative services. It is possible that any or all such Employers also choose to purchase Stop-Loss Policies reinsured by EBPLife. For this reason, the Department has determined that the only practical form of providing notice to interested persons is the distribution by the applicant by first class mail of a copy of the notice of pendency of this proposed exemption (the notice) within fifteen (15) days of the date of the publication of such Notice in the **Federal Register** to the Employers who sponsor of any of the Plans for which First Health and/or EBPHealth have provided services as of the effective date of this proposed exemption. Such distribution to interested persons shall include a copy of the Notice, as published in the **Federal Register**, plus a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), which shall inform such interested persons of their right to comment.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Plan) Located in Pine Bluff, Arkansas

[Application No. D–10445]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed secured loans (the Loans) by the Plan to Motors Finance Company (Motors), a party in interest with respect to the Plan, and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions, as set forth in paragraph #6 below; and (c) the balance of all Loans will at no time exceed 15% of the assets of the Plan.[9]

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five (5) years after the date of the grant. However, the exemption will extend until the maturity of any of the 90 day Loans made within the 5 year period.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which, as of December 31, 1995, had assets totaling $3,385,217. As of the same date, the Plan had forty-five (45) participants. Richard L. Smart (Mr. Smart), S. Ray West, Jr. (Mr. West), Lee Smart (Lee) and Roger Smart (Roger) are participants in and are the Advisory Committee of the Plan. Smart Chevrolet Company (the Employer) is the sponsor of the Plan. The Employer sells new and used automobiles in the Pine Bluff, Arkansas area. As of December 31, 1995, the Employer had a net worth of $2,883,009. Mr. Smart is the president of and a shareholder in the Employer.

2. Motors is engaged in financing the purchase of new and used automobiles sold by the Employer to its customers. The net worth of Motors, as of December 31, 1995, was $300,000. Certain of the principal owners of the Employer are also partners in Motors. Mr. Smart is a five percent (5%) managing partner in Motors. Meredith S. Maxwell, Felix Smart, Lee, Roger and Mr. West each own a fifteen percent (15%) partnership interest in Motors. The collective net worth of the partners of Motors, as of December 31, 1995, was $8,500,000. The net worth of the partners of Motors includes their respective interests in Motors, in the Employer, and in certain notes payable to its partners by Motors.

3. The current trustee of the Plan is Boatmen's Trust Company of Arkansas (Boatmen's Trust), the successor in interest to Worthen Trust Co., Inc., the trustee at the time PTE 92–43 (see rep. 4, below) was granted. Boatmen's National Bank of Pine Bluff (BNBPB), a sister corporation to Boatmen's Trust, participates in a line of credit to supply the Employer and Motors with operating funds of from $100,000 to $200,000 daily. Mr. Smart is on the Advisory Board of BNBPB and is a shareholder in Boatmen's Bancshares, Inc., the parent of Boatmen's Trust and of BNBPB.

4. On July 8, 1985, (50 FR 27863), the Department granted an exemption (PTE 85–121) which permitted for a period of seven (7) years beginning July 8, 1985, certain Loans to Motors by two employee benefit plans (the Plans) then sponsored by the Employer, and to the guaranty of such Loans by the Employer and the individual partners of Motors. Subsequent to the grant of PTE 85–121, the Smart Chevrolet Employees Retirement Plan, one of the Plans which participated in the exemption for PTE 85–121, was merged into the Plan.[10] On June 17, 1992, (57 FR 27073), the Department granted an exemption (PTE 92–43) which permitted, for a period of five (5) years, certain Loans by the Plan to Motors.

It is represented that under the two prior exemptions Motors has made all payments on the Loans in a timely manner and has never defaulted on any of the Loans made by the Plans. As a result of such Loans made pursuant to PTE 92–43, the Plan received an interest rate of between 5.50% to 7.25%, depending on the federal discount rate in effect at the time such Loans were executed. Further, though the principal balance of these Loans has varied from time to time, the terms and conditions of each of the Loans complied with the requirements set forth in the exemptions. The aggregate fair market value of these Loans by the Plan to Motors, as of the most recent annual report, was $818,449 which represented 24.18% of the fair market value of the total assets of the Plan. The applicant, herein, is requesting another exemption which will permit the continuation of such Loans for a period of five (5) years beginning on the date of the grant of this proposed exemption. However, PTE 85–121 and PTE 92–43 permitted the Plan to invest up to 25% of its assets in these Loans. The applicant has represented that with respect to Loans made pursuant to the exemption proposed herein, the Loans will not exceed 15% of aggregate Plan assets.

5. Jess P. Walt (Mr. Walt) has agreed to serve as the independent fiduciary. Mr. Walt, who is a banker, represents that he is independent in that none of the partners of Motors, or the stockholders, officers, or directors of the Employer are officers or directors of the bank where Mr. Walt is employed. In addition, Mr. Walt represents that none of these persons are stockholders of the bank that employs Mr. Walt, except Felix Smart, who owns 35 of the 7,500 outstanding shares, which represent a .47% ownership percentage of the bank. It is represented that the partners of Motors, the Employer and its officers, directors, and shareholders do not have any loans or accounts outstanding at the bank which employs Mr. Walt. Further, the bank which employs Mr. Walt represents that it does not participate in the line of credit extended to Motors by BNBPB.

Mr. Walt represents that he is qualified to act on behalf of the Plan in that he, as a bank officer, has been involved for many years in making automobile installment loans and evaluating credit and collateral considerations related to such loans. Mr. Walt also represents that he is knowledgeable in selecting appropriate rates of return on short term investments and will be continuously aware of the fluctuations in short term interest rates and the alternative low risk short term investments that would be available to the Plan.

6. Mr. Walt will accept fiduciary responsibility with respect to the proposed transactions. In this regard, Mr. Walt will be responsible for determining whether it is advisable for the Plan to enter into the Loans and the Guaranty which are the subject of this proposed exemption and to continue to

[9] For purposes of this proposed exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[10] All references in this Summary of Fact and Representations to the Plan will, if applicable, include both Plans prior to the merger unless the context clearly dictates otherwise.

participate in such transactions, taking into account the rate of return of such investment and the liquidity and diversification of the Plan.

It is represented that Mr. Walt will approve Loans in an amount not to exceed fifteen percent (15%) of the assets of the Plan, provided that all of the terms and conditions described herein are met.[11] All Loans will have a maturity of ninety (90) days and will bear interest at a rate which is two percentage points above the federal discount rate. Mr Walt represents that such interest rate reflects the prevailing fair market interest rate on comparable investments. Mr. Walt represents that he will receive copies of all the promissory notes evidencing the Loans in order to insure that the interest rate is two percent (2%) above the federal discount rate. If at any time a rate of two percentage points above the federal discount rate is not reflective of the prevailing fair market rate of return on a comparable ninety (90) day investments, Mr. Walt indicates that the Loans should be liquidated at the next maturity date, or the yield on such Loans be increased to the then prevailing fair market rate.

The Loans will be secured by all of the installment sale contracts (the Contracts) of Motors. As of December 31, 1995, Motors had 833 outstanding Contracts totaling $5,597,582, with an average balance of $6,720 per Contract. Mr. Walt has represented that he will examine the security agreement and financing statements with regard to the Contracts and will ascertain that the Plan's security interest in all of the Contracts is properly executed, and that such security interest is perfected by properly filed financing statements in conformity with the Uniform Commercial Code, as adopted in Arkansas. It is represented that Mr. Walt, through a combination of monthly reports from Boatmen's and monthly Certification of Compliance Statements signed by Mr. Smart, will insure that at all times the aggregate face value of the Contracts equals at least 200% of the total outstanding balance of the Loans. It is further represented that if at the end of any month the report from Boatmen's indicates that the aggregate face value of the Contracts does not equal at least 200% of the total outstanding balance of the Loans, Mr. Walt will direct Motors to pay the Plan an amount sufficient to bring the Loans into compliance with the 200% collateral requirement.

Mr. Walt, on behalf of the Plan, has accepted the commitment of the Employer and Motors that the Contracts will conform to the following loan policy guidelines: (a) A complete credit history will be performed for each customer; (b) a customer's credit history will be analyzed together with the customer's equity and the terms of the Loan; (c) depending on the use of the vehicle, a customer equity of from 10% to 30% will be required; (d) with an extension of six months available in circumstances of minimal vehicle use, the maximum term of any of the Contracts will be 60 months on new and current year used vehicles, 54 months, 42 months, 36 months, and 24 months, respectively, on one, two, three, four, and five year old vehicles; (e) prior to closing on any Contracts, a written certificate of insurance from an insurance agent will be required showing that the automobile is covered for physical damage with no more than a $250 deductible; (f) such insurance coverage includes fire, theft, and other perils and shows Motors as loss payee; and (g) Motors will employ a full time collector and strict management supervision will be maintained daily over collections.

Motors has represented that, if at any time, it changes the above-described loan policy guidelines it will notify Mr. Walt. Therefore, it is the responsibility of Mr. Walt to determine whether such changes materially affect the value of the Contracts. Mr. Walt represents that if the value of the Contracts is materially affected, such Contracts will be excluded from the collateral which secures the Loans by the Plan to Motors.

The Loans will also be secured by the Guaranty of the partners of Motors. In this regard, the partners of Motors have executed a blanket Guaranty in order to satisfy the requirements of PTE 92–43. Mr. Walt is responsible for ascertaining that any Loans entered by the Plan pursuant to this proposed exemption are also covered by this blanket Guaranty or, if necessary, a new Guaranty will be executed. In addition, it is represented that all of the partners in Motors are jointly and severally liable for the debts of the partnership, specifically including the Loans.

It is represented that from time to time in order to secure its line of credit to Motors, Boatmen's may take a security interest in the Contracts. However, it is represented that such security interest will at all times be subordinated to 200% of the indebtedness of Motors to the Plan. Further, it is represented that other notes payable from Motors to its partners will be subordinated to the Loans. As of December 31, 1995, a total amount of $3,536,123 was due to the partners of Motors under the terms of the notes, but such amount was subordinated, to the indebtedness of Motors to the Plans incurred under PTE 92–43.

In addition, it is represented that all of the Contracts provide Motors with recourse against the Employer for the amount of any defaulted Contracts. In this regard, should there be defaults on any of the Contracts, it is represented that the Employer will repurchase such Contracts from Motors after giving legal notice to the customer under Arkansas law. Once the Employer repurchases any defaulted Contracts, the Employer, not Motors, will repossess the vehicles. The Employer has informed the Department that for 1995 and 1996, the average number of Contracts equaled 818. Of these Contracts forty (40) vehicles were repossessed in 1995 and twenty (20) vehicles were repossessed in 1996. The Employer maintains that defaults and repossessions constitute a very small percentage of the total number of Contracts outstanding at any time.

In addition to the responsibilities outlined above, Mr. Walt is responsible for monitoring Motors' compliance with the terms of the Loans and the Guaranty. In this regard, Mr. Walt has reviewed certain monthly reports (the Monthly Reports) which have been furnished to Joe D. Ratliff, second successor independent fiduciary; Pine Bluff National Bank, first successor independent fiduciary; and the First National Bank of Altheimer, the independent fiduciary under PTE 85–121. Mr. Walt represents that such Monthly Reports are appropriate for the purposes of monitoring the proposed transactions. If this proposed exemption is granted, it is represented that similar Monthly Reports will be provided to Mr. Walt and will be reviewed monthly by Mr. Walt, or more frequently, as Mr. Walt determines is necessary.

In addition, Mr. Walt is responsible for receiving and reviewing the monthly financial statements for Motors and for the Employer and annual financial statements of the partners of Motors. Mr. Walt represents that this information will assist him in monitoring the credit worthiness of the Employer and Motors. If there are any material decreases in the net worth of any of the parties involved, it is represented that Mr. Walt will liquidate the Loans at the next maturity date. In this regard, Mr. Walt represents that he places the most significance on the ability of the Employer to

[11] As noted above in rep. 4, PTE's 85–121 and 92–43 permitted the Plan to invest up to 25% of its assets in these Loans. The applicant has represented that no more than 15% of the Plan's assets will be invested in the Loans under the exemption proposed herein.

repurchase any of the Contracts that are in default and considers the net worth of the partners of Motors to be a secondary source of protection for the Plan. Mr. Walt further represents that if, in reviewing the monthly financial statements of the Employer, he determines that a decrease in the net worth of the Employer has impaired the Employer's ability to repurchase any of the Contracts, he will carefully review the aggregate net worth of the partners of Motors. After such review, if he determines, based on his banking experience, judgment, and other factors, that the Plan is not properly protected, Mr. Walt will instruct Boatmen's to liquidate the Loans at the next maturity date. In the event of a default by Motors on the Loans, Mr. Walt will be responsible for taking all necessary steps to protect the Plan and for enforcing all of the rights of the Plan, including pursuing the partners of Motors under the terms of the Guaranty.

In the opinion of Mr. Walt, the terms and conditions of the Loans and Guaranty are based on arm's length considerations. After reviewing the proposed transactions, Mr. Walt represents that he would make the Loans under the same terms to Motors. In conclusion, Mr. Walt has determined that the proposed transactions are in the best interest of the Plan and its participants and beneficiaries for the following reasons: (a) The Loans by the Plan to Motors are well collateralized; (b) the risk of loss to the Plan is almost non-existent; (c) the ninety (90) day maturity of the Loans will enable the Plan to shift its investments from the Loans in a short period of time, if necessary to provide liquidity to the Plan; (d) the yield to the Plan is approximately 227 basis points greater than that of a ninety (90) day bank certificate of deposit; (e) the rate of return, which will at all times be two percentage points above the federal discount rate, prevents the Plan from becoming locked into a below market interest rate and insures a favorable rate on a continuing basis; and (f) administration of the proposed transactions should generate less expense than that of other investments.

7. The applicant maintains that the wide diversity of customers executing the Contracts significantly spreads the risk to the Plan. Further, the Employer will bear all costs of filing the application for exemption, providing notice to interested persons, and paying for the services rendered by Mr. Walt, as independent fiduciary, to the Plan. In addition, it is represented that throughout the five (5) year duration of this proposed exemption, the Plan will not pay any fees, expenses, or commissions in connection with the proposed transactions.

8. In summary, the applicant represents that the Loans will satisfy the criteria of section 408(a) of the Act as follows: (a) Mr. Walt, the independent fiduciary of the Plan, has agreed to review, approve, and monitor the terms of the Loans and the Guaranty; (b) Mr. Walt has represented that the Loans will be in the best interest of the participants and beneficiaries of the Plan; (c) the Loans will be short term loans limited to no more than 15% of the assets of the Plan; (d) the Loans will be collateralized by a perfected security interest in the Contracts; (f) the face amount of the Contracts will at all times exceed 200% of the total amount of the Loans; (g) the Loans are guaranteed by the partners of Motors; (h) the terms of the Contracts provide Motors with recourse to the Employer in the event of a default on any of the Contracts; and (i) the Plan will receive a return on the Loans of at least two percentage points above the federal discount rate which is represented to be the prevailing fair market rate of return on comparable investments.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll free number.)

Ronald L. Chez (Mr. Chez) IRA and Lawrence G. Kuntz (Mr. Kuntz) IRA (Collectively; the IRAs) Located in Chicago, Illinois and Wilmington, Delaware, Respectively

[Application Nos. D–10359 and D–10360]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (a) the proposed sale by the IRAs of certain closely held stock (the Stock) to Happy Valley Corporation (the Corporation), the issuer of the Stock and an unrelated third party with respect to the IRAs; and (b) the subsequent repurchase of the Stock from the Corporation by

Mr. Chez and Mr. Kuntz, fiduciaries and disqualified persons with respect to the IRAs; provided that the following conditions are met:

1. The sale and the repurchase of the Stock will be one-time transactions for cash;

2. The transactions described in (1) above will take place on the same business day;

3. Mr. Chez and Mr. Kuntz, in their individual capacity, will purchase the same shares of the Stock, as those that were sold to the Corporation by the IRAs. The stock transfer records of the Corporation will evidence that this is the case; and

4. The amount paid to the IRAs for the Stock will be the fair market value of the Stock determined at the time of the sale by a qualified independent appraiser. Mr. Chez and Mr. Kuntz will purchase the Stock from the Corporation for the same consideration as was received by the IRAs for the sale of the Stock.

Summary of Facts and Representations

1. The IRAs are self-directed individual retirement accounts. The Trustee for the IRAs is Delaware Charter Guarantee & Trust Company. In December 1995, Mr. Kuntz invested $12,500 of his IRA assets in 1250 shares of the Stock, and Mr. Chez invested $50,000 of his IRA assets in 5000 shares of the Stock. The investment in the Stock represents approximately 90% of Mr. Kuntz's IRA, and virtually 100% of Mr. Chez's IRA is invested in the Stock.[12] The IRAs hold a minority interest in the Corporation, whereby Mr. Kuntz's IRA holds 2.25% of the outstanding shares of the Stock, and Mr. Chez's IRA holds 9% of the outstanding shares. The Stock is closely held.

The applicant represents that Mr. Chez and Mr. Kuntz are related to the Corporation only as investors through their IRAs and do not have any other business or personal relationship with each other. Mr. Kuntz and Mr. Chez learned about the investment opportunity through business contacts and made the decision to invest in the Stock because they anticipated capital gain appreciation.

2. The issuer of the Stock is the Corporation, an Illinois corporation in the restaurant business. The Corporation was incorporated in April 1995, and on May 19, 1995 it elected ''S'' Corporation status for the tax year ending December 31, 1995.

Subsequently, the Corporation determined to raise additional capital and on May 20, 1995 prepared an offering memorandum for the Stock (the Memorandum). The Memorandum disclosed that the Corporation elected

[12] It is represented that Mr. Chez has numerous IRAs, and the investment in the Stock represents less than 1% of the aggregate assets of these IRAs.

subchapter ''S'' status and intended to operate as such. As such, the Corporation had only one class of stock and the offering was limited to no more than 35 potential shareholders. Under Internal Revenue Service (IRS) rules, only qualified shareholders may hold shares of a subchapter ''S'' corporation.

3. On July 27, 1995, the Corporation accepted a subscription agreement from Mr. Chez. The subscription agreement stated that Mr. Chez was purchasing the Stock as investment for his IRA. On December 4, 1995, the Corporation issued the Stock in Mr. Chez's name. However, on December 20, 1995, at the request of Mr. Chez, the Corporation issued a replacement stock certificate to Mr. Chez's IRA.

On August 1, 1995, Mr. Kuntz subscribed for Stock shares in his own name. On December 20, 1995, at the request of Mr. Kuntz, the Corporation issued a replacement stock certificate to Mr. Kuntz's IRA.

4. However, during the preparation of the Corporation's income tax return for the year 1995, the Corporation's accountants discovered that pursuant to IRS Revenue Ruling 92–73, the IRAs are not permissible shareholders of a subchapter ''S'' corporation under section 1361 of the Internal Revenue Code (the Code).[13] Therefore, the issuance of the Stock to the IRAs terminated the Corporation's subchapter ''S'' status for the year. The applicant represents that the Corporation has received relief from the IRS under section 1362(f) of the Code. However, as a condition of the IRS relief, the IRAs will be required to terminate their ownership of the Stock.

5. Therefore, the applicant requests exemptive relief for the sale of the Stock by the IRAs back to the Corporation, the issuer of the stock, and the subsequent repurchase of the Stock by Mr. Chez and Mr. Kuntz, in their individual capacity. By letter dated May 22, 1997, the attorneys for the Corporation (the Attorneys) represent that the transaction must be structured through the Corporation. The Attorneys believe that the redemption and resale of the Stock is consistent with section 1362(f)(3) of the Code which requires that steps be taken so that the Corporation is once more a small business corporation. Because section 1361(b)(1) of the Code which defines ''small business corporation'' does not permit an IRA to be a shareholder in such a corporation, the Attorneys believe that removing non-permitted shareholders is most effective where the transaction is completely reversed. Because the Stock was originally issued to the IRAs by the Corporation, the Attorneys propose to reverse the transaction through the redemption and the resale. The Attorneys also represent that this factual situation was examined by the IRS when it issued a ruling dated April 11, 1997, granting the Corporation relief under section 1362(f) of the Code.

6. The applicant submitted an appraisal dated May 7, 1997, regarding shares of the Stock (the Appraisal). The Appraisal was prepared by Blackman Kallick Bartelstein, LLP (BKB), certified public accountants, who are independent of the parties involved in the subject transactions. In the Appraisal, Michael Dorman of BKB relied primarily on the net book value and capitalized earnings approaches, and determined that the fair market value of the Stock was $7.20 per share as of April 27, 1995, and $10.10 per share as of March 23, 1997. As a result, both IRAs will realize a gain for the time period that the IRAs held the Stock.

Pursuant to the terms of the exemption, BKB will update the Appraisal at the time the transactions take place and the Stock will be sold at its fair market value as of the date of sale. Mr. Chez and Mr. Kuntz will purchase the Stock from the Corporation for the same consideration as was received by the IRAs for the sale of the Stock.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

1. The sale and the repurchase of the Stock will be one-time transactions for cash;

2. The transactions described in (1) above will take place on the same business day;

3. Mr. Chez and Mr. Kuntz, in their individual capacity, will purchase the same shares of the Stock, as those that were sold to the Corporation by the IRAs. The stock transfer records of the Corporation will evidence that this is the case; and

4. The amount paid to the IRAs for the Stock will be the fair market value of the Stock determined at the time of the sale by a qualified independent appraiser. Mr. Chez and Mr. Kuntz will purchase the Stock from the Corporation for the same consideration as was received by the IRAs for the sale of the Stock.

Notice to Interested Persons

Because Mr. Kuntz and Mr. Chez are the sole participants of their respective IRAs, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and

[13] In this regard, Revenue Ruling 92–73 also provides that if a shareholder inadvertently causes a termination of an ''S'' corporation by transferring stock to a trust that qualifies as an individual retirement account under section 408(a) of the Code, relief may be requested under section 1362(f) of the Code and the regulations thereunder. Section 1362(f) of the Code provides that notwithstanding an event terminating subchapter ''S'' status of a corporation, if the IRS determines that the termination was inadvertent the IRS can waive the effect of the terminating event for any period, if the corporation timely corrects the event, and if the corporation and the shareholders agree to be treated as if the election has been in effect for such a period.

representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of July 1996.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, Department of Labor.

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BILLING CODE 4510–29–P

NATIONAL INSTITUTION FOR LITERACY

[CFDA. No. 84.257B]

Learning Disabilities Training and Dissemination Grants; Notice Inviting Applications for New Awards for Fiscal Year 1997

AGENCY: National Institute for Literacy (NIFL).

ACTION: Notice.

PURPOSE: The purpose of the Learning Disabilities Training and Dissemination (LDTD) grant program is to build the capacity of adult education and literacy service delivery systems and other human resource development systems to meet the educational and training needs of adults with learning disabilities.

In order to achieve this purpose, LDTD grantees will collaborate with the National Institute for Literacy's National Adult Literacy and Learning Disabilities (ALLD) Center (the Center), and with each other, to help selected systems (1) adapt existing policies and programs for training and service delivery to better meet the needs of adults with learning disabilities, and (2) use the Center's Tool Kit for Literacy Providers Serving Adults with Learning Disabilities (the Took Kit) as a primary mechanism for adapting policies and programs for training and service delivery.

The NIFL's overarching goal for LDTD grants is to develop and implement, in cooperation with the Center, mechanisms for supporting systemic change in the provision of services to adults with learning disabilities. In the case of these grants, systemic change will involve (1) improving teaching and learning processes for adults with learning disabilities, (2) supporting training and technical assistance in the use of instructional methods and materials that have shown success with adults, and (3) working with administrators for state, regional, and national systems to achieve the adoption of effective policies and programs that support the provision of quality educational opportunities for adults with learning disabilities.

LDTD grantees will work collaboratively with the Center and each other as part of a national strategy that leads to widespread awareness and use of the Center's resources, and that offers an in-depth, long term approach to improving education and training service delivery for adults with learning disabilities.

Deadline for Transmittal of Applications: Applications must be mailed on or before August 29, 1997. If hand-delivered, the application must be received at the address specified in this notice by 5:00 p.m. on the deadline date.

Eligible Applicants: Public and private non-profit agencies, institutions, and organizations that administer or support state, regional, or national adult education and literacy service delivery systems or related human resource service delivery systems, and consortia of such agencies, institutions, and organizations.

Available Funds: Apporximately $250,000 for the first year.

Estimated Average Size of Awards: Approximately $75,000 per grant for the first year. Funding for subsequent years is likely to increase, with annual grants unlikely to exceed $150,000, subject to availability of funds and the approval of continuation.

Estimated Number of Awards: 2–4 awards in the form of cooperative agreements. At least one award will be made to one of each of the following: (1) A public, state-based agency that administers programs for literacy or other human services, or a consortium headed by such an agency; and (2) a national private non-profit volunteer organization that administers or supports literacy or other human services, or a consortium headed by such an organization.

Project Period: Three years, contingent on satisfactory performance during each year, with the possibility of renewal for subsequent years.

Note: The National Institute for Literacy is not bound by any estimates in this notice.

Applicable Regulations: For purposes of administering these grants, the National Institute for Literacy has adopted the following regulations included in the Education Department General Administrative Regulations (EDGAR): 34 CFR part 74; 34 CFR 75.50; 75.51; 75.102; 75.104; 75.112–192; 75.200 (b)(2), (b)(4); 75.201; 75.215–222; 75.234–236; 75.251–253; 75.500; 75.620–621; 34 CFR Parts 77, 80, 82, 85.

The selection criteria used for this competition are set out in this Notice. While the criteria are based, in part, on those used generally by the U.S. Department of Education, they have been adapted by the NIFL to meet the needs of this program. While the NIFL is associated with the Departments of Education, Labor, and Health and Human Services, the policies and procedures regarding rulemaking and administration of grants are not adopted by the NIFL except as expressly stated in this Notice.

FOR FURTHER INFORMATION CONTACT: Susan Green, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006–2712. Telephone: 202–632–1509. FAX: 202–632–1512. E-mail: sgreen@nifl.gov. For a complete application package, contact Darlene McDonald at 202–632–1525. E-mail:dmcdonald@nifl.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

For information about the National Adult Literacy and Learning Disabilities Center, applicants must contact the National Institute for Literacy. The Center has been advised to refer all such requests to the NIFL.

Information about the Center, all NIFL funding opportunities (including the application notices), and other information about the NIFL and related literacy matters can be viewed on the NIFL's LINCS home page on the World Wide Web at: http://novel.nifl.gov. However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

SUPPLEMENTARY INFORMATION:

Definitions: For purposes of this notice, the following definitions apply:

Literacy is an individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential.

Human Resource Development Systems are systems of public and private programs that focus on building the skills and knowledge of youth and adults, including: adult and family literacy programs, welfare-to-work programs, vocational education and training programs, school-to-work programs, industry-based skill standards programs, K–12 education programs,

postsecondary education, Job Training Partnership Act programs, community college/postsecondary education programs, employer-sponsored training programs, apprenticeship programs, one-stop career centers, dislocated worker programs and related programs in the public, private, and nonprofit sectors.

Background

The National Literacy Act of 1991 established the National Institute for Literacy to improve and expand the system for delivery of literacy services by, among other things, conducting basic and applied research and demonstrations on literacy, and collecting and disseminating information to Federal, State and local entities with respect to literacy.

In 1993, the NIFL funded the National ALLD Center to enhance awareness about the implications of learning disabilities for literacy efforts, and to develop resources to help literacy providers better identify and serve adults with learning disabilities, including a Tool Kit for Literacy Providers Serving Adults with Learning Disabilities (the Tool Kit). In addition to the development of informational materials and provision of awareness and training, the Center offers a national information exchange network for the sharing of information about the relationship between adult literacy and learning disabilities (LD).

The Tool Kit, which is the Center's major product, will be available in fall 1997. It provides comprehensive information on definitions of LD, screening procedures, intervention techniques, and issues of civil rights. The product is designed to be used by administrators and staff development specialists in public and private literacy programs to help practitioners identify and serve adult students with learning disabilities. The Tool Kit, and other Center products and information services, can be used by a wide range of literacy programs, including programs in the workplace, welfare-to-work, family literacy, and adult basic education.

The Center's Took Kit will require marketing throughout the adult education and literacy community and other human resource service systems, as well as in-depth training and ongoing technical support to help administrators and practitioners incorporate Tool Kit methods and materials into service provision. The nature and extent of training and technical assistance needed will vary, depending on the particular system's prior experience and success in dealing with issues of learning disabilities. Moreover, many systems will need to modify their policies and programs for training and service delivery in order to make optimal use of the Tool Kit, and to address the full range of needs of adults with learning disabilities.

Description of the LDTD Program

LDTD grants will support and augment the work of the Center in developing and carrying out activities related to helping systems (1) develop or adapt policies and programs for training and service delivery that provide for better service to adults with learning disabilities; and (2) use Center products, primarily the Tool Kit, and other appropriate tools and methods.

Each LDTD grantee will select a ''targeted area'' to work in. A targeted area is a specified number of states or communities, or a particular system or systems (i.e., federally-supported adult education and family literacy programs (including Head Start and Even Start), national volunteer organizations, welfare training programs, school-to-work transition initiatives, programs for dislocated workers, and other work force training programs). In cooperation with the Center, each LDTD grantee will create a network of key organizations and agencies in the targeted area to achieve systemic change in behalf of adults with learning disabilities. This will require the grantee to establish collaborations with and among all human resource development organizations and agencies in the targeted area.

During the first year of funding, an LDTD grantee will concentrate on (1) establishing a close working relationship with the Center and becoming thoroughly familiar with Center philosophy, products, and methods of training and dissemination; (2) working with the Center to develop a joint strategy for training and dissemination; and (3) developing strong connections with key organizations and agencies in the targeted area, and with other LDTD grantees.

The success of the LDTD program will depend on grantees that have substantial knowledge and experience with regard to the issues and activities involved in building an education and training system that can be of greatest assistance to adults with learning disabilities. Success will further depend on the extent of collaboration with the Center and appropriate literacy and LD-related agencies, as well as efforts to leverage grant funds with additional funds and resources to support project activities. These factors are heavily weighted in the selection criteria against which applicants will be judged.

Selection Criteria

(a)(1) In evaluating applications for a grant under this competition, the Director uses the following selection criteria.

(2) The maximum score for all the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) The Criteria—(1) *Plan of operation* (25 points). The Director reviews each application to determine the quality of the plan of operation for the project, including:

(i) The quality of the design of the project with respect to specific strategies and techniques for—

(A) Achieving systemic change;

(B) Promoting the use of Center and other products and methods for meeting the needs of adults with learning disabilities; and

(C) Providing training and technical assistance in the use of the Center's Tool Kit.

(ii) The extent to which the plan of management is effective and ensures proper and efficient project administration;

(iii) The extent to which the applicant states clear and measurable goals and objectives for the project;

(iv) How well the objectives of the project relate to the purposes of the program;

(v) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(vi) The extent to which the plan demonstrates—

(A) Provisions for building a network of key organizations and agencies in the targeted area to collaborate in systemic change related to service for adults with learning disabilities; and

(B) Commitment of time and resources on the part of key organizations and agencies in the targeted area, as evidenced by detailed letters of support from appropriate officials of those groups and agencies; and

(vii) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) *Prior experience* (25 points). The Director reviews each application to determine the extent to which the applicant's prior experience ensures project success, including:

(i) The applicant's experience in developing and implementing training

and dissemination activities for administrators and staff of adult education and literacy or related programs:

(ii) The applicant's experience in developing and implementing training and dissemination activities related to learning disabilities in adults;

(iii) The applicant's experience in planning and implementing efforts involving systemic change in educational programs, especially in terms of providing leadership for change; and

(iv) Evidence of the applicant's success in carrying out the activities described in section (b)(2) (i), (ii), and (iii) above.

(3) *Collaboration* (20 points). The Director reviews each application to determine the extent to which the applicant has provided for collaborating with the Center and other key agencies, organizations, and institutions, including:

(i) How the applicant plans to collaborate with the Center in developing targeted training and dissemination programs;

(ii) Evidence of the applicant's ability to create and maintain working collaborations with other agencies, organizations, and institutions in carrying out educational projects; and

(iii) The quality of letters of support from appropriate officials of key groups and agencies in targeted areas and systems.

(4) *Leveraging grant funds with other funds and resources* (10 points). The Director reviews each application to determine the quality of plans for leveraging grant funds with other funds and resources, including:

(i) The applicant's prior success in leveraging limited program funds with additional funds and resources; and

(ii) The likelihood of success of the applicant's plans for leveraging LDTD grant funds with additional public or private funds and resources.

(5) *Quality of Key Personnel* (10 points). The Director reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including:

(i) The qualifications of the project director, especially in terms of experience and training in fields related to the project;

(ii) The qualifications of each of the other key personnel, especially in terms of experience and training in fields related to the project;

(iii) The time that each of the personnel will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(6) *Evaluation plan* (5 points). The Director reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation produce data that are both quantifiable and qualitative, in terms of numbers of programs and staff served through the project, and effects of project services on programs and staff.

(7) *Budget and cost effectiveness* (5 points). The Director reviews each application to determine the extent to which—

(i) The budget is adequate to support the project;

(ii) Costs are reasonable in relation to the objectives of the project;

(iii) The applicant plans to devote resources of its own to the project, including facilities, equipment, and supplies; and

(iv) The applicant will leverage grant funds with other funds and resources from other sources.

Contents of a Learning Disabilities Training and Dissemination Application

Each LDTD application must contain a narrative and accompanying budget that provide the following information, corresponding generally to the selection criteria above;

(1) Plan of Operation

The applicant must include a detailed plan of operation and timeline for the first year of the grant, with a broad plan and timeline for the two subsequent years. The plan must include a description of—

(a) How the project will be managed;

(b) Clear and measurable project goals and objectives;

(c) The applicant's approach to fostering systemic change, including specific strategies and techniques;

(d) The state(s) or communities, and system or systems, that will constitute the targeted area, including—

(i) a rationale for the selection; and

(ii) the names of key organizations and agencies in the targeted area to be involved in the project;

(e) How the applicant will work with key organizations and agencies to carry out the project, including formal and informal methods for establishing partnerships and ensuring cooperation;

(f) How the applicant will build a network of key organizations and agencies to develop and implement systemic change related to services for adults with learning disabilities; and

(g) How the applicant will use the first year of the grant to—

(i) Establish a close working relationship with the Center;

(ii) Work with the Center to develop a joint strategy for training, dissemination, and systemic change; and

(iii) Develop strong connections with key organizations and agencies in the targeted area, and with other LDTD grantees.

(2) Prior Experience

The applicant must describe its prior experience in the fields and activities related to the project, including evidence of the applicant's ability to develop and implement a method or methods for working with adult education and literacy systems and other human resource systems to incorporate provisions for dealing with learning disabilities issues, including the use of the Center's products and other services. The applicant should cite:

(a) Evidence of expertise on issues related to adult literacy and adults with learning disabilities, and a description of previous efforts in these areas;

(b) Experience in developing and implementing approaches to systemic change;

(c) Experience in providing training and technical assistance related to identifying and serving adults with learning disabilities;

(d) Experience in developing or adapting systems for the provision of services to adults with learning disabilities; and

(e) Evidence of the applicant's knowledge about obtaining formal diagnostic services for adults with learning disabilities and using federal and other resources to provide affordable diagnostic services.

(3) Collaboration

The application must contain:

(a) A description of how the applicant plans to collaborate with the Center in developing and carrying out activities related to training, dissemination, and systemic change. The description must include—

(i) Assurances that the applicant's philosophy for serving adults with learning disabilities is compatible with that of the Center's;

(k) Assurances that all methods and materials used by the applicant will meet with the Center's prior approval; and

(iii) Commitments to participate in—

(A) Intensive Center training on the Tool Kit and other products;

(B) Joint development of methods and implementation plans for working with systems to effect systemic change;

(C) Coordination of all training and dissemination activities, including those related to all Center products (primarily the Tool Kit); any other methods and materials for effective teaching and learning; and any efforts at systemic change; and

(D) Coordination of efforts related to project evaluation.

(b) Evidence of the applicant's ability to create and maintain working partnerships with other organizations and agencies in carrying out educational projects; and

(c) Explicit and documented commitment of key organizations and agencies in the targeted area to participate in the project, as demonstrated by letters of support from appropriate officials detailing commitments of time and resources to the project.

(4) Leverage Grant Funds With Additional Funds and Resources

The applicant must describe—

(a) Prior experience in leveraging limited program funds with additional funds and resources; and

(b) Detailed plans for leveraging LDTD grant funds with additional public or private funds and resources (i.e., state or local funds for staff development and training, foundation funding).

(5) Quality of Key Personnel

The applicant must describe the qualifications of the key personnel to be involved in this project, including background and experience in—

(a) Adult education and literacy;

(b) Issues related to adults with learning disabilities;

(c) Helping to bring about systemic change;

(d) Carrying out training and dissemination activities related to (5) (a), (b), and (c) above.

(6) Evaluation Plan

The applicant must describe its plan for evaluating the progress and effectiveness of the project, including the extent to which the methods of evaluation include data that are both quantitative and qualitative, in terms of—

(a) Numbers of programs and staff served through the project; and

(b) Effects of project services on program and staff.

(7) Budget and Cost Effectiveness

The applicant must include a detailed budget breakdown for the first year, with summary budgets for the subsequent two years. The budget should include a separate column for cash and in-kind resources to be contributed by the applicant or leveraged from other sources. An accompanying budget narrative should demonstrate that—

(a) The budget is adequate to support the project;

(b) Costs are reasonable in relation to the objectives of the project;

(c) The applicant plans to devote resources of its own to the project, including facilities, equipment, and supplies; and

(d) Efforts are being made to leverage grant funds with funds and resources from other sources.

Other Application Requirements

Project Summary

The proposal must contain a 200-word summary of the proposed project suitable for publication. It should not be an abstract of the application, but rather a self-contained description of the project goals, approach, and activities proposed. The summary must be understandable by a non-specialist reader.

Project Narrative

The narrative must be no longer than twenty (20) single-spaced pages or forty (40) double-spaced pages, plus the letters of support required above. The narrative may be amplified by other materials in attachments and appendices, but the body should stand alone as a complete picture of the project. Applications that exceed 20 single-spaced pages or 40 double-spaced pages, not including letters of support or other materials in attachments and appendices, will not be reviewed.

Budget Proposal

ED Form 524 (Budget Information) must be completed and submitted with each application. The form consists of Sections A, B, and C. On the back of the form are general instructions for completion of the budget. All applicants must complete Sections A, B, and C. In completing Section B, include the nature and source of non-Federal funds, if any. Attach to Section C a detailed explanation and amplification of each budget category. Included in the explanation must be a complete justification of costs in each category. In addition, the applicant must—

1. Clearly identify all contributions from other sources, if any.

2, Show budget detail for any cost-sharing, joint, or cooperative funding.

Disclosure of Prior NIFL Support

If an applicant or any subcontractor or consortium member has received prior NIFL funding, the following information is required:

1. NIFL award number, amount and period of support;

2. A summary of the results of the completed work; and

3. A brief description of available materials and other related research products produced under the prior award.

Note: If the applicant has received a prior award from the NIFL, the reviewers will be asked to comment on the quality of the prior work described in this section of the proposal.

Current and Pending Support

All current project support from whatever source (such as Federal, State, or local government agencies, private foundations, or commercial organizations) must be listed. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other project personnel, even if they receive no salary support from the project(s). The number of a person-months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being considered by or will be submitted soon to other sponsors.

If the project now being submitted has been funded previously by another source, the information requested in the paragraph above should be furnished for the immediately preceding funding period. If the proposal is being submitted to other possible sponsors, all of them must be listed. Concurrent submission of a proposal to other organizations will not prejudice its review by the NIFL.

Any fee proposed to be paid to a collaborating for-profit entity should be indicated. (Fees will be negotiated by the Grants Officer.) Any copyright, patent, or royalty agreements (proposed or in effect) between the applicant and a proposed collaborating entity must be described in detail, so that the rights and responsibilities of each party are made clear.

If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall proposal and addressed in the narrative.

Reporting

In addition to working closely with the NIFL, the grantee will be required to submit an annual report of activities,

quarterly reports, and any products, as specified in the cooperative agreement between the grantee and the NIFL.

Acknowledgment of Support and Disclaimer

An acknowledgment of NIFL support and a disclaimer must appear in publications of any material, whether copyrighted or not, based on or developed under NIFL supported projects: ''This material is based upon work supported by NIFL under Grant No. (grantee should enter NIFL grant number).''

Except for articles or papers published in professional journals, the following disclaimer should be included: ''Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the NIFL.''

Instructions for Transmittal of Applications

(1) The original and five (5) copies of the application must be mailed on or before the deadline date of [insert date 45 days after publication in the FR at the National Institute for Literacy, 800 Connecticut Avenue, NW., Suite 200, Washington, DC 20006–2712, Attention: Susan Green (CFDA #84.257B).

(2) If hand-delivered, the application must be received at the address in (1) above by 5:00 p.m. on the deadline date.

(3) An applicant must show one of the following as proof of mailing:

(a) A legibly dated U.S. Postal Service postmark.

(b) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(c) A dated shipping label, invoice, or receipt from a commercial carrier.

(d) Any other proof of mailing acceptable to the Director.

(3) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(a) A private metered postmark.

(b) A mail receipt that is not dated by the U.S. Postal Service.

NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant check with its local post office.

(3) The NIFL will mail Grant Applicant Receipt Acknowledgements to applicants. If an applicant fail to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the NIFL at (202) 632–1525.

(4) The applicant indicate on the envelope and in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Forms

Applicants are required to submit the following forms, assurances, and certifications::

A. Application for Federal Assistance (Standard Form 424 (Rev. 4–94)) and instructions.

B. Budget Information-Non-Construction Programs (ED Form 524) and instructions.

C. Assurances—Non-Construction Programs (Standard Form 424B).

D. Certification Regarding Lobbying; Debarment, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

E. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

(**Note:** ED 80–0014 is intended for the use of recipients and should not be transmitted to the NIFL.)

F. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

An applicant may submit information on a photostat copy of the application and budget forms, the assurances and the certifications. However, the application form, the Instructions for Estimated Public Reporting Burden: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 3430–0005, expiration date: 7/2000. The time required to complete this information collection is estimated to average 50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, D.C. 20006–2712.

Program Authority: 20 U.S.C. 1213C.

Dated: July 7, 1997.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 97–18132 Filed 7–10–97; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meetings, Sunshine Act Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

Name: Special Emphasis Panel in Civil and Mechanical System (#1205).

1. *Date:* July 28–29, 1997.

Type of Proprosal: Individual Investigator Awards.

2. *Date:* July 31, 1997.

Type of Proposal: NonDestrucive Technology.

Contact: Dr. John B. Scalzi, Program Director, Large Structural and Building Systems Program, Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1361.

Time: 8:30 to 5:00 p.m. each day.

Place: Room 530, National Science Foundation, 4201 Wilson Blvd., Arlington, Va.

Type of Meeting: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Large Structural and Building Systems Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) (6) of the Government in the Sunshine Act.

Dated: July 8, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–18439 Filed 7–9–96; 2:27 pm]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; Special Emphasis Panel in Bioengineering & Environmental Systems

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Special Emphasis Panel in Bioengineering & Environmental Systems (1205).

DATE & TIME: July 31, 1997; 8:00 a.m. to 5:00 p.m.

PLACE: Holiday Inn (Airport), Newark, New Jersey.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Barbara Karn, Program Director, Environmental Technology Program, Division of Bioengineering & Environmental Systems, Room 565, NSF, 4201 Wilson Blvd, Arlington, VA 22230 703/306–1320.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate NSF/Lucent Technologies Industrial Ecology Research Fellowship proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: July 8, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–18440 Filed 7–9–97; 2:35 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation, Crystal River Nuclear Generating Plant Unit 3; Exemption

I

Florida Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–72, which authorizes operation of the Crystal River Nuclear Generating Plant Unit 3 (CR3). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is of a pressurized water reactor type and is located in Citrus County, Florida.

II

In its letter dated April 7, 1997, the licensee requested an exemption from the Commission's regulations. Title 10 of the *Code of Federal Regulations,* Part 50, Section 60 (10 CFR 50.60), ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines pressure/temperature (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. Pursuant to 10 CFR 50.60(b), alternatives to the Appendices G and H to 10 CFR Part 50 requirements may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low-temperature overpressure transients that would produce pressure excursions exceeding the P/T limits of Appendix G to 10 CFR Part 50 while the reactor is operating at low temperatures, the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Section XI requires that a low-temperature overpressure protection (LTOP) system shall be effective at coolant temperatures less than 200°F or at coolant temperatures corresponding to a reactor vessel metal temperature less than reference temperature nil-ductility (RT_{NDT})+50°F, whichever is greater.

At CR3, the LTOP system includes a pressure-relieving device; power-operated relief valve (PORV). The PORV is to be set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the P/T limits of Appendix G to 10 CFR Part 50. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pumps starting or stopping) with the reactor coolant system (RCS) 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.

The licensee indicates that plant operation with this restriction places an unnecessary burden on plant operators to ensure safety limits are maintained, and could potentially result in an undesired actuation of the PORV during normal heatup and cooldown operation. Therefore, the licensee proposed that the PORV setpoint for LTOP events be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by 10 CFR Part 50, Appendix G. The alternate methodology would be consistent with ASME Code Case N–514, ''Low Temperature Overpressure Protection,'' which allows exceeding the pressure of the P/T limits of 10 CFR Part 50, Appendix G, by 10 percent. ASME Code Case N–514 is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria to define pressure limits during LTOP events. The code case methodology is intended to 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. ASME Code Case N–514 has been approved by the ASME Code Committee. The content of this code case has been 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.

III

Presently, CR3 Technical Specifications (TS) do not include LTOP features. By letter dated June 7, 1997, the licensee confirmed lowering the PORV setpoint to 454 psig. These values are based on the approved 15 effective full power years (EFPY) P/T curves for normal cooldown and heatup, using the methodology described in ASME Code, Appendix G, with no reactor coolant pumps running. The licensee also confirmed that it currently controls LTOP features administratively using operating procedures (OPs). These OPs:

(1) Limit the Pressurizer level to less than 220 inches to accommodate a water level surge, and RCS pressure to 100 psig,

(2) Require both trains of High Pressure Injection (HPI) valves to be closed and breakers secured to prevent

inadvertent HPI into the RCS during LTOP conditions, and

(3) Require the Core Flood Tank (CFT) pressure to be maintained within maximum allowable RCS P/T when CFT isolation valves are open, or these valves are closed to prevent inadvertent CFT injection into the RCS.

The licensee stated that these administrative controls will remain in effect until the TS are revised to include LTOP features addressing the full range of RCS pressures.

IV

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The underlying purpose of 10 CFR 50.60, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code, Section XI.

Appendix G of Section XI 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 Point Beach reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Code, Section XI, Appendix G. This approach results in a safety factor of 1.8 on pressure. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on pressure, the margin with respect to toughness for LTOP transients are acceptable. 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.

V

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (62 FR 28907).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of July 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–18211 Filed 7–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

In the Matter of GPU Nuclear Corporation (Three Mile Island Nuclear Generating Station, Unit 1); Exemption

I

The GPU Nuclear Corporation (the licensee) is the holder of Facility Operating License No. DPR–50, which authorizes operation of the Three Mile Island Nuclear Generating Station, Unit 1 (TMI–1). The license provides that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site located in Dauphin County, Pennsylvania.

II

The Code of Federal Regulations at 10 CFR 70.24, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsection (a)(2) of 10 CFR 70.24 specifies detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why it should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

By letter dated February 7, 1997, as supplemented March 26 and June 5, 1997, GPU Nuclear Corporation

requested an exemption from 10 CFR 70.24(a). The Commission technical staff has reviewed the licensee's submittal and has determined that inadvertent criticality is not likely to occur in special nuclear materials handling or storage areas at TMI–1. The quantity of special nuclear material other than fuel that is stored on site is small enough to preclude achieving a critical mass.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. Although the staff has determined that such an accident is not likely to occur, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality together with the licensee's adherence to General Design Criterion 63 constitute good cause for granting an exemption to the requirements of 10 CFR 70.24(a).

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest; therefore, the Commission hereby grants the following exemption:

The GPU Nuclear Corporation is exempt from the requirements of 10 CFR 70.24(a) for TMI–1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (62 FR 36084).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of July 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–18210 Filed 7–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company (the licensee), for operation of the Maine Yankee Atomic Power Station located in Lincoln County, Maine.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt Maine Yankee Atomic Power Company from the requirements of 10 CFR 70.24(a), which requires a monitoring system that will energize clearly audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated December 19, 1996.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel. The quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features to prevent inadvertent criticality, the staff has determined that an inadvertent criticality would not likely occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24(a), therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Maine Yankee Atomic Power Station Technical Specifications, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. Technical Specifications requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, ''General Design Criteria for Nuclear Power Plants,'' Criterion 62, requires that criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically safe configurations. This is met at Maine Yankee, as identified in the Technical Specifications and the Updated Final Safety Analysis Report (UFSAR). Maine Yankee Technical Specifications, Section 1.1, Fuel Storage, requires that fuel shall be stored in vertical racks that are designed to maintain fuel assembly center-to-center distances that will assure K-effective is less than or equal to 0.95 even with the pool filled with unborated water. The Technical Specification places limitations on the storage arrangements of fuel assemblies within certain regions of the spent fuel pool based on the nominal initial enrichment and the average burnup experienced by the assembly. Section 3.4.9, Criticality of Fuel Assemblies, of the UFSAR provides a description of the methods used by the licensee to preclude criticality of fuel assemblies outside the reactor. Section 5.2, Fuel Building, of the UFSAR provides a physical description of the licensee's new-fuel storage building, spent fuel pool and associated fuel handling equipment.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluent nor cause any significant occupational exposures since the Technical Specifications, design controls including geometric spacing of fuel assembly storage spaces and administrative controls preclude inadvertent criticality.

The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station.

Agencies and Persons Consulted

In accordance with its stated policy, on June 20, 1997, the staff consulted with Mr. Pat Dostie of the State of Maine, Office of Nuclear Safety, regarding the environmental impact of this proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 19, 1996, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine, 04578.

Dated at Rockville, Maryland, this 7th day of July 1997.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Acting Director, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–18209 Filed 7–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–001]

Standard Design Certification For the U.S. Advanced Boiling Water Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: GE Nuclear Energy; Availability of Supplement 1 to the Final Safety Evaluation Report (FSER) for the Advanced Boiling Water Reactor (ABWR), NUREG–1503.

The U.S. Nuclear Regulatory Commission (NRC) has published an update to its FSER Related to the Certification of the ABWR Design and has issued this report as Supplement 1 to NUREG–1503.

ADDRESSES: Copies of the Supplement 1 to NUREG–1503 have been placed in the NRC's Public Document Room, 2120 L Street NW., Lower Level, Washington, DC, for review by interested persons. Copies of Supplement 1 to NUREG–1503 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20555–0001. Copies are also available from the National Technical Information Service, 5295 Port Royal Road, Springfield, VA 22161–0002.

FOR FURTHER INFORMATION CONTACT: Dino Scaletti, Office of Nuclear Reactor Regulation, telephone (301) 415–1104, or Jerry N. Wilson, Office of Nuclear Reactor Regulation, telephone (301) 415–3145, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of June 1997.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Standardization Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–17993 Filed 7–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–002]

Standard Design Certification for the U.S. System 80+ Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Asea Brown Boveri-Combusting Engineering; Availability of Supplement 1 to the Final Safety Evaluation Report (FSER) for the System 80+ Design, NUREG–1462.

The U.S. Nuclear Regulatory Commission (NRC) has published an update to its FSER Related to the Certification of the System 80+ Design and has issued this report as Supplement 1 to NUREG–1462.

ADDRESSES: Copies of the Supplement 1 to NUREG–1462 have been placed in the NRC's Public Document Room, 2120 L Street NW., Lower Level, Washington, DC, for review by interested persons. Copies of Supplement 1 to NUREG–1503 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20555–0001. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161–0002.

FOR FURTHER INFORMATION CONTACT: Dino Scaletti, Office of Nuclear Reactor Regulation, telephone (301) 415–1104, or Jerry N. Wilson, Office of Nuclear Reactor Regulation, telephone (301) 415–3145, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of June 1997.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Standardization Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–17996 Filed 7–10–96; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38819; File No. SR–Amex–97–19]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Indexed Term Notes

July 7, 1997.

I. Introduction

On April 30, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to approve for listing and trading under Section 107A of the Amex *Company guide* market index target-term securities (''MITTS''),[3] the return of which is based in whole or in part on changes in the value of the Major 8 European Index (''the Major 8 European Index'').

The proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38664 (May 21, 1997) 62 FR 28910 (May 28, 1997). No comment letters were received in response to the proposal. The Exchange subsequently filed Amendment Nos. 1 and 2 to the proposed rule change on June 11, 1997,[4] and June 27, 1997,[5] respectively. This order approves the proposed rule change, as amended.

II Background and Description

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.[6] 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 (''Major 8 European Index Notes'' or ''Index Notes'').[7]

The Index Notes will be non-convertible debt securities and will conform to the initial listing guidelines under Section 107A of the *Company Guide*[8] and the continued listing guidelines under Sections 1001 to 1003 of the *Company Guide*.[9] although a specific maturity date will not be established until the time of the offering, the Index 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 generally provide for payments at maturity based in whole or in part on changes in the value of the index. At maturity, holders of the Major 8 European Index Notes will receive not less than 90% of the initial issue price, plus an amount, called the ''Supplemental Redemption Amount,'' based on the percentage increase, if any, up to a specific amount, over the starting index value in the Major 8

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''MITTS'' and ''Market Index Target-Term Securities'' are service marks of Merrill Lynch & Co., Inc. (''Merrill Lynch'').

[4] Amendment No. 1 states that the Exchange's equity trading rules will apply to the trading of indexed term notes linked to the Major 8 European Index, including Rule 411, which requires members to use due diligence to learn essential facts relative to every customer and to every order or account accepted, and Rule 462, which requires the application of equity margin rules to the trading of indexed term notes. Amendment No. 1 also states that the continued listing guidelines set forth in Section 1001 through 1003 of the Amex Company Guide will apply to the proposed indexed term notes; that the exchange will, prior to trading the proposed indexed term notes, distribute an Information Circular to members providing guidance with regard to member firm compliance responsibilities, including suitability recommendations, when handling transactions in the indexed term notes, and highlighting their special risks and characteristics; that the Exchange will maintain the Index and it will be the Exchange's responsibility to determine, if necessary, whether to replace a sub-index with a substitute or successor index or undertake to publish the sub-index if it ceases to be published. *See* letter from Claire P. McGrath, Vice-President and Special Counsel, Amex, to Ivette Lopez, Assistant Director, Market Supervision, Commission, dated June 10, 1997 (''Amendment No. 1'').

[5] Amendment No. 2 further clarifies Amendment No. 1 by stating that Section 1003(b) of the *Company Guide* in particular will apply to the proposed indexed term notes, and attaches a copy of a draft information circular that Amex will distribute to its members. Amendment No. 2 also states that the shares of a sub-index will remain fixed, except in the case of a significant event, such as a split in the value of the sub-index a change in the method of calculation, or if the sub-index ceases to be published. Amendment No. 2 gives an example of what would happen to the Index calculation if a sub-index were to split in value. Also, if the sub-index ceases to be published, Amex could choose to replace it with a substitute index (another index currently being published that correlates highly with the sub-index being replaced), a successor index (an index intended by the publisher as a replacement to the original sub-index), or undertake to publish the sub-index using the same procedures last used to calculate the sub-index prior to its discontinuance. In addition, Amendment No. 2 states that if the marketplace for the securities underlying any one of the sub-indices that constitute the Major 8 European Index is closed on any given business day, due to natural disaster or holiday observed in the foreign country, Amex will use the previous closing value in the calculation. *See* letter from Claire P. McGrath, Vice-President and Special Counsel, Derivates Securities, Amex, to Ivette Lopez, Assistant Director, Market Regulation, Commission, dated June 26, 1997 (''Amendment No. 2'').

[6] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[7] The Commission has previously approved the listing and trading of MITTS or hybrid securities similar to MITTS based upon portfolios or securities. *See* e.g., Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994); 34692 (September 20, 1994), 59 FR 49267 (September 27, 1994); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (''Term Notes Approval Orders''). Although certain aspects of the Major 8 European Index Notes are similar to those MITTS previously approved by the Commission, this is the first time the Commission has reviewed a MITTS product that is an index of several indices rather than a portfolio of individual securities.

[8] Specifically, the notes must have: (1) A minimum distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $4 million; and (4) a term of at least one year. Additionally, the issuer of the notes must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in tow of the three prior fiscal years. As an alternative to these financial criteria, the issue must have either: (1) assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[9] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of the Exchange's Company Guide. Section 1002(b) states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to the continued listing guidelines for distribution of the indexed term notes on the Major 8 European Index, the Exchange will rely, in part, on the guidelines in Section 1003(b), which discuss suspensions and delistings with respect to limited distribution and reduced market value. *See* Amendment No. 2, supra note 5.

European Index.[10] 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, and highlighting the special risks and characteristics of the proposed Major 8 European Index Notes.[11] The Exchange's equity trading rules will apply to the trading of the indexed term notes linked to the Major 8 European Index, including Rules 411 and 462.[12] Specifically, Rule 411 will impose a duty of due diligence on Amex's members and member firms to learn the essential facts relating to every customer prior to trading Major 8 European Index Notes. In addition, for this particular MITTS product, the Exchange will require members and member firms to make a determination that the proposed index term note is suitable for the customer, and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation that the customer has the knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.[13]

According to Amex, the eight indices (''sub-indices'' or individually ''sub-index'') that form the Major 8 European Index are comprised of a total of 341 of the largest and most liquid securities from each of the eight European markets they represent. Initial weightings will be assigned to each sub-index at the close of trading on the day immediately prior to the listing of the Index 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%.[14] Amex represents that it has in place surveillance sharing agreements with the appropriate regulatory organizations in each country represented in the Major 8 European Index, except Sweden and Switzerland, which together represented 14.88% of the Major 8 European Index as of April 3, 1997.

The Major 8 European 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 Index 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 Major 8 European Index to reflect changes in relative market capitalizations among the sub-indices. The initial sub-index value used in the Major 8 European Index calculation will equal the product of the number of shares in the sub-index times its representative sub-index level. The Major 8 European 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 Index Note. The Exchange will calculate the Major 8 European Index and, similar to other stock index values published by the Exchange, the value of the Major 8 European 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-index ceases updating in its home market. The Exchange will then disseminate the Major 8 European Index based on the closing values for each sub-index.

Because index term notes are generally meant to be a one time issuance, providing investors with a percentage of the appreciation in the index as measured over a specified period of time, and are essentially a passive investment, the Major 8 European Index will not be actively maintained like other derivatively based index products, except as discussed below. 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 he method of calculation. For example, if the publisher of one of the sub-indices were to split that index, Amex would double the shares represented by that sub-index in the Major 8 European Index.[15] Further, if a sub-index ceases to be published, the Exchange may determine to replace it with a substitute index (another index currently being published that correlates highly with he sub-index being replaced), a successor index (an index intended by the publisher as a replacement to the original sub-index), or may undertake to publish the sub-index using the same procedures last used to calculate the sub-index prior to its discontinuance.[16] For example, Amex states that if the CAC–40 should cease to be published by SBF-Paris Bourse, Amex may undertake to publish a capitalization-weighted index of 40 of the most liquid and highly capitalized stocks traded on the Paris Bourse.[17] Finally, the Commission notes that Amex has sole authority to determine whether to

[10] *See* Amendment No. 2, supra note 5. In no event will the Supplemental Redemption Amount be less than zero. The Supplemental Redemption Amount will equal:

Principal × (Ending Index Value-Starting Index Value) ÷ Starting Index Value × Participation Rate

The Participation Rate will equal a factor between 110% and 120%. Investors will only be able to participate in appreciation of the indexed term notes up to the established Participation Rate. For example, assuming a 120% Participation Rate, if the Major 8 European Index appreciates 30% over its starting value, investors would only be able to receive at expiration their initial investment plus 20% of the appreciation in the Major 8 European Index value. *See* Amendment No. 2, supra note 5.

[11] *See* Amendment Nos. 1 and 2, supra notes 4 and 5.

[12] Rule 411 requires the Exchange's members to use due diligence to learn the essential facts relative to every customer and to every order or account accepted. Rule 462 requires the application of equity margin rules to the trading of indexed term notes. *See* Amendment No. 1, supra note 4.

[13] *See* Amendment No. 2, supra note 5, attached Draft Information Circular.

[14] A brief description of each of the sub-indices is set forth in detail in the notices release. *See* Securities Exchange Act Release No. 38664 (May 21, 1997), 62 FR 28910 (May 28, 1997).

[15] *See* Amendment No. 2, supra note 5.

[16] *See* Amendments Nos. 1 and 2, supra notes 4 and 5.

[17] *See* Amendment No. 2, supra note 5. The Commission notes that this replacement process is a slightly different approach than in other MITTS-like products. Generally, when portfolio securities cease to exist during the term of the note due to a merger, acquisition, or similar type corporate transaction, a value equal to the security's final value will be assigned, to the stock. If the issuer of a component stock is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, the security will continue to be included in the index as long as a market price for the security is available. If a market price is no longer available for an index stock due to circumstances including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the security is assigned a value of zero for index calculation purposes.

replace a sub-index that has ceased to be published and, if so, the choice of replacement. The issuer of the Major 8 European Index Notes has no role in these determinations.

If the marketplace for the securities underlying any of the sub-indices that constitute the major 8 European Index is closed on any given business day in the U.S., such as in the event of a market disruption due to a natural disaster or in the more likely event that the marketplace is closed for a holiday celebrated in the foreign country, Amex will use the previous closing value in the calculation of the Major 8 European Index.[18]

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[19] Specifically, the Commission believes providing for exchange-trading of the Major 8 European Index Notes will offer a new and innovative means of participating in the market for foreign securities. In particular, the Commission believes that the proposed Index Notes will permit investors to gain equity exposure in securities trading in eight foreign markets while at the same time limiting the downside risk of the original investment as a result of the principal guarantee. Accordingly, for the reasons discussed below as well as the same reasons as discussed in the Term Notes Approval Orders,[20] the Commission finds that the rule proposal is consistent with the requirements of Section 6(b)(5) of the Act that the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities and to protect investors and the public interest.[21]

The Commission notes that the Major 8 European Index Notes are not leveraged instruments; however, their price will still be derived from and based upon the performance of securities in eight European markets as reflected by the underlying sub-indices. As noted in the Term Notes Approval Orders, the level of risk involved in the purchase and sale of a MITTS is generally similar to the risk involved in the purchase or sale of traditional common stock, except for the fact that the products are derivatively priced from a portfolio of securities. MITTS on the Major 8 European Index, however, raise an additional level of risk because the final rate of return of the Index Notes is derivatively priced, based upon the performance of a portfolio of eight different sub-indices, whose performance is also derivatively priced based upon the performance of a portfolio of securities trading in each of these eight market centers.[22] Accordingly, the Commission has specific concerns regarding this type of product. For the reasons discussed below, the Commission believes Amex's proposal adequately addresses these concerns.

First, the Commission notes that Amex's rules and procedures addressing the special concerns attendant to the trading of hybrid securities will be applicable to the proposed Index Notes. In particular, by imposing the hybrid listing standards, heightened suitability for recommendations in Index Notes, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has adequately addressed the potential problems that could arise from the hybrid nature of the proposed Index Notes. In addition, Amex will distribute a circular to its membership calling attention to the specific risks associated with the Major 8 European Index Notes.[23]

Second, the Major 8 European Index Notes remain a non-leveraged product with the issuer guaranteeing no less than 90% of principal return. The Commission realizes that the final payout on the Major 8 European Index Notes is dependent in part upon the individual credit of the issuer. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the *Company Guide* which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as MITTS. In addition, the Exchange's hybrid listing standards further require that the proposed indexed term notes have at least $4 million in market value.[24] In any event, financial information regarding the issuer, in addition to information on the underlying sub-indices, will be publically available to investors.

Third, each of the sub-indices represent securities from eight major markets. Both the history and performance of these indices, as well as current pricing trends, should be readily available through a variety of public sources. Further, the Commission notes that although the value of each sub-index should be available, Amex has committed to disseminating the value of the Major 8 European Index on a real-time basis at least once every 15 seconds throughout the trading day. As noted above, current values for each individual sub-index, for as long as they are available during Amex's trading hours. The Commission believes that this information will be extremely useful and beneficial for investors in the Index Notes.

Fourth, the Commission also has a systematic concern that a broker-dealer or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the Term Notes Approval Orders, the Commission believes this concern is minimal given the size of the proposed Index Notes issuance in relation to the net worth of the issuer.[25]

Finally, the Commission also believes that the listing and trading of the proposed Index Notes should not unduly impact the market for the securities underlying the sub-indices or raise manipulation concerns. The Commission notes that all of the sub-indices that make up the Major 8 European Index are established indices.[26] The Commission has previously reviewed or approved six of the eight sub-indices, representing 83.78% of the value of the Major 8 European Index as of April 3, 1997,[27] in the context of either warrant trading, options trading, or while issuing non-objection letters to the Commodity

[18] *See* Amendment No. 2, supra note 5.

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Term Notes Approval Orders, supra note 7.

[21] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] As noted above, supra note 7, this is the first time the Commission has reviewed a MITTS product that is an index of several indices.

[23] *See* Amendment Nos. 1 and 2, supra notes 4 and 5.

[24] *See* Amex Company Guide § 107A.

[25] *See* Term Notes Approval Orders, supra note 7.

[26] The Commission notes that the Major 8 European Index Notes are not quite equivalent to other MITTS in that the Major 8 European Index is based upon a group of sub-indices, all of which have not been approved by the Commission for trading. The Commission notes that by approving this proposed rule change the Commission is not approving either the Major 8 European Index or the underlying sub-indices for options, warrants, and/or futures trading. The Commission further notes that if the sub-indices that have not been approved were to equal more than 20% of the Major 8 European Index value, the Commission would find it necessary to evaluate those sub-indices like other index products before approving the MITT. The decision to allow a MITTS to be priced partly off of non-approved indices is related to the fact that the Index Notes are a limited issuance, at least 90% principal guaranteed, non-leveraged investment, and that the non-approved indices comprise only 16.22% of the Major 8 European Index value. Any changes in these factors would alter the Commission's determination.

[27] The sub-indices that have been previously reviewed or approved in one of these contexts are the FT–SE 100, DAX, CAC 40, MIB 30, OMX, and the IBEX 35. The other two sub-indices in the Major 8 European Index are SMI and AEX.

Futures Trading Commission (''CFTC'') regarding offers and sales to U.S. citizens of futures and options on futures on those sub-indices. In these previous reviews, the Commission evaluated each of the individual sub-indices noted above and found that they were broad-based indices comprised of highly capitalized stocks with high trading volumes that were not readily susceptible to manipulation.

Specifically, in the letters to the CFTC, the Commission found that certain of the sub-indices are not readily susceptible to manipulation because of the representative nature of the various industry segments included in the individual index, the relative weighted value of the index's component stocks, and the substantial capitalization and trading volume of the component stocks.[28] In Commission orders previously approving the FT–SE 100 for warrant and reduced-value options trading, the CAC 40 for warrant trading, and the DAX for warrant trading, the Commission made similar findings that the index was a broad-based index of actively traded, well capitalized stocks.[29] Additionally, Amex's surveillance procedures should serve to deter as well as detect any potential manipulation.[30]

The Commission finds good cause to approve Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As noted above, Amendment No. 1 states that the Exchange's equity rules, including the equity margin rule and the suitability rule, will apply to the trading of the proposed Index Notes. The Draft Information Circular included in Amendment No. 2 also adopts heightened suitability standards, as described above, for this particular MITTS product. In addition, Amendment No. 1 clarifies that the Exchange will distribute to its membership, prior to trading the proposed Index Notes, a circular providing guidance with regard to member and member firm compliance responsibilities, including suitability recommendations, when handling transactions in the proposed Index Notes and highlighting their special risks and characteristics.

Amendment No. 1 also states that the continued listing standards set forth in Sections 1001–1003 of the Amex *Company Guide* will apply to the trading of the proposed Index Notes, and Amendment No. 2 further clarifies this by stating that Section 1003(b), in particular, will apply. Finally, Amendment Nos. 1 and 2, collectively, state that the shares for each sub-index will remain fixed, except in the event of a significant action taken by the publisher, such as a split in the sub-index value, a change in the calculation of the sub-index, or if the sub-index ceases to be published. Amendment No. 2 gives an example of how a split in the value of the sub-index would affect the Major 8 European Index, and clarifies the alternatives available to Amex if a sub-index ceased to be published. Amendment No. 2 also states how Amex would calculate the major 8 European Index if the marketplace of a sub-index was closed on any given business day in the U.S., such as if a market disruption occurred due to a natural disaster or a foreign holiday.

The Commission believes that Amendment Nos. 1 and 2, as described herein, clarify and strengthen the Exchange's proposal by, among other things, providing the specific continued listing standards that will apply, which should help ensure a minimal level of depth and liquidity for continued trading of the product on Amex, identifying which trading rules will apply to the trading of Index Notes, and adopting a heightened suitability standard for recommendations concerning the Index Notes. Amendments Nos. 1 and 2 also refine the original proposal by specifying in further detail how the Exchange will be responsible for determining any changes in the sub-indices due to a significant event, and the terms of the Information Circular to members and members, firms. Additionally, the Exchange's proposal to list and trade the proposed indexed term notes was noticed for the full comment period and no comment letters were received. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the rule proposal. 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 also will 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 August 1, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–Amex–97–19), including Amendment Nos. 1 and 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18225 Filed 7–10–97; 8:45 am]

BILLING CODE 8010–01–M

[28] The Commission has issued these non-objection letters relating to the offer and sale of futures and/or options on futures on the FT–SE 100, the DAX, the CAC 40, the MIB 30, the OMX, and the IBEX 35.

[29] *See* Securities Exchange Act Release Nos. 27769 (March 6, 1990), 55 FR 9380 (March 13, 1990) (FT–SE–100 Warrants); 28544 (October 17, 1990), 55 FR 42792 (October 23, 1990) (CAC 40 Warrants); 28587 (October 30, 1990), 55 FR 46595 (November 5, 1990) (CAC 40 Warrants); 29722 (September 23, 1991), 56 FR 49807 (October 1, 1991) (FT–SE 100 Reduced-Value Index Options); and 36070 (August 9, 1995), 60 FR 42205 (August 15, 1995 (DAX Warrants).

[30] As noted above, Amex represents that it has in place surveillance sharing agreements with the appropriate regulatory organizations in each country in the Major 8 European Index, except Sweden and Switzerland. These two countries together represented only 14.88% of the Major 8 European Index as of April 3, 1997.

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38817; File No. SR–CBOE–97–29]

Self-Regulatory Organizations; The Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Fee Reduction Program for Market-Maker Transaction Fees, Floor Broke Fees, and Member Dues; and the Customer ''Large'' Trade Discount Program

July 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 934 (''Act''),[1] notice is hereby given that on June 30, 1997, the Chicago Board Options Exchange (''CBOE'' or ''Exchange'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1) (1988).

Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by CBOE. 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

CBOE is proposing to renew and amend (i) its Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues; and (ii) Its Customer ''Large'' Trade Discount Program.[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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to renew and amend (i) the Exchange's Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues; and (ii) its Customer ''Large'' Trade Discount Program. The foregoing fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22, Other Fees or Charges, and will take effect on July 1, 1997.[3]

The Exchange's Fee Reduction Program for market-maker transaction fees, floor broker fees, and member dues currently provides that if at the end of any quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-to-date basis exceeds one of certain predetermined volume thresholds, the Exchange's market-maker transaction fees, floor broker fees, and member dues will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. The Program is scheduled to terminate on June 30, 1997 at the end of the Exchange's 1997 fiscal year. The Program is proposed to be amended to provide that the Program will continue in effect during the Exchange's 1998 fiscal year and will terminate on June 30, 1998. The program also is proposed to be amended to increase the volume thresholds at which the discount commences. Specifically, the threshold volume at which the $.01 market-maker transaction fee reduction applies will be increased from 675,000 contracts to 700,000 contracts. Also, the threshold volume at which the floor broker fee reduction of $.005 applies will be increased from 700,000 contracts to 725,000 contracts. Finally, the member dues fee reduction, which currently ranges from 25% to 75% for volumes ranging from 650,000 to 750,000 contracts, as amended, will increase the volume thresholds, with the 25% discount commencing at 675,000 contracts, the 50% discount commencing at 750,000 contracts, and the 75% discount commencing at 775,000 contracts.

The Exchange's Customer ''Large'' Trade Discount Program currently provides for discounts on the transaction fees that CBOE members pay with respect to public customer orders for 500 or more contracts. Specifically, for any month the Exchange's average contract volume per day exceeds one of certain predetermined volume thresholds, the transaction fees that are assessed by the Exchange in that month with respect to public customer orders for 500 or more contracts are subject to a discount in accordance with a discount schedule. The Program is scheduled to terminate on June 30, 1997 at the end of the Exchange's 1997 fiscal year. The Program is proposed to be amended to provide that the Program will continue in effect during the Exchange's 1998 fiscal year and will terminate on June 30, 1998. In addition to renewing the current fee discount percentages under the Program, the Program is also proposed to be amended to increase by 25,000 contracts all the threshold levels to which the discount rates apply, increasing the minimum threshold level from 575,000 to 600,000 contracts at which the 30% discount rate applies. In all other respects the Program remains unchanged.

The proposed amendments are the product of the Exchange's annual budget review. The amendments are structured to fairly allocate the costs of operating the Exchange in the event that the Exchange experiences higher volume. In addition, although the proposed rule change provides that the Exchange's Fee Reduction Program for market-maker transaction fees, floor broker fees, and member dues and the Exchange's Customer ''Large'' Trade Discount Program will terminate at the end of the Exchange's 1998 fiscal year, the Exchange intends to evaluate these Programs prior to the beginning of the 1999 fiscal year and may renew these Programs in the same or modified form for the 1999 fiscal year.

The proposed rule change is consistent with Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any 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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(e)(2)[7] thereunder. At any time within sixty days of the filing of such proposed 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.,

[2] The text of the proposed rule change is attached as Exhibit A to File No. SR–CBOE–97–29, and is available for review in the principal office of CBOE and in the Commission's Public Reference Room.

[3] CBOE notified its membership of these changes in notice to members 97–31, dated July 1, 1997. Telephone conversation with Stephanie Mullins, Attorney, CBOE, and Peggy Blake, Division of Market Regulation, Commission (July 3, 1997).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(e)(2).

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CBOE–97–29 and should be submitted by August 1, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18226 Filed 7–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38816; File No. SR–CHX–97–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Trading in Sixteenths

July 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 25, 1997 the Chicago Stock Exchange, Incorporated (''CHX'' 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 Exchange proposes to amend Rule 37 (c) and (e) of Article XX of the Exchange's Rules. The text of the proposed rule change is as follows (additions are *italicized*; deletions are [bracketed]):

Article XX

Rule 37

(c) No change in text of introductory paragraph.

(1) Pricing.

(i) Both buy and sell orders in markets quoted with [a minimum variation (⅛ spread)] *less than ¼ point spread* or orders which do not meet the criteria in (ii) or (iii) below will be executed based on the ITS BBO.

(ii) Buy orders in markets quoted with [more than an ⅛ spread] *a ¼ point spread or wider* will be executed at a price ⅛ point better than the ITS Best Offer if (i) an execution at the ITS Best Offer would create a double up tick based upon the last sale in the primary market or (2) an execution at the ITS Best Offer would result in a greater than a ⅛ point price change from the last sale in the primary market.

(iii) Sell orders in markets quoted with [more than a ⅛ spread] *a ¼ point spread or wider* will be executed at a price ⅛th point better than the ITS Best Bid if (i) an execution at the ITS Best Bid would create a double down tick based upon the last sale in the primary market or (2) an execution at the ITS Best Bid would result in a greater than ⅛th point price change from the last sale in the primary market.

For example, the execution price for a market buy order in a ¼–½ quoted market is as follows:

No change in the text of the example.

(2)–(5) No change in text.

(d) No change in text.

(e) No change in text of introductory paragraph.

(1) Stopping. If an agency market order eligible for Enhanced SuperMAX would create either a double up tick (buy order) or double down tick (sell order) if the order was executed at the ITS BBO, the Exchanged SuperMAX program will ''stop'' the order. Once stopped, the order will not received an execution that is worse than the stopped price. Notwithstanding anything in the previous sentence to the contrary, agency market orders in markets quoted *in less than a ¼ point market* [with a minimum variation (usually ⅛ spread)] will not be stopped. Orders not stopped will be immediately executed based upon the ITS BBO as the case may be.

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

As described below, the purpose of the proposed rule change is to describe the conditions under which the SuperMAX and Enhanced SuperMAX price improvement algorithms will apply, given the recent changes in the minimum trading increment.[2] The intent of the Exchange has been, and continues to be, to provide price improvement in a market with a spread of ¼ point or wider. The prior language used to describe this intent was ''more than a ⅛th spread,'' and thereby assumed a minimum trading increment of ⅛th. The proposed rule change eliminates the need for any assumptions or interpretations regarding a minimum trading increment.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6[3] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[4]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See, e.g.,*Securities Exchange Act Release No. 38590 (May 9, 1997), 62 FR 26832 (May 15, 1997)(SR-CHX–97–08, changing the minimum variation for issues traded on the American Stock Exchange and the CHX to sixteenths); Securities Exchange Act Release No. 38717 (June 5, 1997), 62 FR 32134 (June 12, 1997)(SR-CHX-97-12, changing the minimum variation for issues traded on the New York Stock Exchange and CHX to sixteenths).

[3] 15 U.S.C. § 78f(b).

[4] *Id.* § 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (e) of Rule 19b–4 thereunder.[6]

At any time within sixty days of the filing of such proposed 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 fix 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–97–18 and should be submitted by August 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18227 Filed 7–10–97; 8:45 am]

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[5] *Id.* Section 78s(b)(3)(A).

[6] 17 CFR 240.19b–4.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38796; File No. SR–DCC–97–02]

Self-Regulatory Organizations; Delta Clearing Corp.; Order Approving a Proposed Rule Change Relating to Multiple Brokers for Options Transactions

June 30, 1997.

On March 11, 1997, Delta Clearing Corp. (''Delta'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DCC–97–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'').[1] Notice of the proposal was published in the **Federal Register** on May 13, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change modifies Delta's procedures for options trading (''Options Procedures'') to allow brokers which have been approved by Delta pursuant to the conditions set forth in the Options Procedures to submit trade reports for options transactions on behalf of participants. Currently, Delta's Options Procedures provide that Delta may accept trade reports for options transactions only from one broker, Euro Broker Maxcor, Inc. (''Euro Broker'').

Although the rule change allows Delta to designate certain options brokers as authorized to submit trades, such brokers will not be accorded the status of a ''participant,'' and the Options Procedures make no provision for an authorized broker to maintain money or securities accounts at Delta. Accordingly, no provision has been made for margin requirements or liquidation of an authorized broker's accounts in the event of the broker's suspension. Nevertheless, the procedures identify the minimum requirements a brokers' broker must meet and the procedures Delta must follow in the event it determines to deny access to an authorized broker or suspend an authorized broker's access to Delta's clearing system.[3]

The rule change amends Section 401 of the Options Procedures to provide for submission of trade reports by authorized brokers in the case of brokered transactions or by participants in the case of nonbrokered transactions. The rule change also amends Section 2002 of the procedures to provide that every authorized broker shall keep records showing the name of the participants to the transactions with respect to each transaction submitted by such authorized broker to be effected through Delta's clearing system.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38568 (May 2, 1997), 62 26342.

[3] The conditions for designation as an authorized broker are set out in Section 2001 of the Options Procedures. The qualifications necessary for designation as an authorized broker include the following: (1) the broker must be properly registered with the Commission under Section 15(b) or 15C of the Exchange Act and be a member in good standing of the National Association of Securities Dealers, Inc.; (2) the broker must indicate an interest in brokering transactions to be cleared through Delta's clearing system and must have the operational capacity to do so; (3) the broker must review the requirements of Exchange Act Rule 17a–23 and must execute a certificate confirming its compliance therewith; (4) the broker must be in compliance with all net capital requirements; (5) the broker must maintain the books and records required to be maintained under the Options Procedures; (6) the broker must employ personnel and utilized procedures which are sufficient to discharge its obligations in a timely and efficient manner; and (7) absent special circumstances, neither the broker nor any associated persons shall be subject to a statutory disqualification.

[4] The rule change also makes other sections of the Options Procedures apply to options brokers. These include:

(i) Section 206, requiring the delivery of financial reports and audits;

(ii) Section 208, setting forth the admission procedure for an applicant;

(iii) Section 209(a), requiring an authorized broker prior to admission as an authorized broker to execute an agreement agreeing to be bound by Delta's procedures;

(iv) Sections 209(b)(iv) and (v), pursuant to which an authorized broker agrees to permit inspection of its books and records (limited to the extend relating to transactions cleared through Delta's clearing system) and to indemnify Delta and its principals from default of misconduct by the authorized broker;

(v) Section 210(b), allowing an authorized broker to withdraw voluntarily by delivering written notice to Delta and Delta's clearing bank;

(vi) Sections 301 and 303, requiring among other things that the authorized broker maintain an office during business hours at which a representative of the authorized broker would be available to take all actions necessary for conducting business through the clearing system and maintain computer and communication equipment capable of supporting software provided by Delta enabling computer to computer communication of reports and other notices;

(vii) Article XII (Sections 1201, 1202, and 1208), providing for suspension of authorized brokers upon the terms set forth therein;

(viii) Article XV, applying the force majeure provisions to authorized brokers;

(ix) Article XVII, pursuant to which the authorized brokers agree to submit to the jurisdiction of the courts of the State of New York

Brokers may be approved to act either as authorized brokers for options transactions or as authorized brokers for repurchase agreement transactions cleared through Delta or may be approved to act as authorized brokers for both options and repurchase agreement transactions. Initially, Delta anticipates that there will be three entities which will apply and will be authorized as brokers for the options clearing system.[5]

Delta expects that the approval of authorized brokers for options transactions may increase the volume of options transactions cleared through Delta; however, Delta expects to clear no more than two hundred options contracts per day as a consequence of admitting additional authorized brokers. In light of the fact that the approval of authorized brokers may result in increased trading volume and the fact that Delta presently clears options and repurchase agreement transactions on two different hardware platforms, Delta has adopted interim internal operating procedures providing for manual oversight of participant and system exposures limits.[6]

II. Discussion

Section 17A(b)(3)(F)[7] of the Exchange Act requires that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, to safeguard funds and securities in its custody or control, and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that Delta's introduction of multiple brokers for options transactions should permit wider utilization of its clearing system by participants. Thus, the proposal should increase the number of trades that are incorporated into the national clearance and settlement system and that will obtain the benefit of Delta's guarantee and Delta's risk management system. By allowing more trades to be settled through an automated clearance system, the proposal should also enhance the prompt and accurate clearance and settlement of trades.

The Commission believes that providing for multiple brokers for options transactions and the possible increase in options trades processed through Delta is being done consistently with Delta's obligations to safeguard securities and funds under Section 17A. For example, Delta has adopted procedures to monitor participants' exposure. Also, Delta will only accept brokers that meet certain standards designed to ensure that the broker has the facilities to perform its functions promptly and accurately. Finally, Delta will receive the broker's financial statements and the ability to inspect the broker's books and records and thus will be able to monitor any changes in the broker's condition.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and in particular with the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (File No. SR–DCC–97–02) be and hereby is approved.

For the commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18228 Filed 7–10–97; 8:45 am]

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or the United States courts for the Southern District of New York; and

(x) The definition of authorized representative in Article I.

[5] Such brokers are Euro Broker, RMJ Options Trading Corp., and GFI Group, Inc.

[6] At the start of each business day, Delta will review the exposure of each participant from options and repurchase agreement transactions to determine any violations of exposure limits. Delta will establish a watch list of any participant whose exposure is 80% of their exposure limit. Delta will monitor closely all activity by participants on the watch list. If necessary, Delta will also calculate intraday exposure for participants which may result in additional collateral calls.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2561]

Specification of Laws pursuant to the Taiwan Relations Act

Pursuant to Executive Order No. 13014 of August 15, 1996 (61 FR 42963), and by virtue of the authority vested in me as Assistant Secretary of State for Consular Affairs by the Secretary of State in Delegation of Authority No. 218 of September 17, 1996, and after appropriate consultation with the potentially interested or affected federal agencies, I hereby specify the following provisions of law pursuant to section 7(a) of the Taiwan Relations Act, 22 U.S.C. 3306(a):

(a) The citizenship and nationality laws of the United States, including but not limited to Title III of the Immigration and Nationality Act (INA) of 1952, as amended, 8 U.S.C. 1401 *et seq.*, to the extent that the functions provided for therein are conferred upon diplomatic and consular officers of the United States.

(b) The passport laws of the United States, including but not limited to the Passport Act of 1926, as amended, 44 Stat. 887, 22 U.S.C. 211a *et seq.*, to the extent that the functions provided for therein are conferred upon diplomatic and consular officers of the United States.

This specification shall be published in the **Federal Register**.

Dated: June 16, 1997.

Mary A. Ryan,

Assistant Secretary of State.

The text of Delegation of Authority 218 is set forth below.

Delegation of Authority No. 218

Spedification of Law Pursuant to the Taiwan Relations Act

Pursuant to section 7(a) of the Taiwan Relations Act (hereinafter, ''TRA''), 22 U.S.C. 3306(a), and by virtue of the authority vested in me as Secretary of State by section 1 of the State Department Basic Authorities Act of 1956, *as amended*, 22 U.S.C. 2651a, and section 1–101 of Executive Order No. 13014 of August 15, 1996 (61 FR 42963), I hereby provide as follows:

1. Specification of Laws

I hereby specify the following provisions of law pursuant to section 7(a) of the TRA, 22 U.S.C. 3306(a):

(a) Section 1707 of the Revised States (22 U.S.C. 4193);

(b) Section 1708 of the revised Statutes, *as amended* (22 U.S.C. 4194);

(c) Section 1709 of the Revised Statutes, *as amended* (22 U.S.C. 4195);

(d) Section 1710 of the Revised Statutes, *as amended* (22 U.S.C. 4196);

(e) Section 1711 of the Revised Statutes, *as amended* (22 U.S.C. 4197);

(f) Section 1718 of the Revised Statutes (22 U.S.C. 4198); and,

(g) Section 7 of the Act of April 5, 1906 (22 U.S.C. 4215).

These specifications shall be retroactive to August 15, 1996.

2. General Delegation

I hereby delegate to the Assistant Secretary of State for Consular Affairs the authority to specify laws of the United States pursuant to section 7(a) of the TRA, 22 U.S.C. 3306(a), after appropriate consultation with potentially interested or affected federal agencies, as the Assistant Secretary deems appropriate.

3. Technical Provisions

(a) Notwithstanding any provision of this Specification and Delegation of Authority, the Secretary of State or the Deputy Secretary of State may at any time exercise any function delegated herein.

(b) Any act, executive order, regulation, or procedure affected by this Specification and Delegation of Authority shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

(c) This Specification and Delegation of Authority shall be published in the **Federal Register**.

Dated: September 17, 1996

Warren Christopher,

Secretary of State.

[FR Doc. 97–18215 Filed 7–10–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–97–2147]

Application of Alaska Seaplane Service, L.L.C. for Issuance Of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 97–7–7).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Alaska Seaplane Service, L.L.C., fit, willing, and able, and (2) awarding it a certificate to engage in interstate scheduled air transportation of persons, property, and mail using aircraft with no more than nine passenger seats.

DATES: Persons wishing to file objections should do so no later than July 22, 1997.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–97–2147 and addressed to Department of Transportation Dockets (SVC–120.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: July 7, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary, for Aviation and International Affairs.

[FR Doc. 97–18229 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD01–97–051]

Construction of a Pier for Coast Guard Vessels at Military Ocean Terminal, Bayonne, New Jersey; Environmental Assessment and Finding of No Significant Impact

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI), in accordance with the National Environmental Policy Act of 1969, for the proposed construction of a new pier for moorage of Coast Guard vessels at the Military Ocean Terminal, Bayonne (MOTBY). The EA concludes that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This notice announces the availability of the EA and FONSI.

ADDRESSES: Requests to receive a copy of the EA and FONSI should be mailed to the Commanding Officer, Facilities Design and Construction Center-Pacific, Rm 2264, 915 Second Avenue, Seattle, WA 98174. The documents may also be picked up from the same address between 8 a.m. and 3 p.m., P.S.T., Monday through Friday, except Federal Holidays, by contacting Mr. John Vogel, United States Coast Guard, Facilities Design and Construction Center, at telephone (206) 220–7387.

FOR FURTHER INFORMATION CONTACT: Mr. John Vogel, United States Coast Guard, Facilities Design and Construction Center, at telephone (206) 220–7387.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Coast Guard operates several ice breakers, buoy tenders, and aids-to-navigation vessels in the greater New York Harbor area. These vessels have been homeported at Governors Island, NY, and are in the process of being relocated to the MOTBY. In 1995, the relocation was the subject of a prior EA and FONSI. At the time of preparation of the 1995 EA, the Coast Guard had anticipated the permanent use of existing Department of Defense (DOD) berths for the Coast Guard ice breakers and buoy tenders. However, negotiations with the DOD have revealed that permanent, exclusive use of these berths is not possible.

The proposed action, required to furnish permanent moorage facilities for Coast Guard cutters at the MOTBY, would provide Coast Guard owned moorage for the cutters on Coast Guard owned submerged lands. A new concrete pile-supported pier, approximately 605 feet long, varying in width from 13 to 30 feet, is proposed to be constructed off of lot 75 to accommodate the cutters. Pile supported vehicle access to the proposed wharf would be provided at one location, tying into an existing roadway (F Street) at the MOTBY. The existing Coast Guard floating docks utilized by smaller USCG boats would be relocated 800 feet west, to the eastern end of lot 85. A new pile supported pedestrian walkway would connect the floating docks to the existing roadway (18th Street).

Finding

Construction of a new pier for Coast Guard vessels at the MOTBY is determined to have no significant effect on the quality of the human environment or require preparation of an Environmental Impact Statement.

Dated: June 18, 1997.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 97–18265 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–036]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Transportation has renewed the charter for the Chemical Transportation Advisory Committee (CTAC) to remain in effect for a period of two years from May 27, 1997, until May 27, 1999. CTAC is a federal advisory committee constituted under 5 U.S.C. App. 2. Its purpose is to advise the Coast Guard on the safe transportation and handling of hazardous materials in bulk on vessels and barges in U.S. ports and waterways.

FOR FURTHER INFORMATION CONTACT: Commander Kevin S. Cook, Executive Director, or Lieutenant John J. Plunkett, Assistant to the Executive Director, Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone 202–267–0087.

Dated: June 30, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–18264 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting; correction.

SUMMARY: This document contains a correction to the notice of meeting published in the **Federal Register** on July 2, 1997 (62 FR 35879). The notice announces that the meeting of the Aviation Rulemaking Advisory Committee that discusses certification procedures issues will meet on July 24, 1997 at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Rulemaking, ARM–209, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9682.

Correction of Publication: In the notice document (FR Doc. 97–17301), on page 35879 in the issue of Wednesday, July 2, 1997, make the following correction:

In the **DATES** section on page 35879, second column, second line, the time was listed as 9:00 a.m. This time should be changed to read 1:30 p.m.

Issued in Washington, DC on July 7, 1997.

Brian A. Yanez,

Assistant Executive Director, ARAC on Aircraft Certification Procedure Issues.

[FR Doc. 97–18154 Filed 7–10–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held July 29, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Consider and Approve: a. Proposed Final Draft, DO–160D, Environmental Conditions and Test Procedures for Airborne Equipment, RTCA Paper No. 190–97/TMC–281, prepared by Special Committee (SC)–135; Report on Inclusion of HIRF ''Pass-Fail'' Criteria in DO–160D, Environmental Conditions and Test Procedures for Airborne Equipment; b. Proposed Final Draft, AOC ATM MASPS, RTCA Paper No. 191–97/TMC–282, prepared by SC–169; c. Change 1, DO–197A MOPS for Traffic Alert and Collision Avoidance System I, RTCA Paper No. 181–97/TMC–275, prepared by SC–147; d. Report from the Systems Management Working Group: 1. Actions Related to the Approval of the SC–162 Document Presented at the April 1997 TMC, Minimum Operational Performance Standard for Aeronautical Telecommunication Network Avionics; 2. Status of Policy for References in RTCA Documents to Standards Documents from Other Organizations; 3. Revised Final Draft, Minimum Operational Performances Standards for Aeronautical Telecommunication Network Avionics, RTCA Paper No. 184–97/TMC–276, prepared by SC–162; e. Proposed Update to the Terms of Reference for SC–186, Automatic Dependent Surveillance-Broadcast, RTCA Paper No. 189–97/TMC–280. (4) Discuss/Take Position on: a. Report on Proposed Change to DO–204, Minimum Operational Performance Standards for 406 MHz ELT's; b. Report from Chairman of SC–182 on the Progress of the Committee; c. FAA Request for a Special Committee on Aviation Data Base Development, RTCA Paper No. 060–97/TMC–269; d. Report Regarding the Activities of SC–169: 1. Requirement for Change 1 to DO–219, Minimum Operational Performance Standards for ATC Two-way Data Link Communications, RTCA Paper No. 415–96/TMC–245; 2. Presentation of a Plan for the Coordination of Activities for Special Committees Working on Data Communications Issues, RTCA Paper No. 192–97–TMC–283; e. Discussion of Letter Regarding Improvement in the TMC Process; (5) Other Business: a. Report from the Chairman, SC–176, on the Status of SC–176 and DO–194A; b. Discuss FAA Letter Regarding Future Tasking of RTCA, RTCA Paper No. 188–97/TMC–279); (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the commission at any time.

Issued in Washington, DC, on July 3, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–18262 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose Only, Impose and Use and Use the Revenue From a Passenger Facility Charge (PFC) at Inyokern Airport, Inyokern, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose only, impose and use, and use PFC revenue from a PFC at Inyokern Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990, Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 as recodified by Title 49 U.S.C. 40117 [C(3)] and 14 CFR Part 158. On June 24, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the Indian Wells Valley Airport District was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 26, 1997.

DATES: Comments must be received on or before August 11, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Nancy Bass, General Manager, Inyokern Airport, P.O. Box 634, Inyokern, CA 93527. Comments from air carriers may be in the same form as provided to the Indian Wells Valley Airport District under section 158.23 of FAR Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor Standards Section, Airports Division, P.O. Box 92007, WPC, Los Angeles, CA 90009, Telephone: (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose only, impose and use, and use the revenue from a PFC at the Inyokern Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 as recodified by Title 49 U.S.C. 40117 [C(3)]) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On June 24, 1997, the FAA determined that the application to impose only, impose and use, and use the revenue from a PFC submitted by the Indian Wells Valley Airport District was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 26, 1997.

The following is a brief overview of the application No. AWP–97–03–C–00–IYK:

Level of the Proposed PFC: $3.00.

Proposed Charge Effective Date: October 1, 1997.

Proposed Charge Expiration Date: December 30, 2002.

Total Estimated PFC Revenue: $253,000 for impose or impose and use, and $140,000 for use only.

Brief description of the proposed projects:

Impose only: Widen Runway 2–20 from 75′ to 100′—Total $153,000.

Impose and Use: Construct Fire Station—Total $100,000.

Use only: Rehabilitate Taxiways—Total $140,000. This project was previously approved as impose only within an overall PFC application which was approved on February 11, 1995, in the total estimated amount of $215,000.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Small certificated air taxi carriers not providing scheduled service.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the Inyokern Airport Administration Office.

Issued in Hawthorne, California, on June 24, 1997.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 97–18261 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lebanon Municipal Airport, Lebanon, New Hampshire

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Lebanon Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 11, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy J. Edwards, at the following address: Airport Manager, 5 Airpark Road, West Lebanon, New Hampshire 03784.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Lebanon under § 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Lebanon Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 2, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Lebanon was substantially complete within the requirements of § 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than August 20, 1997.

The following is a brief overview of the impose and use application.

PFC Project #: 97–02–C–00–LEB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1999.

Proposed estimated charge expiration date: December 1, 1999.

Estimated total net PFC revenue: $22,350.

Brief description of project: Installation of Airport Security Fencing.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lebanon Municipal Airport, 5 Airpark Road, West Lebanon, New Hampshire.

Issued in Burlington, Massachusetts on July 2, 1997.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 97–18152 Filed 7–10–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (49 CFR) §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Nevada Northern Railway Museum (NNRX)

[FRA Waiver Petition Docket No. RSEQ–95–1]

The NNRX seeks a waiver of compliance with 49 CFR, Part 240, ''Qualifications for Locomotive Engineers.'' NNRX is a seasonal tourist operation with both steam and diesel train excursions. The normal operating season is from Memorial Day through Labor Day on weekends only. The NNRX operates a program called ''Student Engineer-Locomotive Rental Program'' which, according to the railroad, has generated much of the income necessary to keep the museum operating and its continuation is imperative to the future of the museum. In addition, the program ''provides an opportunity for an individual to learn the aspects and responsibilities of a locomotive engineer as well as the history of the Nevada Northern Railway.'' The NNRX program's total rental period, including testing, preparation and cab time will not exceed two hours. It is proposed that movement will be locomotive only and under the direct supervision of a certified locomotive engineer and fireman. A written examination and adequate clothing will be required. Furthermore, each student must be in reasonably good health and have good eyesight.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. RSEQ–95–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at 1120 Vermont Avenue, N.W., Washington, D.C. 20005, Room 7020.

Issued in Washington, D.C. on July 2, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–18242 Filed 7–10–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub-No. 1)]

CSX Transportation, Inc.; Construction and Operation Exemption; Connection Track at Crestline, OH

CSX Transportation, Inc. (CSXT) and Consolidated Rail Corporation (CRC) have filed a notice of exemption under 49 CFR 1150.36 to construct a connection track between two CRC main lines in the NW Quadrant. The connection will extend approximately 1,507 feet between approximately milepost 75.4 on CRC's North-South main line between Greenwich, OH, and Indianapolis, IN, and approximately milepost 188.8 on CRC's East-West main line between Pittsburgh and Ft. Wayne, IN. [1]

Construction is scheduled to begin on or about 90 days after the filing date of this notice, but not before the effective date of the exemption, which is 70 days after publication of this notice in the **Federal Register**, unless stayed.

The Board's Section of Environmental Analysis (SEA) will analyze the potential environmental impact of this proposed construction and operation, which is addressed in the environmental documents prepared in the primary application in STB Finance Docket No. 33388. The environmental report covering the proposed construction and operation of the connection track at Crestline is contained in the Environmental Report filed with the Board in STB Finance Docket No. 33388. In addition, as the Board required in CSX/NS/CR, Decision No. 9, CSX must submit, no later than September 5, 1997 (Day F+75), a preliminary draft environmental assessment (PDEA) for each individual construction project covered by the Board's waiver decision. Each PDEA must comply with all of the requirements for environmental reports contained in the environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with SEA and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. If a PDEA is insufficient, the Board may require additional environmental information or reject the document. See CSX/NS/CR, Decision No. 9, at 8.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for its review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation. *Id.* at 8. The effective date of this exemption may be stayed pending consideration of the environmental record and completion of the environmental process.

Should the Board determine that the Crestline construction project could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed control transaction in STB Finance Docket No. 33388, CSX/NS/CR. *Id.* at 8. The Board's consideration of this construction project does not, and will not, in any way, constitute approval of, or even

[1] This proceeding is related to STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail, Inc. and Consolidated Rail Corporation (CSX/NS/CR). In CSX/NS/CR, Decision No. 9, served June 12, 1997, the Board granted the applicants' Petition for Waiver, allowing CSXT and CRC to seek approval for construction of four ''first day'' connections, including this proposed connection at Crestline, OH, prior to Board approval of the Primary Control Application. CSXT filed a notice of exemption to construct and operate a connection track in Crestline, as a related filing in Volume 5 of the primary application filed on June 23, 1997, in the CSX/NS/CR proceeding. See CSX/NS–22 (Volume 5) at 94. CSXT and CRC concurrently filed a slightly modified version of the notice of exemption for construction of a connection track in Crestline (CSX–5). The Board will consider both filings in tandem. As the Board stated in CSX/NS/CR, Decision No. 9, at 6–7:

* * * in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project. The operational implications of the merger as a whole, including operations over the * * * construction projects, will be examined in the context of the [Environmental Impact Statement] EIS that we are preparing for the overall merger. * * * No rail operations can begin over these (four CSX connections) until completion of the EIS process and issuance of a further decision.

indicate any consideration on our part respecting approval of, the primary application in STB Finance Docket No. 33388.

This exemption will be effective on September 19, 1997, unless stayed. Petitions to stay the effective date of this notice on any grounds must be filed by July 21, 1997. Petitions for reconsideration must be filed by July 31, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33388 (Sub-No. 1), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 and served on: Dennis G. Lyons, Arnold & Porter, 555 Twelfth Street, N.W., Washington, DC 20004–1206. Parties to STB Finance Docket No. 33388 will not be automatically placed on the service list for this proceeding.

Decided: July 3, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–18221 Filed 7–10–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate of Identity of Owner of Registered Securities and Certificate of Identity of Owner of Savings and Retirement Securities.

DATES: Written comments should be received on or before September 9, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Identity of Owner of Registered Securities and Certificate of Identity of Owner of Savings and Retirement Securities.

OMB Number: 1535–0048.

Form Numbers: PD F 0385 and PD F 0385–1.

Abstract: The information is requested to establish the identity of the owner of United States Savings Bonds/Notes or Registered Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 177.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 89.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) 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 estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 7, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–18195 Filed 7–10–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application for disposition of United States registered securities and related checks without administration of deceased owner's estate.

DATES: Written comments should be received on or before September 9, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application for Disposition of United States Registered Securities and Related Checks Without Administration of Deceased Owner's Estate.

OMB Number: 1535–0058.

Form Number: PD F 1646.

Abstract: The information is requested to support a request for distribution of registered securities belonging to a decedent's estate that is not being administered.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 625.

Estimated Time Per Respondent: 90 minutes.

Estimated Total Annual Burden Hours: 938.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

public record. Comments are invited on: (a) 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 estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 7, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–18196 Filed 7–10–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Redemption at Par of United States Treasury Bonds Eligible for Payment of Federal Estate Tax.

DATES: Written comments should be received on or before September 9, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Redemption At Par Of United States Treasury Bonds Eligible For Payment Of Federal Estate Tax.

OMB Number: 1535–0010.

Form Number: PD F 1782.

Abstract: The information is requested to support a request for redemption at par of United States Treasury Bonds eligible for payment of federal estate tax.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,250.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) 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 estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 7, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–18197 Filed 7–10–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Affidavit by individual surety.

DATES: Written comments should be received on or before September 9, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Affidavit By Individual Surety.

OMB Number: 1535–0100.

Form Number: PD F 4094.

Abstract: The information is requested to support a request to serve as surety for an indemnification agreement on a Bond of Indemnity.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 55 minutes.

Estimated Total Annual Burden Hours: 460.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) 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 estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 7, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–18198 Filed 7–10–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request by owner of savings bonds/notes deposited in safekeeping when original custody receipts are not available.

DATES: Written comments should be received on or before September 9, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request By Owner Or Person Entitled To Payment Or Reissue Of United States Savings Bonds/Notes Deposited In Safekeeping When Original Custody Receipts Are Not Available.

OMB Number: 1535–0063.

Form Number: PD F 4239.

Abstract: The information is requested to establish ownership and request reissue or payment when original custody receipts are not available.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 84.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) 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 estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 7, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–18199 Filed 7–10–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning collections of information required to comply with the terms and conditions of FHA debentures.

DATES: Written comments should be received on or before September 9, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Titles:

FHA New Account Request

FHA Transaction Request

FHA Debenture Transfer Request

OMB Number: 1535–0120

Form Numbers: PD F 5366, 5354, and 5367.

Abstract: The information is used to (1) establish a book-entry account; (2) change information on a book-entry account; and (3) transfer ownership of a book-entry account on the HUD system, maintained by the Federal Reserve Bank of Philadelphia.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households, businesses or other for-profit.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 102.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) 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 estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 7, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–18200 Filed 7–10–97; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register

Vol. 62, No. 133

Friday, July 11, 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 ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–603–000]

Egan Hub Partners, L.P.; Notice of Application

Correction

In document 97–17321, beginning on page 35796, in the issue of Wednesday, July 2, 1997, the **Docket No.** should read as set forth above.

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1842

Quick-Closeout Procedures

Correction

In rule document 97–17309 beginning on page 36227 in the issue of Monday, July 7, 1997, make the following correction:

On page 36228, first column, line two under **Impact**, ''not'' should appear after ''will''.

BILLING CODE 1505-01-D

federal register

Friday
July 11, 1997

Part II

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL 5850–6]

RIN 2060–AG76

Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through the amended Clean Air Act of 1990, Congress mandated that EPA promulgate regulations requiring that gasoline sold in certain areas be reformulated to reduce vehicle emissions of toxic and ozone-forming compounds. The EPA published rules for the certification and enforcement of reformulated gasoline (RFG) and provisions for non-reformulated or conventional gasoline on February 16, 1994.

Based on experience gained since the promulgation of these regulations, EPA is proposing a variety of changes to the regulations relating to emissions standards, emissions models, compliance related requirements and enforcement provisions. The proposed changes involve both the reformulated and conventional gasoline programs. Many of the changes codify guidance issued by the Agency since the initial adoption of these gasoline programs. These changes are in the nature of minor adjustments to the structure of these programs. The emissions benefits achieved from reformulated gasoline will not be reduced.

DATES: The comment period on this proposed action will close August 11, 1997, unless a hearing is requested, in which case the comment period will close 30 days after the close of the public hearing. EPA will conduct a hearing (date and location to be announced) if a request for such is received by July 18, 1997.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–97–03, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW, Washington, DC 20460. The Agency requests that commenters also send a copy of any comments to Marilyn Bennett, U.S. Environmental Protection Agency, Office of Air and Radiation, at the address listed in the For Further Information Contact section. Those wishing to notify EPA of their intent to submit adverse comment or request an opportunity for a public hearing on this action should contact Marilyn Bennett at (202) 233-9006. Materials relevant to the final rule establishing standards for reformulated gasoline and anti-dumping standards for conventional gasoline are contained in Public Dockets—A–92–01 and A–92–12, and are incorporated by reference.

The preamble, regulatory language and regulatory support document are also available electronically from the EPA Internet Web site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of Internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer per the following information. The official **Federal Register** version is made available on the day of publication on the primary Internet sites listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below and on the TTN BBS.

Internet (Web)
http://www.epa.gov/docs/fedrgstr/EPA-AIR/
(either select desired date or use Search feature)
http://www.epa.gov/OMSWWW/
(look in What's New or under the specific rulemaking topic)
TTN BBS: 919–541–5742
(1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Helpline: 919–541–5384
Off-line: Mondays from 8 am to 12 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T>Gateway to TTN Technical Areas (Bulletin Boards)
<M>OMS—Mobile Sources Information (Alerts display a chronological list of recent documents) <K> Rulemaking & Reporting

At this point, choose the topic (e.g., Fuels) and subtopic (e.g., Reformulated Gasoline) of the rulemaking, and the system will list all available files in the chosen category in date order with brief descriptions. To download a file, type the letter ''D'' and hit your Enter key. Then select a transfer protocol that is supported by the terminal software on your own computer, and pick the appropriate command in your own software to receive the file using that same protocol. After getting the files you want onto your computer, you can quit the TTN BBS with the <G>oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

FOR FURTHER INFORMATION CONTACT: Marilyn Bennett, Fuels and Energy Division, U.S. EPA, 401 M Street, SW (6406J), Washington, DC 20460. Telephone: (202) 233–9006.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Refiners, importers, and distributors of motor vehicle fuel; motor vehicle fuel retail outlets and wholesale purchaser-consumer facilities; facilities that act as independent laboratories.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of part 80, subparts D, E and F, of title 40 of the Code of Federal Regulations. If you have questions regarding applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Today's preamble explains the basis for the regulatory changes and the purpose of the proposed rule. The remainder of this preamble is organized into the following sections:

I. Corrections of Typographical Errors and Minor Revisions
II. General Fuels Provisions
III. RFG and Anti-dumping Standards/Models
IV. RFG Compliance Requirements
V. Enforcement
VI. Anti-dumping Requirements
VII. Attest Engagements

VIII. Environmental and Economic Impacts
IX. Public Participation
X. Regulatory Flexibility
XI. Executive Order 12866
XII. Paperwork Reduction Act
XIII. Unfunded Mandates Act
XIV. Statutory Authority

I. Corrections of Typographical Errors and Minor Revisions

§ 80.2(w)	The reference to the cetane index test method is removed and added as § 80.3(e). As a replacement, a definition is proposed for ''previously certified gasoline'' to mean RFG and conventional gasoline that has been produced or imported in conformance with applicable requirements and included in the refinery, oxygenate blender or importer compliance calculations.
§ 80.2(y)	The reference to the sulfur content test method is removed and added as § 80.3(f). This section is revised to conform to the sulfur test method in § 80.46(a).
§ 80.2(z)	The reference to the aromatics content test method is removed and added as § 80.3(g). This section is revised to limit the test method to use for diesel fuel only to avoid conflict with the test method for aromatics content of RFG in § 80.46(f).
§ 80.2(ee)	Revises the definition of reformulated gasoline to delete the requirement for a gasoline marker under § 80.82.
§ 80.2(gg)	Revises definition of gasoline ''batch'' to make this definition apply to conventional gasoline as well as to RFG.
§ 80.41(d)	Revises chart to replace ''≤32.6'' for VOC per-gallon minimum reduction with ''≤32.6'' and replace ''≤−2.5'' with ''≤−2.5'' for per-gallon minimum NO_X performance reduction (percent).
§ 80.45(c)(1)(iv)(B)	Corrects several small typographical errors in both the Phase I and Phase II equations.
§ 80.45(c)(1)(iv)(D)(12)	Corrects typographical error by changing ''(E300 X 72 percent)'' to ''(E300—72 percent).''
§ 80.45 (c)(1)(iv)(D) (13)	Corrects typographical error by changing Phase I coefficients to Phase II coefficients, i.e. change ''80.32 + (0.390 X ARO)'' to ''79.75 + (0.385 X ARO).''
§ 80.45(d)(1)(iv)(B)	Corrects typographical errors to the equation.
§ 80.45(f)(1)(i)	Corrects the entry for aromatics ''acceptable range'' to read ''0.0—55.0 volume percent.''
§ 80.49(a)	Corrects typographical error. There is a reference to section 80.43(c), which is incorrect. The proper reference is to section 80.49(a)(5)(i).
§ 80.49(a)(1)	Corrects typographical error in formula at the bottom of the new parameter under Fuel 2. Changes from ''C+B/2'' to ''(C+B)/2.''
§ 80.49(a)(3)	Corrects typographical error. There is a reference to § 80.43(c), which is incorrect. The proper reference is to § 80.49(a)(5)(i).
§ 80.49(b)	Corrects typographical error. There is a reference to § 80.43(c), which is incorrect. The proper reference is to § 80.49(a)(5)(i).
§ 80.50(a)(2)	Corrects reference to ''extension fuels per the requirements of § 80.49(a)'' to read ''extension fuels per the requirements of § 80.49(b).''
§ 80.65(e)(2)(ii)(B)	Revises to apply to importers as well as refiners.
§ 80.65(g)	Revises to delete heading: ''Marking of conventional gasoline.''
§ 80.68(b)(2)(ii)	Revises the word ''area'' to read ''area(s)'' to clarify the application of the equation to a situation in which more than one area fails a survey or survey series in a single year.
§ 80.69(a)(6)(iv)	Revises to add reference to § 80.69(e)(2).
§ 80.69(e)	Revises to clarify reference by removing ''who obtains any RBOB in any gasoline delivery truck'' and adding ''other than a terminal storage tank blender specified in § 80.69(c)'.
§ 80.69(e)(2)(i)(A)	Revises to add the word ''to.''
§ 80.69(e)(2)(v)	Corrects reference to § 80.70(b)(2)(i). The correct reference is to § 80.65(e)(2)(i).
§ 80.75(a)	Revises to require refiners, importers, and oxygenate blenders to include notification to EPA of per-gallon versus average election with the first quarterly reports submitted each year.
§ 80.75(a)(3)	Revises to add a new § 80.75(a)(3) which provides a mathematical equation for converting weight percent oxygen from an oxygenate to volume percent oxygenate.
§ 80.77(c)	Revises to add reference to RBOB.
§ 80.77(f)	Revises to add reference to RBOB.
§ 80.128(e)(2)	Revises by changing reference from § 80.69(a)(9) to § 80.69(a)(2).

II. General Fuels Provisions

A. Test Methods (§ 80.3; RFG Test Methods § 80.46)

1. Replacement of Lead and Phosphorus Test Methods with Industry Standard Test Methods (§§ 80.3 (a) and (b))

40 CFR part 80, appendices A and B, specify the test methods that are used for determining, respectively, the phosphorus content and the lead content of gasoline. Today's proposal would remove appendices A and B and add §§ 80.3 (a) and (b) which would require the use of ASTM method D 3231–94 for phosphorus and methods D 3237–90 or D 5059–92 for lead. The phosphorus and lead test methods are used primarily to determine compliance with the standards under §§ 80.22 and 80.23, dealing with the unleaded gasoline program. Also, under § 80.41(h)(1), RFG may contain no heavy metals. As a result, the proposed lead test method would be used for determining the presence of this heavy metal in RFG.

The test methods in appendices A and B of 40 CFR part 80 originally were adopted from ASTM standard test methods. Over time, however, ASTM has updated their test methods, while EPA has not. EPA believes the current ASTM test methods are equivalent to the methods currently in the regulations, and are more consistent with the test methods regulated parties normally use for commercial purposes. As a result, the proposed test methods would be appropriate for determining compliance with the provisions of 40 CFR part 80.

EPA believes there would be little additional burden on the regulated industry if the proposed phosphorus and lead test methods were adopted. Initially, EPA understands that the proposed test methods are the current industry standard test methods, so most gasoline testing laboratories already are equipped to conduct the proposed test

methods. In addition, there is no requirement for regulated parties to test their gasoline for phosphorus or lead under either the unleaded gasoline or the RFG regulations, so parties would not be obligated to use the proposed test methods at all. Rather, the phosphorus and lead test methods in the regulations are used by EPA to determine if gasoline meets standards for these metals. EPA or a regulated party also could use non-regulatory phosphorus or lead test methods. However, in an enforcement proceeding, the results from non-regulatory test methods would only constitute evidence of the results that would have been obtained if the regulatory test method had been conducted on the gasoline at issue.

2. Reformulated Gasoline Test Methods (§§ 80.46 (a) Through (g))

In § 80.46, test methods were specified for the measurement of the regulated properties of reformulated gasoline. Many of the test methods designated in the original rule were consensus standards, prepared and maintained by ASTM. Since the original issuance of the rule, some of these methods have been updated. EPA is now proposing to replace the current regulatory methods with the updated versions of these methods for the measurement of sulfur, olefins, and distillation parameters. In addition, EPA is proposing an alternative test method (ASTM D 5453–93) for determining the sulfur content in conventional gasoline until September 1, 1998. This proposed alternative test method is discussed in Section VI.B.6. The proposed updated methods all are finally approved ASTM test methods. In addition, ASTM has developed a method (ASTM D 5599–95) that is the same as the procedure for the measurement of oxygenates at §§ 80.46(g) (1) through (8), and EPA proposes to replace §§ 80.46(g) (1) through (8) with a reference to the ASTM method. For the measurement of RVP, EPA proposes to eliminate the appendix containing EPA Method 3 (appendix E), and designate ASTM D 5191–96 as the required method, with the exception that the correlation equation as described in EPA Method 3 must be used in place of the correlation equation described in ASTM D 5191–96. ASTM D 5191–96 is identical to the RVP test method in appendix E when the correlation equation from EPA Method 3 is used with the ASTM method. In all cases, these changes do not amount to a deviation in method, or significant change in procedure. Most of the ASTM changes revolve around improvements in quality statements. The inclusion of ASTM D 5599–95 for oxygenates is the result of ASTM preparing a test method that is consistent with that previously defined in the **Federal Register**.

The test method previously designated for benzene, ASTM D 3606, has been updated since the original publication of the rule. However, the parameters must be adjusted to allow for the resolution of ethanol and methanol from the benzene. In addition, the EPA GC/MS method has been demonstrated through ASTM round-robin testing to be an equivalent method for the measurement of benzene. Since the use of the EPA GC/MS method would allow two parameters (benzene and aromatics) to be performed with a single test, EPA believes the use of the EPA GC/MA method for the measurement of benzene would result in a reduced burden to the regulated industry, and, therefore, is proposing to allow its use as an alternate test procedure for the measurement of benzene in gasoline.

3. Butane Test Methods (§ 80.46(h))

Blendstocks require the same full set of parameter measurements as reformulated gasoline, since final properties must be extrapolated for all final blends. When butane designated for blending must be tested, the designated methods are generally not applicable, since the properties for butane typically fall outside the scope of the methods. Therefore, EPA is proposing to designate several test methods specifically for butane blendstock testing. ASTM D 2163–91 and D 5623–94 have been identified as suitable methods for the measurement of light hydrocarbons and sulfur respectively. The Gas Producers Association (GPA) has developed a method for the measurement of benzene and aromatics in butane. This method is GPA 2186-95. EPA is not proposing to designate a method for measuring olefins in butane. No consensus method currently exists for measuring total olefins in butane blendstocks. ASTM D 2163–91 will measure the lighter olefins, but not any heavier ones in the mix. EPA has identified a proprietary method, known as the Wasson ECE 383–01 method, which measures all of the olefinic compounds in the blendstock. This method is not a consensus standard, but is of the type that would be acceptable, due to its ability to measure total olefins.

4. Volatility Test Methods (§§ 80.3 (c) and (d))

As discussed above, for the measurement of RVP, EPA proposes to eliminate the appendix containing EPA Method 3 (appendix E) and designate ASTM D 5191–96 as the regulatory method, with the exception that the correlation equation as described in EPA Method 3 must be used in place of the correlation equation described in ASTM D 5191–96.

The measurement of alcohols, especially ethanol, for the volatility rule has been described in detail in appendix F of 40 CFR part 80. In this appendix, Method 1 describes a water extraction method, and Method 2 details a chromatographic procedure (an older version of ASTM D 4815.) In an effort to harmonize methods, EPA believes it would reduce the testing burden to allow test methods that are consistent with the reformulated gasoline rule. As a result, EPA proposes to eliminate Appendix F and designate ASTM D 5599–95 as the method for the measurement of alcohols in gasoline for the purpose of complying with the volatility regulations. Consistent with the reformulated gasoline rule, the use of ASTM D 4815–94a will be allowed as an alternate as long as this use is allowed under the reformulated gasoline rule.

5. Diesel Fuel Test Methods (§§ 80.3 (e), (f), and (g))

When the diesel sulfur rule was originally published by EPA, several methods were included for the measurement of the regulated properties. Included in these properties are sulfur concentration, cetane index, and aromatic content. The current designated test for sulfur is ASTM D 2622–87, with D 4294–83 being an allowable alternate. As discussed above, EPA proposes to substitute the current regulatory test method for sulfur, D 2622–87, with the latest version of this method, D 2622–94. EPA also proposes to substitute the alternate method for determining sulfur content in diesel fuel, D 4294–83, with the latest version, D 4294–90(1995), and substitute the current test method for cetane index, ASTM D 976–80, with the latest version, D 976–91.

The test for aromatics in diesel had been designated to be ASTM D 1319–88. EPA recognizes that ASTM describes this test as inadequate for the measurement of the aromatic content in diesel fuel. For some time, EPA has been performing ASTM D 5186 in parallel with D 1319, and found D 5186 to be superior in both precision and accuracy. The primary difficulty in changing from the use of D 1319 to D 5186 to measure compliance lies in the units reported by the two methods. The regulation specifies a limit on the aromatic content in volume per-cent, coincidentally the same units reported

by D 1319. Unfortunately, D 5186 reports results in mass per-cent. In order to comply with the regulation, these results must be converted to volume per-cent. EPA proposes to apply a conversion factor to the results. The equation to be used for the conversion of mass per-cent diesel aromatics to volume per-cent diesel aromatics is:

Vol% = (Mass% * 0.916) + 1.33

Where Mass% refers to the output from D 5186–96, the SFC test.

This equation is identical to that used by CARB in their conversion of mass per-cent results to volume per-cent results for the affirmation of regulatory limits.

This change should not impose any additional financial burden on industry, since it is not a required test. The option of measuring aromatics was originally placed in the rule to allow an alternate to the requirement that low sulfur fuels meet a minimum requirement of a 40 cetane index. The intent was to regulate aromatic content, and it was found that some fuels with high napthenic content could actually be very low in aromatics, yet still not meet the 40 cetane index level. The option to test for aromatic content would only be exercised if a fuel fails to meet the required cetane index level, a relatively infrequent occurrence.

6. Table of Test Methods

The following table sets out the test methods currently required under the fuels regulations at 40 CFR part 80, and the corresponding proposed test methods:

Parameter	Old test	New test
Reformulated Gasoline:		
RVP	EPA Method 3	ASTM 5191–96, except that equation is as in Method 3.
Benzene	ASTM D3606–92, with exceptions for Methanol and Ethanol.	ASTM D3606–96, also with exceptions. In addition, the use of the EPA GC/MS Method for the measurement of Benzene will now be allowed as an alternate.
Distillation	ASTM D86–90	ASTM D86–96.
Aromatics	EPA GC/MS Method (80.46)	EPA GC/MS Method (80.46) (No Change) alternate is D1319–95a.
Olefins	ASTM D1319–93	ASTM D1319–95a.
Sulfur	ASTM D2622–92	ASTM D2622–94 (ASTM D5453–93 is alternate for Conventional Gasoline to 9/1/98).
Oxygenates	EPA OFID Method (80.46)	ASTM D5599–95, alternate is D4815*–94a.
Lead Phase Down:		
Phosphorus	Appendix A	ASTM D3231–94.
Lead	Appendix B	ASTM D3237–90 (Atomic Absorbance) or D5059–92 (X-ray).
Volatility:		
Alcohol		Consistent with Reformulated Gasoline.
Diesel Sulfur:		
Sulfur	ASTM D2622–87, or D4294-83	ASTM D2622–94, or D4294–90 (1995).
Aromatics	ASTM D1319–88	ASTM D5186–96.
Cetane Index	ASTM D976–80	ASTM D976–91.
Blendstock Tests:		
Light Hydrocarbons in Butane		ASTM D2163–91.
Sulfur in Butane		ASTM D5623–94.
Benzene and Aromatics in Butane		GPA 2186–95.
Olefins in Butane		Test procedure not specified. Wasson-ECE 383–01 is an example of an acceptable test procedure.

B. Gasoline and Diesel Fuel Sampling Procedures (Proposed § 80.8)

40 CFR part 80, Appendices D and G, specify sampling procedures for gasoline and diesel fuel for all motor vehicle fuel programs under 40 CFR part 80, including the programs for unleaded gasoline, gasoline volatility, diesel sulfur, RFG, and anti-dumping. Today's proposal would replace the sampling procedures in appendices D and G with the following ASTM standard practices:

- D 4057–95, ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products;''
- D 4177–95, ''Standard Practice for Automatic Sampling of Petroleum and Petroleum Products;''
- D 5842–95, ''Standard Practice for Sampling and Handling of Fuels for Volatility Measurements;'' and
- D 5854–95, ''Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products.''

Appendices D and G were adopted from the 1981 version of D 4057. Over time, however, ASTM has updated D 4057, and these changes are not reflected in Appendices D and G. For example, appendix D addresses the collection of samples from a ''tap'' in the shell of a petroleum storage tank. The current requirement under appendix D, reflective of D 4057–81, requires that taps extend at least three feet into the storage tank. *See,* ¶ 11.3.1.1 of appendix D. However, tap extensions are necessary only for heavy petroleum products (and not for gasoline and diesel fuel), and, furthermore, tap extensions are not possible with floating roof storage tanks that are commonly used today. As a result, EPA and regulated parties currently agree to waive the tap extension requirement on a case-by-case basis. Under D 4057–95 sampling tap extensions are not required for light petroleum products such as gasoline and diesel fuel, so that if this ASTM procedure were adopted the tap extension issue would be resolved for all cases.

EPA is proposing to adopt three ASTM methods in addition to D 4057–95 in order to include procedures that address a broad scope of sampling situations that are relevant to EPA's motor vehicle fuels programs. D 4177–95 deals with automatic sampling of petroleum products, which is relevant under the anti-dumping regulations for refiners who produce conventional gasoline using an in-line blending operation where automatic sampling is necessary. Similarly, D 5842–95 deals with sampling and sample handling for volatility measurement, which is relevant to determining compliance with the volatility standards in § 80.27 and the RFG standards in § 80.41. Last, D 5854–96 deals with the creation of composite samples, which is relevant

under the RFG and anti-dumping programs in certain situations involving imported gasoline where the gasoline from multiple ship compartments is treated as a single batch.

EPA believes it is appropriate to replace Appendices D and G with ASTM standard practices. The current ASTM practices reflect up to date procedures, which if followed would result in improved sample quality for regulatory purposes. In addition, the adoption of industry standard procedures would reduce regulatory burden because parties would be able to follow their customary practices when meeting regulatory requirements.

III. RFG and Anti-Dumping Standards/Models

A. Standards and Requirements for Compliance (§§ 80.41 and 80.101)

1. Averaging Per-Gallon Minimum Standards for NO_X (§§ 80.41 (d) and (f); § 80.68(b)(1)(iv))

Reduction of NO_X emissions is a prominent feature of Phase II of the Reformulated Gasoline Program which goes into effect on January 1 of 2000 (Phase I provides control at a ''no NO_X increase'' level). The Phase II standard for refiners choosing to comply on average (requiring a 6.8% reduction from baseline during the high ozone season) sets the level of NO_X emission reduction required on average by these refiners. Thus, for refiners who choose to average, the averaging standard effectively controls the overall environmental benefit contributed to the program by these refiners.

In addition to the average NO_X standards, though, there are also per-gallon minimum reduction standards for refiners that choose to average (not to be confused with standards for overall compliance on a per-gallon basis). The averaging minimum standard in Phase II requires that each gallon (batch) of RFG in the high ozone season has at least a 3% reduction from the statutory baseline; the corresponding Phase I standard holds any *increase* over statutory baseline for a batch to 2.5%. Less stringent minimum standards apply outside of the high ozone season in Phase II. The per-gallon minimum standards are in addition to the year-long average standard of a refinery's output of a given type of RFG and these minimum standards set the NO_X reduction which must be achieved by each batch (and therefore each gallon) of RFG.

These NO_X per-gallon minimum standards were not put in place to provide any incremental environmental benefit beyond that provided by the average standard, but rather to ensure an even distribution of program benefits from area to area and through time. This primary reason for the averaging per-gallon minimum standards (for NO_X and other parameters as well) was discussed in the enforcement section of the preamble to the RFG final rule (Section VII). An additional but secondary objective of the minimum standard was to augment the ability of enforcement authorities to detect non-RFG gasoline being illegally sold in RFG areas. For reasons that will be discussed more fully below, EPA is proposing to eliminate the per-gallon minimum standards for NO_X and to accomplish the same objectives that these standards would have accomplished by substantially expanding the number of area-by-area surveys of RFG emission performance required to be conducted by refiners choosing to average. EPA is not proposing any change to the averaging standard for NO_X.

The Problem With the Per-Gallon NO_X Minimums

When EPA imposed the per gallon minimum standards, data did not exist to adequately assess the variability, within refineries' output, of NO_X quality or the factors that affect it across all of the batches of gasoline produced in a year.

Representatives of the gasoline refining industry (the American Petroleum Institute (API), the National Petroleum Refiners Association (NPRA) and representatives of various of their member companies) have presented data to EPA [1] showing that NO_X performance of actual RFG retail samples varies substantially by octane grade and from batch to batch [2] within a grade. The processes involved in gasoline production result in a broad bimodal [3] distribution of NO_X quality, with premium batches showing characteristically lower NO_X emissions and regular batches, with their higher levels of sulfur and olefins, showing higher NO_X emissions. [4] These data on gasoline produced under the simple model requirements showed a very substantial proportion of regular grade RFG samples that would have failed to meet the Phase I minimum reduction standard that applies beginning in 1998.

In order to bring these higher NO_X batches of regular RFG into compliance, the refiners suggested that the industry would have to incur substantial additional costs in excess of those calculated in EPA's Regulatory Impact Assessment which EPA relied upon in adopting the standards for RFG in 1993. That assessment of the costs of compliance for NO_X was based upon the cost of meeting the average standard, not the per-gallon minimum that applies to refineries that average, which is the subject of this proposal. They further argued that in the absence of a substantial enforcement tolerance to account for the uncertainty of measurement (especially of olefin levels) in downstream enforcement sampling, the bimodal frequency distribution would have to be shifted further than would otherwise be required. While the problem created by the NO_X minimum would already be substantial in Phase I with the 1998 introduction of the complex model, the

[1] Industry representatives met with EPA personnel on January 14, 1997 and presented a graphical analysis which can be found in the docket for this rulemaking. Docket Number A–97–03, Item Number II–E–1.

[2] Since these were retail samples, they could not truly reflect batch-to-batch variability due to the intermingling of gasolines from different batches, and even from different sources, in the distribution system.

[3] A bimodal distribution here refers to one that has two distinct frequency peaks or two values around which a large number of batches will gather.

[4] Engineering judgment would lead to a conclusion that a broad distribution of NO_X quality differing markedly between premium and regular gasoline grades would exist in the gasoline pool. First, NO_X quality under EPA's complex model is primarily a function of sulfur and olefin content in the gasoline. Thus, differences in either of these properties would result in differences in NO_X quality. Second, in the refinery, processes which typically contribute large volumes to the regular gasoline grade are often high in sulfur and olefins, whereas processes contributing heavily to the premium gasoline pool are often very low in olefins and sulfur. For example, the fluid catalytic cracker (FCC) unit in a refinery breaks large molecules into smaller ones and is the ''workhorse'' of most refineries and the largest contributor of any refinery unit to the gasoline pool. The gasoline produced by the FCC unit is highly olefinic, and, depending upon the crude oil source for the refinery, usually very high in sulfur. FCC gasoline also possesses octane quality consistent with regular gasoline. For this reason and since regular gasoline is typically the highest volume product of U.S. refineries, most of the product produced by the FCC is used in the production of regular gasoline. On the other hand, premium gasolines, which differ from regular grades primarily in the higher octane quality they possess, contain lower amounts of FCC streams and higher levels of high-octane aromatic streams produced by catalytic reformers. Such streams, called reformate, are extremely low in olefins and also very low in sulfur. Thus, a much lower level of sulfur and olefin content and therefore, better NO_X quality, is found in the premium pool as compared to the regular pool. (A 1989 study of blendstocks used to produce U.S. gasoline found FCC blendstocks possessing an average octane quality of 86.4, an average olefin content of 29.1 percent, and an average sulfur content of 756 parts per million (ppm). The same study found that reformate streams, produced by the reformer, possessed octane quality of 92.6, an olefin content of less than 1 percent and an average sulfur level of 55 ppm. See ''NPRA Survey of U.S. Gasoline Quality and U.S. Refining Industry Capacity to Produce Reformulated Gasolines—Part A'', National Petroleum Refiners Association, 1991 Gasoline Study, January, 1991, Docket Number A–97–03, Item Number II–B–1.)

refiners suggested that Phase II's tighter minimum standard for NO_X in the year 2000 would exacerbate an already very difficult situation, even given the changes made to refinery processes in order to be able to comply with the Phase II average standard.

The distribution of retail sample data initially presented by the refiners in their general meeting with the Agency described the net result of the product intermingling that occurs in the gasoline distribution system. By describing all of the nation's gasoline taken together, these data could suggest the existence of a problem (high variability with many samples below the minimum reduction standard), but could not indicate much about how widespread the problem is or show what types of refineries are likely to be affected. By examining historical RFG reporting data,[5] EPA was able to confirm the general factual basis of the industry analysis. Specifically, the data showed a broad distribution of NO_X quality with the premium batches clustered near the high end (high NO_X reductions), while regular batches are more spread out with central tendency nearer the low end and many batches falling below the Phase I NO_X minimum. Left unanswered by either the industry-supplied information or EPA's own analysis, was the question of whether refiners could exercise any control over the variability and shape of the frequency distribution that was evident in both data sources. In other words, it was not clear what options were available to refineries to remedy the problem.

To provide additional insights, EPA and a refinery expert from the Department of Energy met separately with individual refiners in order to look at batch data from single refineries using differing gasoline production approaches. The refineries represented by the companies EPA met with comprised a very diverse group. They varied with regard to size, general level of technology, control over inputs, historical product slate, and other characteristics. EPA focused the agenda for these meetings on three basic questions: (1) For each separate refinery, what is the batch-to-batch distribution of NO_X quality by grade and season, (2) what are the causes of the variability that is observed in the historical data—which parameters account for the variability in NO_X, and what caused them to vary the way they did, and (3) how do refinery managers plan to meet the NO_X minimum standards in the absence of a substantial enforcement tolerance or regulatory relief.

The general picture of the broad bimodal distribution of gasoline NO_X quality by grade that was developed from overall industry analyses and examination of our own data was generally confirmed in these more detailed meetings.

As might be expected, individual facilities varied considerably in the size of the challenge posed by the NO_X minimum standards and they expected to address that problem with varying strategies. The pattern that emerged from all of these discussions was that refiners intend to pursue the least capital-intensive solutions wherever possible, even to the extent of incurring substantial additional production costs in the short run. Although the strategies articulated in these meetings[6] did not precisely conform to the pattern expected by the industry associations (shifting the entire distribution of NO_X quality), they seemed to lead to the same result economically—excess costs in producing RFG beyond the costs of making the refinery's average conform to the average standard. Any major expansion of the RFG program as a result of areas opting into the program could further increase the costs of meeting the minimum standard.

Objectives of the NO_X Minimum Standards

The primary purpose of the NO_X minimum is to assure an even temporal and geographic distribution of the program's environmental benefits. To put this more simply, the minimum is intended to ensure that no area covered by the RFG program will suffer from impaired air quality (possibly resulting in an exceedance of the NAAQS for ozone) as a result of a single refinery's shipping a batch of high NO_X gasoline to an area for which it was a primary supplier. An additional, though secondary, purpose of the NO_X minimum standards is to provide a tool for detecting the illegal sale of non-RFG gasoline in areas covered by the program. This would work by keeping legitimate RFG above the minimum, while illegally sold non-RFG might fall below the standard.

Avoiding distribution problems. The RFG regulations incorporated two mechanisms to avoid the unlikely event of an area being shortchanged on NO_X quality due to refinery gate averaging—the minimum standard and the RFG gasoline quality surveys.[7] These surveys were specifically intended to guard against uneven distribution of benefits. In the event that the surveys find a covered area to have received less than the intended NO_X emission reduction benefits, the regulations provide for a substantial tightening of the average standard—an outcome that would be expensive to the industry and one that it will work hard to avoid. This proposal includes an increase in the number of surveys to be conducted (an additional 20 surveys per year) that should improve the surveillance of gasoline quality on an area-by-area basis.

Detecting non-conforming gasoline. A detailed examination of 1995 and 1996 actual batch-by-batch gasoline quality (NO_X performance) shows that the NO_X minimum standard is not a very useful tool for detecting contamination of RFG by illegally sold conventional gasoline, since many batches of conventional gasoline, especially premium grade, are in compliance with the minimum standard. Minimum standards for other gasoline characteristics (especially oxygen content and benzene levels) provide far superior capability for determining if contamination by non-complying gasoline has taken place.[8] The proposed expansion of the survey program would further enhance these enforcement efforts, since analysis results for survey samples found to be out of compliance with RFG requirements are immediately supplied to EPA's enforcement office.

Conclusions and Proposed Regulatory Actions

EPA believes, as a result of the investigations discussed above, that the averaging minimum standards for NO_X

[5] Data on the characteristics of gasoline batches as they are shipped from the refinery are submitted to EPA as part of the reporting requirements of the RFG regulations. An aggregated analysis that protects the confidentiality of individual refiners' data can be found in the docket for this rulemaking. Docket Number A–97–03, Item Number II–A–5.

[6] Some general examples of the approaches which are likely to be used to bring sub-minimum batches above the standard include: Finding another use for the poor NO_X quality gasoline or its components (shifting it to conventional gasoline, if that can be done without violating anti-dumping standards, or shifting it to other products) and buying conforming RFG on the spot market to take its place; reblending the poor NO_X quality batches with clean blendstocks purchased from the outside to make them conform to the minimum; or simply reducing RFG production.

[7] A program of gasoline quality surveys is required to be conducted by refiners that wish to comply on average rather than on a per-gallon basis. The surveys must be done by an independent contractor in accordance with a statistically sound sampling plan approved by EPA. The location and timing of surveys is determined by EPA with minimal advance notice to the industry's contractor. If survey averages fall short of the criteria set out in the regulations, the average standards and/or the minimum standards are made more stringent for subsequent years for all of the refineries that supplied gasoline to the area(s) where the failure occurred.

[8] Analysis in support of this conclusion has been placed in the docket for this rulemaking. Docket Number A–97–03, Item Number II–A–6.

are likely to be costly to the industry as a whole in both phases of the program, and will make the 1998 complex model implementation extremely difficult for a portion of existing refineries. With the additional costs in question, the overall cost of compliance is likely to exceed the cost upon which the standards were based (the cost of meeting the average standard) without providing additional environmental benefits. By increasing the costs of producing RFG, these standards may contribute to a higher cost differential between RFG and conventional gasoline and so pose a significant obstacle to smooth implementation of Phase II of the program. Since the per-gallon minimum standards for NO_X do not increase the environmental benefit and their purposes can be as easily served by the RFG surveys, EPA proposes the elimination of these per-gallon minimum standards.

Since the RFG surveys provide an alternative tool for accomplishing both of the purposes of the NO_X per-gallon minimums, it is important that the survey program remain adequate to perform these tasks. The regulations at § 80.68(b)(1) currently prescribe 50 surveys beginning in 1998, with adjustments provided for opt-in of additional programs and/or potential survey failures. EPA believes that 20 additional surveys would provide significant additional protection of the NO_X quality of gasoline in those RFG covered areas with limited sources of supply. Accordingly, EPA proposes that the number of surveys in the initial schedule (§ 80.68(b)(1)) for each year beginning in 1998 be expanded by 20. EPA invites comments on this proposed change.

2. Clarification That Model Limits Constitute Standards (Proposed § 80.41(h)(3) and § 80.78(a)(1)(vi); Revised § 80.101(b)(3))

Both the simple and the complex models include restrictions on the range of parameter values that may be used with these models. See §§ 80.42(c) and 80.45(f) for the simple model limits and the complex model limits, respectively. These parameter range limits are included because the simple and complex models have not been shown to accurately predict emissions when parameter values outside the range limits are used. For this reason, §§ 80.42(c) and 80.45(f) state that the models may not be used for fuels with parameter values that are outside the valid range limits. The complex model specifies different valid range limits for reformulated versus conventional gasoline. Compare § 80.45(f)(1)(i) (complex model range limits for reformulated gasoline) with § 80.45(f)(1)(ii) (complex model range limits for conventional gasoline).

EPA always has considered the valid range limits to constitute standards that apply to reformulated and conventional gasoline. Gasoline subject to simple or complex model standards must be evaluated for compliance with these standards. Where gasoline has property values outside the valid range limits, it cannot be evaluated and, therefore, it is unlawful to produce and sell such gasoline.

Today's proposal would clarify that the valid range limits are standards, by citing the valid range limits along with the other standards that apply to reformulated and conventional gasoline. In addition, EPA is proposing to add a provision to the reformulated gasoline prohibitions under § 80.78(a) that addresses the valid range limit standards. This prohibition would clarify that the complex model valid range limits apply not only to reformulated gasoline when produced or imported, but throughout the distribution system as well. The complex model valid range limit standards must be applied downstream of the refinery or importer because complex model standards apply throughout the distribution system, i.e., the VOC and NO_X minimum per-gallon emissions performance standards. In order to evaluate reformulated gasoline for compliance with these downstream standards, the gasoline must have parameter values that are within the valid range limits.

EPA is proposing to promulgate the revisions contained in this rulemaking under the authority of both sections 211 (c) and (k) of the Act, except for the revisions which would include the valid range limits as standards under § 80.41 and § 80.101. EPA proposes to promulgate the revisions concerning the valid range limits under the authority of section 211(k), but not section 211(c). EPA is proposing to promulgate the valid range limits as standards solely for the purpose of ensuring that the models will accurately predict emissions, and not for the independent purpose of achieving emissions reductions from the range limits themselves. As a result, EPA believes that it is not necessary to promulgate the valid range limits as standards under the authority of section 211(c).

3. Effective Dates for Standard Changes Due to Survey Failures (§ 80.41(p))

Section 80.41(p) states that when a minimum or maximum per-gallon reformulated gasoline standard is changed to be more stringent as a result of a survey failure, the effective date for the new standard is ninety days after EPA announces the new standard. EPA now believes that additional time is necessary in order to ensure an appropriate transition to a new standard as a result of the lag time between the date refiners and importers begin producing gasoline to a new standard, and the date this gasoline displaces the earlier gasoline through the distribution system.

For this reason, EPA is proposing a staged introduction to a new per-gallon standard, that results from a survey failure. The dates the new standard would be required would be expressed in the number of days after the date EPA announces the new standard: 60 days for gasoline produced at a refinery or imported by an importer; 120 days for facilities downstream of the refinery or importer other than retail outlets and wholesale purchaser-consumers; and 150 days for retail outlets and wholesale purchaser-consumers. Under the proposed approach refiners and importers would have about two months to begin meeting the new standard, downstream parties such as terminal operators then would have about two months to transition to the new standard after shipments of gasoline meeting the new standard begin, and retailers and wholesale users would have about one month to transition after terminals must begin shipping gasoline meeting the new standard.

EPA believes the times proposed for these stages are consistent with current industry practice for transitioning to new standards, such as the transition to meet the summertime high ozone season standards each spring. For example, terminals supplying RFG must have gasoline that meets the VOC-control standard beginning on May 1 each year, and retailers and wholesale purchaser-consumers in RFG areas must meet the VOC-control standard beginning about one month later, on June 1.

Refiners must begin producing VOC-controlled RFG early enough before May 1 that the gasoline distribution system through the terminal level can transition from non-VOC-controlled gasoline to VOC-controlled gasoline by May 1. The date when particular refiners begin producing VOC-controlled RFG each year varies depending on factors such as the time necessary to transport gasoline from the refinery to the terminals, and the rate of turnover at the terminal. However, EPA believes that most long-distance distribution systems are able to transition within 60 days of the date refiners begin shipping gasoline meeting the new standard.

EPA is able to enforce the VOC-control standard at refineries based on the refiners' batch reports to EPA that identify gasoline batches as either VOC-controlled or non-VOC-controlled; the VOC-control standards apply only to batches that are identified as VOC-controlled. However, there is nothing in the refiners' batch reports to EPA that identifies the per-gallon minimum and maximum standards to which the gasoline is subject. As a result, EPA must rely on a date certain on which the new standard applies at the refinery. Moreover, EPA believes this date must be sufficiently earlier than the date the new standard applies at the terminals in order to ensure the availability to terminals of gasoline meeting the new standard for the terminals' transition. EPA also believes that 60 days is an appropriate length of time for terminal transitions, based on experience with VOC-control transitions.

B. Complex Model (§ 80.45)

1. Proper E300 Value for the Edge Target Fuel for Use in Complex Model Extrapolation (§ 80.45(c)(1)(iv)(C)(6))

The Complex Model as described in § 80.45 includes provisions for extrapolations beyond the limits of the data upon which the model was based. The limits of the data define the ''allowable range'' which represents the range of fuel parameters within which the Complex Model equations are directly applicable, and outside of which extrapolation must be used up to the limits of the model.[9] These extrapolations take the form of intricate equations and a series of conditions for use of those equations. Among other things, the conditions associated with extrapolation direct Complex Model users to determine properties for an ''edge target fuel.'' The edge target fuel is equivalent in all respects to the target fuel, except that no fuel parameters are allowed to exceed the limits of the allowable range. In effect, the edge target fuel represents the point in the multi-dimensional fuel parameter space where extrapolation begins.

The Complex Model equation for exhaust volatile organic compounds (VOC) contained in § 80.45(c)(1) includes a single interactive term. This term, the product of E300 and aromatics, necessitates that extrapolations involving E300 include a simultaneous evaluation of the aromatics level of the target fuel. Thus in paragraph (c)(1)(iv)(C)(6), Complex Model users are directed to determine whether the mathematical phrase (80.32 + (−.390xARO)) is greater or less than 94, and to set the E300 edge target fuel value accordingly. In so doing, users are determining whether the aromatics-dependent E300 extrema (i.e. curve turnover) point falls beyond the limits of the available data in the Complex Model database.

However, the language in paragraph (c)(1)(iv)(C)(6) is misleading. As currently written, the user is directed to set the E300 value of the edge target fuel at 94 vol% whenever the value of the phrase (80.32 + (0.390xARO)) is greater than 94. The Agency's intention, however, was that this step be taken only if the E300 term is being extrapolated. In other words, if the target fuel value for E300 falls below the higher limit for E300 in the allowable range as defined in Table 6, § 80.45(c)(1)(iv), then E300 is not being extrapolated, and the E300 value of the edge target fuel should be equal to the E300 value of the target fuel.

To correct this problem, the language in § 80.45(c)(1)(iv)(C)(*6*) and its counterpart applicable to Phase II calculations at § 80.45 (c)(1)(iv)(D)(*6*) would be changed such that Complex Model users will only set the E300 value of the edge target fuel equal to 94 if the target fuel value for E300 exceeds the higher limit specified in Table 6, § 80.45(c)(1)(iv).

IV. RFG Compliance Requirements

A. Sampling of Reformulated and Conventional Gasoline (Proposed § 80.47)

Under § 80.65(e)(1) refiners and importers are required to collect a representative sample from each RFG batch produced or imported, and to determine the batch properties based upon analysis of this sample.[10] ''Batch of reformulated gasoline'' is currently defined in § 80.2(gg) as ''a quantity of reformulated gasoline which is homogeneous with regard to those properties which are specified for reformulated gasoline certification.'' Similarly § 80.101(i)(1)(i)(A) requires refiners and importers of conventional gasoline to collect a representative sample from each batch produced or imported, and to determine compliance with the anti-dumping standards based upon the batch samples.[11]

As a result, refiners and importers are required to collect a representative sample of each gasoline batch. However, EPA has not previously promulgated requirements for determining when a quantity of gasoline is homogeneous so that it qualifies as a batch. Today EPA is proposing such requirements for determining batch homogeneity. In addition, EPA is proposing procedures whereby an importer of reformulated or conventional gasoline would be able to treat as a single batch the gasoline contained in multiple compartments of a ship.

It is important that refiners and importers determine compliance with the reformulated and conventional gasoline standards using samples collected from quantities of gasoline that are homogeneous in terms of the properties relative to these standards. If a quantity of gasoline is not homogeneous, a sample of that gasoline often will not reflect the overall average qualities of the gasoline. For example, when a refiner produces gasoline by combining blendstocks having different volatilities, unless the tank is thoroughly mixed the gasoline often will be horizontally stratified, with the higher volatile blendstocks at the top of the tank and the lower volatile blendstocks at the bottom of the tank. If a sample is collected of the gasoline at any one spot in such a stratified tank the sample only will reflect the properties of the gasoline at that strata. Storage tank sampling techniques such as ''all level samples'' or ''running samples'' tend to compensate for stratified product, but these techniques do not assure a truly representative sample.[12]

[9] The allowable range of the model is, in fact, a combination of the limits of the data and additional limitations that may be imposed by the existence of extreme, or curve turnover points.

[10] Under § 80.69(b) oxygenate blenders who meet the oxygen standard on average also are required to sample and test each batch of RFG produced using RBOB, and the discussion in this preamble section applies to such oxygenate blenders in the same manner as for refiners of RFG.

[11] EPA is proposing several changes relative to the sampling of conventional gasoline that are discussed below in section VI.B. of this preamble. EPA is also proposing to revise the ''batch'' definition in § 80.2(gg) to apply to conventional gasoline and not just to RFG. EPA also is proposing to require refiners and importers of conventional gasoline to separately test each batch, which would eliminate the current option of testing a number of batches together using a composite sample.

In addition, EPA is proposing a definition for ''previously certified gasoline'' to mean RFG and conventional gasoline for which the refiner, oxygenate blender or importer has met applicable requirements and standards and that the refiner, oxygenate blender or importer has included or intends to include in the refinery or importer compliance calculations.

[12] A ''running sample'' of the product contained in a storage tank is collected by lowering a sample container from the top of the product to the bottom and then raising the container to the top, at such a speed that the container is less than full when removed from the tank. *See*, 40 CFR part 80, appendix D, ¶ 11.2.2.2. An ''all levels sample'' is collected by lowering a stoppered container to the bottom of the product in a storage tank, removing the stopper with a cord or chain, and raising the container to the top at such a speed that the container is less than full when removed from the tank. *See*, 40 CFR part 80, Appendix D, ¶ 11.2.2.1.

Continued

In the case of RFG, moreover, certain standards must be met on a per-gallon basis. If any portion of the RFG in a storage tank violates an applicable per-gallon standard, this gasoline portion is out of compliance even if the gasoline in the tank would be in compliance if fully mixed. For example, consider a refinery storage tank containing RFG designated as simple model, VOC controlled for Region 2. If the gasoline is stratified by RVP, and the RVP of the upper strata is greater than the applicable per-gallon maximum standard of 8.3 pounds per square inch (psi),the gasoline in this upper strata would violate the applicable per-gallon standard even if the average RVP of the gasoline in the tank is less than 8.3 psi.[13] A single sample from such a stratified tank may not reflect the violation. Even an ''all levels'' or ''running'' sample of the gasoline in a stratified storage tank could yield a test result within the standard because to a certain extent such a sample ''averages'' across the strata, which would have the effect of masking the violation.

As a result, EPA is proposing that refiners and importers would be required to establish that each quantity of reformulated or conventional gasoline that will be treated as a batch is homogeneous before the batch sample is prepared or analyzed.

EPA is proposing two options by which the homogeneity of the gasoline in a storage tank could be established. Under the first option, a refiner would collect three separate samples from the storage tank—upper, middle, and lower spot or tap samples. These samples would be analyzed for each parameter relevant to applicable standards, and the gasoline in the storage tank would be considered homogeneous if the test results agree within the ranges specified in § 80.65(e)(2)(i).

Under the second option for establishing storage tank homogeneity, the party would demonstrate that it followed tank mixing procedures that can be shown to result in homogeneity. For example, a refiner could meet the homogeneity requirement through records that show the tank mixing procedures used for a batch (tank size and type, volume of gasoline, the type of tank mixers, the mode of mixer operation if appropriate, and the duration of mixer operation), together with historic sampling and testing records demonstrate these procedures result in complete mixing.

Under this second storage tank option, success of the mixing procedure must still be confirmed for each batch. However, instead of requiring analysis for each parameter relevant to applicable standards, only API gravity analysis of upper, middle, and lower spot or tap samples would be required. The gasoline would be considered homogeneous under this option if the demonstrated mixing procedure was performed, and the API gravity values for the upper, middle, and lower samples do not differ by more than 0.3° API. Where the configuration of a storage tank does not permit the collection of upper, middle, and lower spot or tap samples, the API gravity analysis to confirm the success of the mixing procedure would be waived.

EPA also is proposing procedures whereby an importer would be able to demonstrate the gasoline in multiple compartments of a marine vessel is homogeneous. The importer would collect a ''running'' sample from each compartment and analyze the samples for each parameter relevant to applicable standards. The vessel's gasoline would be homogeneous and could be treated as a batch if the results agree within the ranges specified in § 80.65(e)(2)(i).

EPA is proposing that for purposes of establishing homogeneity a party could use test methods other than the methods specified in § 80.46. The methods in § 80.46 would still be used to establish the batch properties for ''certifying'' a batch.

EPA also is proposing that in the case of RFG, the gasoline contained in a storage tank or marine vessel would not be considered homogeneous if any sample collected to establish homogeneity has a test result that exceeds an applicable per-gallon standard. Thus, in the case of standards a refiner or importer is meeting on a per-gallon basis no test result could violate the per-gallon standard, and in the case of standards being met on average no test result could violate an applicable per-gallon minimum or maximum standard.

EPA is proposing additional options by which an importer could treat the gasoline imported by marine vessel as a single batch without determining the homogeneity of the gasoline. RFG contained in multiple compartments of a marine vessel could be certified as a single batch using a volume weighted composite of samples collected from the compartments if the entire contents of these compartments is transferred into a single shore tank. EPA is proposing this option because it is likely the gasoline from multiple vessel compartments is completely mixed, i.e., becomes homogeneous, through the process of being transferred into a shore tank.

Under today's proposal importers also would be allowed to use composite samples to certify as a single batch the RFG imported by marine vessel where the gasoline is off-loaded into multiple shore storage tanks. Under this option, however, the importer would be required to demonstrate that the RFG off-loaded into each shore tank separately meets all applicable per-gallon standards, without regard to any gasoline contained in the storage tank prior off-loading the imported gasoline (or, ''heel''). Thus, the importer would be required to sample and test the tank heel prior to off-loading the imported gasoline and the tank contents after the imported gasoline has been added, and to mathematically calculate the properties of the imported gasoline added to the tank.

EPA is proposing that imported conventional gasoline contained in multiple compartments of a marine vessel could be tested using a volume weighted composite of samples collected from the compartments with one limitation. There are no per-gallon standards associated with conventional gasoline (other than the complex model limit standards, as is discussed in section III.A.1. of this Preamble), and, as a result, there are no proposed requirements to separately test vessel compartment or shore tanks. However, EPA is proposing that each separate grade of conventional gasoline on a marine vessel (e.g., regular, premium) must be treated as a separate batch. EPA believes that, in general, there is greater variability in the properties of gasolines of different grades, than of gasolines of the same grade. The proposed grade limitation on marine vessel compositing for conventional gasoline would constitute some limit on the range of gasoline properties that could be included in a single composite sample, which EPA believes would improve the quality of composite samples. EPA requests comment on this proposed limitation on the use of composite samples of imported conventional gasoline.

C. General Requirements (§ 80.65)

1. Assignment of Batch Numbers (§ 80.65(d)(3))

Section 80.65(d)(3) requires refiners and importers to assign batch numbers to batches of RFG, RBOB, conventional gasoline, and certain blendstock that is included in the refiner's compliance

In theory, both of these sampling methods obtain product from all strata in the storage tank somewhat in proportion to the size of the strata.

[13] Per-gallon standards must be met by all portions of the gasoline contained in a storage tank in part because the different gasoline portions may be distributed without further mixing.

calculations. The batch numbers are used to identify batches in batch reports submitted to EPA under §§ 80.75(a) and 80.105(a).

EPA is proposing to revise § 80.65(d)(3) to require oxygenate blenders who meet the oxygen standard on average to assign batch numbers to RFG batches. This would conform § 80.65(d)(3) with the current reporting requirement at § 80.74(a), that oxygenate blenders who meet the oxygen standard on average must submit batch reports to EPA.

2. Clarifications of Requirement to Test RFG and RBOB (§ 80.65(e)(1))

Section 80.65(e)(1) requires refiners and importers to determine the properties of each batch of RFG that is produced or imported. Gasoline that complies with the standards in § 80.41 is deemed certified (§ 80.40(a)), hence this process is commonly considered as ''certifying'' each batch. This determination is required for each parameter relevant to the RFG standards. EPA is proposing two clarifications of § 80.65(e).

EPA is proposing to add language to § 80.65(e) to clarify that this section applies to RBOB as well as to RFG, and to add a cross reference to the requirement in § 80.69(a)(2) that the certified properties of RBOB are the properties of the RBOB subsequent to downstream blending with oxygenate, based on test results of a sample of the RBOB hand blended in the laboratory with the appropriate oxygenate type and amount. EPA believes the certification of RBOB already is implicit in § 80.65(e), and that refiners and importers have been certifying and reporting the properties of RBOB based on the analysis results of a hand blend, so that the proposed changes would not change current practices.

EPA also is proposing to clarify that certification testing for RVP is necessary only for RFG and RBOB that is designated as VOC controlled, because RVP test results are relevant only to VOC controlled gasoline. Under the simple model the RVP standard applies only to VOC controlled product. RVP test results are an input to the complex model only for VOC controlled gasoline; in the case of non-VOC controlled gasoline the complex model uses an RVP value of 8.7 psi regardless of the actual RVP value of the gasoline. This change to § 80.65(e) also would change the reporting requirement for RVP, to apply only to VOC controlled RFG and RBOB, because the parameter reporting requirement in § 80.75(a)(2)(v)(B) cross references the requirements in § 80.65.

3. Weight Percent Range for Total Oxygen Content (§ 80.65(e)(2)(i))

Section 80.65(e)(2)(i) provides a table with ranges for fuel properties to be used in comparing the refiner's or importer's test results to the test results obtained from the independent laboratory. The table at § 80.65(e), however, currently does not include a range for total oxygen content. The RFG regulations prescribe a standard for weight percent oxygen, and refiners and importers of RFG are required to determine and report the total weight percent of oxygen in each batch of RFG for compliance purposes. It is appropriate, therefore, to include a range for total oxygen content in the table at § 80.65(e) for purposes of comparing the refiner's or importer's test results with the test results obtained from the independent laboratory. A range for total weight percent oxygen content was unintentionally omitted in the final rule. As a result, today's rule proposes to add to the table at § 80.65(e)(2)(i) a 0.10 wt% range for total oxygen content. This range would be in addition to, and not instead of, the volume ranges for oxygenates listed in § 80.65(e)(2)(i).

The 0.10 wt % range for total oxygen was derived by multiplying the values of the oxygenates in the table in § 80.65(e)(2)(i) by the weight % of the oxygen in the oxygenates and averaging them. EPA acknowledges that this approach assumes that the density of these oxygenates is similar to gasoline, but believes that any difference in density would result in an insignificant increase in the 0.10 wt % value. EPA continues to believe that this is an appropriate method of determining an appropriate range for total oxygen content between the refiner's laboratory and the independent laboratory.

4. Independent Laboratory Requirements (§ 80.65(f); Proposed §§ 80.72, 80.74(h), and 80.75(n))

Sections 80.65(e) and (f) contain the independent laboratory requirements for RFG. Under § 80.65(e)(1) each batch of RFG must be analyzed, either by the refiner or importer, or by an independent lab. Section 80.65(f) requires each refiner and importer of RFG to designate an independent lab that must collect a sample from each batch of RFG. The refiner/importer then has the option of having the independent lab meet the analysis requirement for all RFG batches (the 100% analysis option), or of having the independent lab analyze up to 10% of the samples collected to be identified by EPA (the 10% analysis option). The 100% analysis option is most often chosen by importers who do not operate their own company laboratory.

EPA is proposing two categories of changes to the independent laboratory requirements. The first category of changes would include in the regulations the guidance EPA previously has issued regarding the identification of samples for analysis by independent labs, and the identification of samples the independent lab would send to EPA. The second category would slightly narrow the criteria by which a laboratory is considered independent. In addition, EPA is seeking comment on whether companies that serve as independent laboratories under the RFG program should be made directly responsible for properly completing the functions of sample collection, analysis, record keeping and reporting.

The first category of changes being proposed relate to the identification of samples to be analyzed under the 10% analysis option, and the identification of samples to be supplied to EPA under both the 10% and the 100% analysis options.

Sections 80.65(f)(1)(ii) (B) and (C) state that under the 10% independent analysis option, EPA will identify which samples the independent lab must analyze. However, the regulations do not specify the mechanism by which EPA identifies these specific samples. EPA subsequently provided this sample-identification guidance in *Reformulated Gasoline and Anti-Dumping Questions and Answers* (October 3, 1994), titled ''Reformulated gasoline program protocol for use by independent labs in selecting samples for analysis under the 10% independent analysis option, and for identifying samples to ship to EPA.'' This protocol has been in use since it was issued, and EPA has received no adverse comments from regulated parties regarding this protocol. Therefore, EPA proposes to incorporate this protocol in the RFG regulations. *See* proposed § 80.72.

EPA believes the protocol is an appropriate mechanism for identifying samples for analysis by independent labs. The protocol provides an automated system to randomly identify for analysis 10% of the samples collected by an independent lab in a way that gives regulated parties no influence over the sample choice.

In addition to identifying the independent laboratory samples to be analyzed, the proposed protocol also identifies which samples must be supplied to EPA, including the minimum sample quantity to supply. The requirement to forward samples to EPA applies to both the 10% and the

100% analysis options, and, therefore, the proposed sample-shipment protocol applies to both options. Further, the regulations would instruct independent labs to send to EPA any sample that, when tested by the independent lab, is found to violate a per-gallon standard that applies to the refiner or importer.

The proposal also would specify the quantity of gasoline that independent labs would be required to supply to EPA. The batch sampling methodologies of appendix D, in section 12.2, call for sample containers of one quart as a minimum. Assuming that a single sample is collected in a one quart container and that the container is filled only to the minimum 70% level (appendix D requires samples to be 70–85% full), this would provide a total of approximately 660mL of gasoline. EPA believes one-half of this quantity, or 330mL, is sufficient for a laboratory to complete all the testing requirements of the RFG regulations. Therefore, where an independent lab analyzes an RFG sample that also must be supplied to EPA, at least half the original sample volume, or 330mL, would be available for shipment to EPA. Under the proposed regulation regarding sample quantity, where the independent lab has not analyzed a sample the lab would be required to supply EPA with a one quart sample 70–85% full. In the case of a sample that has been analyzed by the independent laboratory the lab would be required to supply EPA with a minimum sample volume of 330mL.

The proposed regulations state that samples supplied to EPA should be sent to an address to be specified by EPA. This address would be the following: United States Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory (NVFEL), Fuels and Chemical Analysis Branch 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4200.

EPA is not proposing to include this address in the regulations in order to facilitate an address change if it becomes necessary. If there is an address change for samples shipped to EPA, regulated parties would be notified through individual letters, a **Federal Register** notice, or some other appropriate means.

The second change being proposed would revise one criteria used to determine if a laboratory is ''independent.'' Section 80.65(f)(2)(iii)(A), and proposed § 80.72(b)(2)(I), specify that in order to be considered independent a laboratory may ''not be operated by any refiner or importer * * *.'' EPA now believes this independence requirement is too stringent, and should apply only in the case of refiners and importers of RFG.

Laboratories used to satisfy the independent sampling and testing requirements are required to be independent in order to increase the credibility of the laboratories' test results, as discussed at 59 FR 7765 (February 16, 1994). The independent sampling and testing requirement applies only to refiners and importers of RFG, however, and as a result EPA believes refiners and importers who operate a commercial laboratory, but who produce or import no RFG, should be allowed to serve as independent laboratories under the RFG program. EPA is proposing that this definition of ''independence'' would not apply if any RFG is produced or imported within a common corporate structure. Thus, if a parent corporation has a subsidiary corporation that is a refiner or importer of RFG, no other subsidiary of that parent corporation could be considered independent.

Finally, EPA is seeking comment on whether companies that serve as independent laboratories should be made regulated parties under the RFG program.

Section 80.65(f)(3) describes the sample collection and reporting procedures, and requires that each refiner or importer shall ''cause its designated independent laboratory'' to carry out these procedures. Under these procedures the independent lab collects a representative sample from the RFG batch, determines the batch volume and other information about the batch, reports test results to EPA, and supplies samples to EPA upon request. A refiner or importer whose independent lab fails to properly carry out these procedures would have failed to meet the independent lab requirements, which would constitute a violation of the RFG requirements by the refiner or importer.

EPA requests comments on whether the regulations should be revised to provide that a laboratory that undertakes to act as an independent lab under the RFG program becomes responsible to properly carry out the independent lab requirements, in order to allow better monitoring and enforcement of the independent lab requirements. For example, currently there is no requirement for independent labs to retain records, which creates potential difficulties when EPA attempts to audit and inspect independent labs.

Under this approach, where an independent lab failed to properly carry out an independent lab procedure, the independent lab would be liable for a violation of the RFG regulations. In addition, the refiner or importer for whom the lab is performing the independent lab function would have failed to meet the independent lab requirement which would constitute a violation of the RFG regulations. Under this approach, the independent lab would also be required to retain records and submit reports to EPA.

The authority to regulate laboratories that serve as an independent labs under the RFG program is based on Clean Air Act sections 114(a), 208(a), 211(c), and 211(k). Analysis of RFG by independent laboratories is critical to enforcement of the RFG standards, for reasons that are discussed at 59 FR 7765 (February 16, 1994). In order for independent laboratory sampling and testing to serve a useful purpose, however, the independent lab must properly perform the procedures. EPA believes independent labs would be more likely to take the steps necessary to ensure the required procedures are properly performed if there were regulatory consequences that applied directly to the independent laboratory, and not just indirectly through sanctions against the refiner or importer.

The current regulations state that a lab that is debarred, suspended, or proposed for debarment pursuant to the Governmentwide Debarment and Suspension regulations cannot serve as an independent lab under the RFG program. An independent lab that fails to properly carry out the required procedures could be the subject of a suspension or debarment action by EPA. EPA requests comment on whether the suspension or debarment sanction is adequate to ensure that independent labs properly perform required procedures, in the absence of regulatory liability.

In addition, EPA requests comment on whether regulations should be proposed that would require labs to be accredited in order to carry out the RFG independent lab requirements. EPA has not previously proposed a lab accreditation requirement because of the likelihood that refiners and importers would use only labs the refiners and importers are convinced are fully capable of properly performing the independent lab requirements. However, EPA has received comments that an accreditation requirement could result in greater certainty that labs have the equipment, training, and internal procedures necessary to properly carry out the independent lab requirements, that could assist refiners and importers in selecting independent labs.

Therefore, EPA requests comments on whether lab accreditation would be appropriate for the RFG program;

whether accreditation should be performed by EPA or by an independent body, and which independent body or bodies should be considered; the accreditation criteria that would be appropriate; the estimated costs of an accreditation program; and any other considerations EPA should include as part of a lab accreditation proposal.

5. Compliance Audits (§ 80.65(h) and § 80.105(c))

EPA proposes to modify §§ 80.65(h) and 80.105(c) to make clear that the attest requirement applies separately to each refinery operated by a refiner, or the gasoline imported by an importer. The amended rules clarify EPA's intent that refiners and importers of RFG, RBOB, and conventional gasoline, and oxygenate blenders who blend RBOB and meet the oxygen standard on average, must perform a separate attest engagement for each facility at which such gasoline or product is produced. In the process of issuing the Final Rule, EPA considered and rejected the suggestion that parties be able to aggregate multiple facilities within one attest engagement. Such an aggregation would adversely skew the effect of the random sampling protocol described in § 80.127 by increasing the population of batches subject to random sampling, and by potentially spreading the samples drawn over several facilities. The effect, therefore, would be to produce less than the 95% confidence level for each facility that the attest engagement is designed to accomplish.

6. Calculations Involving Previously Certified Gasoline (§ 80.65(i); § 80.78(a); § 80.101(e))

Under §§ 80.65(i) and 80.101(e)(1) refiners are required to exclude from a refinery's compliance calculations gasoline that was not produced at that refinery and gasoline that was produced at that refinery but was included as part of another batch, sometimes called ''previously certified gasoline,'' or ''PCG.'' These requirements are included in order to prevent double counting of PCG. Section 80.101(g)(3) provides the procedure by which refiners are required to calculate the properties of blendstock that are combined with PCG to produce conventional gasoline. However, the procedure in § 80.101(g)(3) is appropriate only for the simple model anti-dumping standards, and there is no procedure specified for excluding PCG from RFG compliance calculations. As a result, EPA is proposing procedures for excluding PCG from the complex model compliance calculations for both RFG and conventional gasoline. In addition, the procedures EPA is proposing would allow refiners to use conventional gasoline to produce RFG or RBOB, and to reclassify RFG with regard to VOC control and OPRG.

The procedures EPA is proposing would require refiners to determine the volume and properties of each batch of PCG used in the refinery operation, along with the designations of the gasoline: RFG, RBOB or conventional gasoline; and for RFG, the designations relative to VOC control and OPRG. The volume and properties of each PCG batch would be reported to EPA *as a negative batch* using the same designations as when received by the refiner. The PCG then would be used by the refiner as another blendstock in the refinery operation, and any gasoline produced using the PCG would be sampled and tested and included in compliance calculations without regard to the PCG content. Gasoline produced using the PCG could have the same designations as the original PCG batch, or different designations. Thus, the proposed procedures would allow a refiner to reclassify conventional gasoline as RFG, or to reclassify RFG with regard to VOC control and OPRG.

Under the current regulations refiners are prohibited from reclassifying gasoline in certain ways. For example, § 80.78(a)(10) prohibits any person from reclassifying conventional gasoline as RFG. However, EPA understands that prohibitions against reclassifying gasoline, such as § 80.78(a)(1), constrain the operational flexibility for regulated parties, and that such prohibitions should be imposed only where necessary. EPA believes the PCG proposal allows greater flexibility without compromising the environmental goals or effective enforcement of the RFG program, and the PCG proposal is appropriate for this reason.

In the case of standards that are met on average a refiner who uses PCG would meet each average standard based upon the net average properties of gasoline in the relevant averaging pool, [14] consisting of the positive volume and properties of all gasoline produced in that averaging pool and the negative volume and properties of all PCG in that averaging pool. In addition, each averaging pool would be required to have a net ''positive'' gasoline volume—each averaging pool's volume of gasoline produced would have to be greater than the volume of PCG.

Consider, for example, Refiner A who has elected to meet the VOC emissions performance standard on average at Refinery X. In this example a batch of PCG, designated as RFG, VOC controlled for Region 1, is used to produce RFG at Refinery X. This PCG would be included as a negative batch in Refinery X's VOC emissions performance compliance calculations for the ''VOC controlled for Region 1'' averaging pool, regardless of whether the PCG was used to produce RFG with this or with another designation. [15] Refiner A nevertheless would be required to meet the VOC standard for the ''VOC controlled for Region 1'' averaging pool, and the net volume of gasoline in this averaging pool would have to be greater than zero.

In a case where a refiner has elected to meet a parameter or emissions performance standard on a per-gallon basis, and a batch of RFG or RBOB is produced using previously certified RFG, the value of the per-gallon standard the refiner would be required to meet for this batch would be the more stringent of: (1) The per-gallon standard that applies to the refinery under § 80.41; or (2) the value for that parameter or emissions performance for the previously certified RFG used to produce the batch. If previously certified conventional gasoline is used, however, use of this PCG would not affect the per-gallon RFG standards.

Consider again the example of Refiner A, and in this example Refiner A has elected to meet the benzene standard on a per-gallon basis at Refinery X. Under § 80.41(c), and in the absence of applicable survey ratchets, the benzene per-gallon standard is 1.00 volume percent (vol%). Also, in this example the batch of previously certified RFG has a benzene content of 0.85 vol%. In consequence, any RFG produced at Refinery X using any amount of this PCG would be subject to a benzene per gallon standard of the more stringent 0.85 vol%.

Any previously certified conventional gasoline used to produce RFG or conventional gasoline would be included in the compliance calculations

[14] Compliance with each average standard is based on the average property or emissions performance of the subset of the gasoline produced at a refinery that is relevant to that standard, sometimes called an ''averaging pool.'' For example, the averaging pool for anti-dumping standards is all conventional gasoline produced during an averaging period. In addition, certain RFG standards must be separately met by more than one averaging pool. For example, under § 80.67(g) the RFG NOx emissions performance standard must be met by the averaging pool of all RFG and RBOB that is VOC controlled, and separately by the averaging pool of all RFG and RBOB that is not VOC controlled.

[15] EPA is proposing that a ''negative'' batch would be included in the ''Actual Total'' calculation in § 80.67(g)(1)(ii) by multiplying the ''V_i'' term (the batch volume) times minus 1.

for the gasoline produced. In addition, the previously certified conventional gasoline would be included, as a negative batch, in the refinery's anti-dumping compliance calculations.

Finally, any previously certified RFG or conventional gasoline would be included as a negative volume for purposes of calculating a refinery's compliance baseline under § 80.101(f).

The proposed approach is summarized in the following table.

Previously certified gasoline (PCG) type	Gasoline produced type	Gasoline produced standards	
		Per-gallon	Average
RFG or RBOB	RFG	More stringent of: • § 80.41 per gallon standards; or • PCG properties	• Include PCG in compliance calculations as negative batch. • All RFG pool volumes for average standards must be positive.
Conventional Gasoline (CG).	RFG or RBOB	§ 80.42 per gallon standards	• Include PCG in CG compliance calculations as negative batch. • CG pool volume must be positive.
CG [1]	CG	None	(Same as above).

[1] Includes RFG used to produce CG, because previously certified RFG may be ''downgraded'' to previously certified CG.

EPA believes the approach proposed for addressing PCG is appropriate because it would provide regulated parties with significantly additional flexibility, with no apparent risk of adverse environmental consequences. The additional flexibility would result from the ability for regulated parties to more easily use previously certified gasoline in refinery operations.

At the time the RFG regulations were promulgated EPA was concerned that the overall quality of the various gasoline pools could be degraded if refiners were able to reclassify conventional gasoline into RFG, or to reclassify certain categories of RFG into other categories. For example, if a refiner could reclassify conventional into RFG, it would be possible for a refiner to produce very ''clean'' conventional gasoline and include this gasoline in its anti-dumping compliance calculations, and then reclassify this same gasoline into RFG with very little or no additional blending. This would enable the refiner to meet the anti-dumping standards using gasoline that, in reality, will be used as RFG. One effect of this type of ''gaming'' would be to degrade the quality of the conventional gasoline pool, with consequent adverse environmental effects.

As a result of these concerns, EPA included provisions in § 80.78 that prohibit parties from combining certain categories of gasoline. For example, § 80.78(a)(10) prohibits parties from combining RFG with conventional gasoline to produce RFG, in part in order to address the ''gaming'' concern described above.

However, the proposed PCG accounting procedure would allow refiners to reclassify conventional gasoline into RFG in a manner that avoids the potential for adverse environmental effects from ''gaming.'' This is true because reclassifications using PCG may occur only at a refinery, and the PCG must be included, as a negative batch, in the refinery's compliance calculations for the gasoline pool that corresponds to the PCG's designations when first produced. Consider again the example of ''gaming'' involving very ''clean'' conventional gasoline, described above. Under the PCG proposal any of the very ''clean'' conventional gasoline used as PCG would have to be included in the refinery's anti-dumping compliance calculations as a negative batch, this pool would have to meet the anti-dumping standards, and the pool volume would have to be positive. This would require the refiner, in effect, to produce other conventional gasoline that is equal in quantity and quality to very ''clean'' conventional gasoline used as PCG, that would offset the loss of this gasoline to the conventional gasoline pool. Thus, under the proposal there would be no net change in the quality of the conventional gasoline pool.

This same logic would allow refiners to reclassify RFG with regard to VOC control and OPRG.

In the case of RFG standards that are met on a per-gallon basis, a different approach would be used to ensure no degradation in the quality of the overall RFG pool as a result of the PCG proposal, since averaging calculations are performed only where standards are met on average. The approach proposed, as discussed above, would prohibit the receiving refiner from degrading the quality of any previously certified RFG batch with regard to any standard the receiving refiner meets on a per-gallon basis, by setting the per-gallon standard at the parameter value of the PCG if it is more stringent than the normal per-gallon standard.

As a result, EPA is proposing to specifically allow refiners to change the classifications of RFG and conventional gasoline under the PCG procedures. In addition, EPA is proposing to revise the prohibitions in § 80.78 to reflect the PCG proposal. In proposed revisions to §§ 80.78(a) (5) and (7) parties would be allowed to combine RFG or RBOB with blendstock under the terms of the PCG proposal.

Under the proposed PCG procedures it would be important that any gasoline claimed as PCG actually is used in a refinery's operation—otherwise, these procedures could cause a degradation in gasoline quality. For example, consider a refinery that received a batch of relatively ''dirty'' conventional gasoline. If this gasoline is classified as PCG, is used in the production and compliance calculations of conventional gasoline, and is added to the anti-dumping compliance calculations as a negative batch, there would be no net effect of the ''dirty'' PCG on the refinery's overall anti-dumping compliance calculations. If, however, the refiner never used the PCG as a component for gasoline production, yet included the ''dirty'' PCG as a negative batch in compliance calculations, the refinery's conventional gasoline pool would appear ''cleaner'' than it was in reality.

As a result, EPA is proposing record keeping and attest requirements that would apply in the case of any refiner who uses the PCG option, that would include records demonstrating the storage and movement of the PCG from the time it is received at the refinery until it is used in the production of gasoline. The proposed attest procedures would require the auditor to verify that PCG was used to produce gasoline at the refinery, and that the PCG batch report to EPA is consistent with the refiner's sampling and testing of the PCG, and the PCG product transfer documents, when received at the refinery.

7. Requirements for Imported Gasoline (§ 80.65(j))

Section 80.65(j) ''Requirements for imported gasoline,'' is proposed as an addition to the general requirements of § 80.65(e) to qualify import certifications. This is in response to importer and independent laboratory questions regarding certification of import cargoes. The Agency has received questions regarding where and when imported gasoline must be certified, and how to treat gasoline destined for multiple ports. The Agency has issued policy guidance in response to these questions in *Reformulated Gasoline and Anti-Dumping Questions and Answers.* Today's regulatory revision is somewhat more restrictive than the *Reformulated Gasoline and Anti-Dumping Questions and Answers* policy guidance, in that batch certification would have to comply with the U.S. Customs Service requirements for imported gasoline. The original intent of the RFG regulation was to follow the normal import industry practices as regulated by the U.S. Customs Service. Some allowances were provided in the *Reformulated Gasoline and Anti-Dumping Questions and Answers* guidance that may not conform with the U.S. Customs Service regulations and today's proposal reverses any changes that may have occurred.

The first requirement proposed in § 80.65(j) is that batch certification sampling be conducted at the time and place permitted under U.S. Customs Service regulations, 19 CFR 151.42, and as specified in the new § 80.47 *Sampling of reformulated and conventional gasoline,* which is discussed above. Section 80.47 provides specific sampling procedures for reformulated and conventional gasoline, and refers to § 80.8 *Sampling Methods* for the general sampling procedures that apply.

This requirement reflects the majority of guidance provided in *Reformulated Gasoline and Anti-Dumping Questions and Answers.* For instance, the guidance provides that when an import vessel off-loads its cargo at more than one U.S. Customs Service port, then it must certify the cargoes off-loaded in the separate ports as different batches. The reason for this is that there is no mechanism for EPA to enforce or even to find out about possible additions to a certified batch when a vessel leaves the port where it was sampled. Today's proposal also requires separate batch certifications for separate entry ports as governed by the U.S. Customs Service regulations. However, in *Reformulated Gasoline and Anti-Dumping Questions and Answers,* an exception to this guidance is provided for multiple ports within a given harbor area, such as the New York City harbor area, wherein a single batch may be off-loaded at multiple Customs ports within the harbor. Today's proposal will not include this exception because it does not conform with U.S. Customs Service regulations. EPA relies on U.S. Customs Service records for enforcement of the EPA fuels regulations. By following the Customs Service regulations EPA maximizes the usefulness of this enforcement tool. It also minimizes regulatory confusion by conforming the EPA requirements with an existing regulatory requirement of the U.S. Customs Service.

U.S. Customs Service regulations for imported petroleum products allow for sampling once an import vessel is docked and ready to off-load its cargo, although under 19 CFR 151.42, *Controls on unlading and gauging,* each port director independently establishes the methods of control. As such, the protocols for sampling an import vessel could vary from port to port and could also depend on the type of import vessel (for instance, ship, barge, rail car). EPA requests comments on the requirement to follow the U.S. Customs Service procedures during batch certification. EPA will retract any conflicting guidance that remains in *Reformulated Gasoline and Anti-Dumping Questions and Answers* after final revisions to this regulation are promulgated.

The second and final requirement of proposed § 80.65(j) is that batch size could be no larger than a ''line item,'' or a single item of merchandise, of an entry summary under U.S. Customs Service requirements specified at 19 CFR part 141, subparts D, E, and F, and part 142, subparts A and B. These subparts of the Customs Service regulations specify the documentation required for import cargoes. This documentation must differentiate merchandise by listing or invoicing items subject to different duty rates (19 CFR 141.61(e)), and it must list or invoice items of varying commercial value separately (19 CFR 141.86). Therefore, it is EPA's understanding that the Customs Service regulations require quantities of gasoline imported on a single vessel to be distinguished on the basis of their differences in commercial values or potential for differences in commercial value. For instance, different grades (segregated in different tanks) would be entered as separate line items. Also, gasoline from different sources but of the same grade, would normally be entered as separate line items due to their potential for the separate sources not meeting the agreed upon commercial specifications. Limiting batch size to U.S. Customs Service entry ''items'' serves two functions: (1) It adjusts the EPA requirements to fit better with the existing regulatory standards of the U.S. Customs Service, and (2) it puts a limit on the variations of RFG property values within a batch (that could lead to inaccurate sample representation as discussed above in the preamble to § 80.47, regarding homogeneity determination).

D. Compliance on Average (§ 80.67)

1. Transfer of Oxygen and Benzene Credits (§ 80.67(h)(1)(iv))

Section 80.67(h)(1)(iv) permits the transfer of credits directly from the refiner, importer, or blender who generates them to the refiner, importer, or blender who uses the credits for compliance purposes. EPA has received several inquiries with regard to whether transfers within the same company are included in the language of this section. It is the Agency's intention that the refiner, importer, or blender may properly transfer legitimate credits within the company or outside of the company. As a result, EPA is proposing to modify § 80.67(h)(1)(iv) to clarify that credit transfers may be either intercompany or intracompany.

E. Compliance Survey Requirements (§ 80.68)

1. Method of Computation for Averages in Survey Series (§§ 80.68 (c)(9)(I)(B) and (ii)(B), (c)(10), (c)(11), (c)(12) and (c)(13))

The RFG surveys were designed to deter and detect situations where the flexibility afforded refiners through averaging gasoline characteristics at the refinery gate (as opposed to averaging each refinery's contribution to the gasoline in a particular covered area) results in a covered area obtaining gasoline that on average differs in relevant qualities from the average gasoline quality that would occur if averaging was required separately for each covered area. The surveys are conducted by an industry association according to a statistical sampling plan approved by EPA and involve sampling gasoline from retail outlets. If the gasoline in an area fails to meet standards set forth in the regulations for a particular parameter, the standards for that parameter are made more stringent and the number of surveys that must be conducted in the following year is increased.

Some of the gasoline characteristics evaluated by the survey are chiefly of interest because of their role in causing or contributing to ambient ozone levels. Surveys for these parameters (e.g., VOC surveys) are passed or failed based upon the average of results from a week-long survey. Other parameters (like benzene and toxics) are of concern because of their cumulative effects over a longer period of time. Surveys for these latter characteristics are passed or failed based upon the average of a year-long series of one-week surveys. This discussion is primarily concerned with how the average of such a series of one-week surveys should be computed.

Under the current regulations, determining the average for each survey series [16] involves computation of a simple average [17] of parameter values from each gasoline sample across all of the samples gathered during the year (without any consideration of which week-long survey the sample was a part). If all of the individual week-long surveys had equal sample sizes, this approach to computation would yield as good a representation of the fuel supply as the timing and distribution of the week-long surveys throughout the year permitted.[18] Practical considerations involved in the design and conduct of an efficient overall survey operation, though, dictate some substantial variations in sample size among the week-long surveys. One such effect, and probably the most important one, stems from the fact that high-ozone season surveys for ozone precursors must yield a confidence interval on the mean small enough to meet the precision requirements of the regulations (§ 80.68(c)(13)(iii)) for each individual survey. Since practical considerations dictate that surveys for the various parameters be conducted concurrently (i.e., each gasoline sample is analyzed for all parameters covered by the survey program), this situation results in larger-than-necessary sample sizes in the summer for non-ozone precursor parameters. Outside the summer ozone season there is no need to maintain precision standards for each individual survey, but only for the annual series of such surveys. In the interest of efficiency, the survey manager may be expected to cut back on sample sizes during these times at the beginning and end of the calendar year. As a result, the simple average substantially overrepresents summertime gasoline.

An additional reason for altering the prescribed approach to computing averages of series has to do with the weights attached to each sample to handle either lack of pre-survey information about an individual retail outlet's throughput or the situation where an outlet with unusually high throughput is located in a covered area with relatively few outlets and is consequently selected into the sample with certainty. For both situations the sample is not self-weighting and weights must be computed to properly represent the outlet's gallonage in the sample. The current approach, the simple average, requires that such weights be computed two different ways, once for the outlet's inclusion in the week-long survey for ozone-related parameters and then again for the annual average computation for non-ozone-related parameters. The latter set of weights cannot be computed until the year's data collection is complete, leaving some uncertainty up to the end of the year as to the status of survey results in areas where throughput data are not available for most outlets. This particular problem is a characteristic of the sample design approach currently being used by the industry survey organization, but that approach or some variant of it is likely to be used in any thorough attempt to meet the survey requirements in the regulations.

Both the distortion and the difficulty in computing weights, as discussed above, can be eliminated by changing the method by which the average of each survey series is computed for a given parameter in a given RFG covered area. Instead of averaging all of the measurements on individual gasoline samples in the survey series, we are proposing the following: (1) That the measurements for each week-long survey in an area be averaged, regardless of the sample size, to create a set of means of week-long surveys, and then (2) that all of the resulting individual survey averages for the area be averaged, themselves, across all of the surveys in the series. This approach removes a significant source of distortion, simplifies calculations, and improves the representativeness of the number that we use to make the important decision on whether the gasoline in an area has passed or failed a survey series.

2. Clarification of Applicability of Survey Precision Requirements (§ 80.68(c)(13)(iii))

The intent of the survey precision requirements set forth in the regulations (§ 80.68(c)(13)(iii)) was to ensure that errors (in either direction) in survey or survey series pass/fail determinations would be unlikely. Without these requirements survey managers would be able to trade off risk of inappropriate survey failure against survey costs, and the environment would not be protected against the increased risk of errors in the other direction resulting from insufficient sampling.

Thus the precision requirements should apply to the body of data that serves as the basis of each pass/fail determination. As currently written, the regulations attach the precision requirements exclusively to individual surveys without making it clear that for certain survey parameters (for example, oxygen under the simple model) the pass/fail determination is made against a year-long series of surveys rather than against a single survey. The regulations would therefore be altered to attach the precision requirements to the appropriate body of data for each determination—to the individual survey where the parameters being evaluated are ozone-related and to the survey series for other parameters.

F. Downstream Oxygen Blending (§ 80.69)

1. Refiner ''Hand-Blending'' of RBOB (§§ 80.69 (a)(2), (a)(8) and (a)(9))

Under § 80.65(c)(1) refiners and importers are required to meet all RFG standards for RBOB, except for the oxygen standard. Under § 80.65(c)(2) the oxygen standard for RBOB is met by the oxygenate blender. Section 80.69(a)(2) requires refiners and importers to determine the non-oxygen properties of RBOB by blending the appropriate type and amount of oxygenate with a sample of the RBOB (sometimes called a ''hand blend''), and testing the properties of the resulting RFG. Under § 80.69(a) an RBOB refiner or importer is allowed to hand blend the amount of oxygenate actually used by the oxygenate blender only if, *inter alia,* a quality assurance program is carried out over the oxygenate blending operation. In the absence of such a quality assurance program, under § 80.69(a)(8) specified types and amounts of oxygenate must be hand blended.

EPA is proposing to revise § 80.69(a)(2) to provide additional guidance regarding the type and amount of oxygenate that must be hand blended, and to move the hand blending

[16] § 80.68(c)(9)(i)(B) for toxics; (10)(ii) for NO_X; (11) for benzene; and (12) for oxygen.

[17] In the case of toxics, the computation introduces weights for the season (high-ozone season or outside of high-ozone season) since the statistical model used to compute the emissions is different in the two seasons. The weights substantially correct the overemphasis on summer that affects other non-ozone-related parameters, as discussed in the remainder of the text.

[18] While the design for each of the individual week-long surveys is probabilistic, a variety of considerations prevent EPA from distributing the surveys in a perfectly random manner with respect to time. The overall sampling approach for survey series thus departs, to some extent, from a purely probabilistic design.

instructions from § 80.69(a)(8) to § 80.69(a)(2) in order to improve the organization of this section. The additional guidance would apply in the case of ''refiner specified'' RBOB (i.e., neither ''any oxygenate'' nor ''ether only'') for which the refiner or importer has specified options for more than one oxygenate type, or for a range of oxygenate volumes. EPA is proposing that the hand blend for such RFG must be formulated with the most conservative options. For example, where an RBOB specification allowed ethanol and other oxygenates, the hand blend would have to be formulated using ethanol, because ethanol, as compared with other oxygenates at the same weight percent oxygen, generally results in RFG with worse emissions performance.

Section 80.69(a)(9) specifies that where RBOB is designated as ''refiner specified'' but the quality assurance program is not completed, the hand blend must be formulated with 4.0 vol% ethanol. EPA is proposing to merge this paragraph with § 80.69(a)(2).

2. Deletion of §§ 80.69 (a)(4) and (a)(10)

Section 80.69(a)(4) requires refiners of RBOB to determine properties of the RBOB, which would allow downstream parties to determine if any contamination had occurred and thereby ensure that the RFG produced using the RBOB would meet applicable standards. Section 80.69(a)(4) was included in the final reformulated gasoline regulation to facilitate quality assurance programs by downstream parties who handle RBOB, particularly where RBOB from a specific refinery travels as a segregated product. However, EPA believes that, in practice, most RBOB is being transported in a fungible manner. As a result, there is little value to § 80.69(a)(4) and EPA is proposing to delete this requirement. EPA believes that downstream parties may conduct fully adequate quality assurance programs over RBOB by hand blending the oxygenate type and amount specified for the RBOB and testing the hand blended sample to determine compliance with applicable standards.

Section 80.69(a)(10) requires refiners and importers of RBOB to include in the RBOB blending specifications a range of oxygenate types and amounts for all RBOB. This requirement was included in the RFG rule because at the time the RFG regulations were promulgated it was not clear the types of RBOB regulated parties would choose to produce. As a result, the regulations were structured to accommodate a wide variety of RBOB types. In practice, however, refiners and importers of RBOB have chosen to produce only a limited slate of RBOB types, and mainly only two types: generic ''ether-only'' RBOB, and RBOB with blending instructions that are specific to the refiner and that is shipped in a segregated manner. As a result, EPA now believes that § 80.69(a)(10) creates a burden on refiners and importers of RBOB, yet provides little or no benefit to oxygenate blenders or to the environment. Accordingly, EPA is proposing to eliminate this requirement.

3. Refiner Evaluation of RFG Produced by Oxygenate Blender (§ 80.69(a)(7))

In the case of a refiner of RBOB conducting oversight over the RFG produced at a downstream oxygen blending facility, the refiner of the RBOB is required to calculate the non-oxygen parameter values for the RFG produced using the RBOB. To do so, the refiner may use either the oxygen blending assumptions under § 80.69(a)(2) or the actual oxygen blending levels if the refiner meets the contractual and quality assurance testing requirements specified in § 80.69(a)(5) through (7).

The quality assurance provisions of § 80.69(a)(7) require the refiner to use sampling and testing to ensure that the RFG produced by the downstream oxygen blender meets ''applicable standards.'' The applicable standards are not further specified in that paragraph.

EPA is proposing to amend § 80.69(a)(7) to require the refiner to evaluate the RFG produced by an oxygenate blender for the oxygenate type and oxygen amount, but not for other RFG standards. The principal purpose of the § 80.69(a)(7) oversight program is to ensure that the oxygenate blender uses the proper type and amount of oxygen, to support the refiner's RBOB compliance calculations. Other sections of the regulations address quality assurance sampling and testing for all standards that apply at all downstream locations, including at oxygenate blending facilities. See, for example, § 80.79(c), which requires quality assurance sampling and testing as an affirmative defense for violations of downstream standards. As a result, EPA believes it is most appropriate to require sampling and testing only for oxygenate type and amount under § 80.69(a)(7).

4. Oxygenate Blending Instructions (§ 80.69(b)(1))

Under § 80.69(b)(1) oxygenate blenders are required to blend with RBOB only the type and amount of oxygenate that is specified for the RBOB. EPA is proposing to amend this section to provide additional guidance to oxygenate blenders regarding this blending. In addition, EPA is proposing regulations that would specify the allowed quantity of *de minimis*, extraneous, oxygenates that may be present in an oxygenate blending operation.

EPA is proposing oxygenate blending requirements under § 80.69(b)(1) that are in accord with the RBOB blending instructions. In addition, EPA is proposing language that would clarify that the minimum oxygenate volume that could be used is the minimum volume specification for the RBOB, and that the oxygenate blender is free to add additional oxygenate up to the maximum oxygen standard under § 80.41(g).

EPA understands that when RBOB is blended with oxygenate to produce RFG at oxygenate blending facilities, the RFG may contain *de minimis* amounts of oxygenate other than the principal oxygenate that is blended. These oxygenates may result, for example, when RBOB is shipped via pipeline adjacent to RFG (that necessarily would contain oxygenate), and these products are imperfectly segregated. Also, when an oxygenate is produced it is normal that *de minimis* amounts of other oxygenates also are produced and that remain present in the principal oxygenate.

EPA believes that *de minimis* quantities of oxygenate that are in addition to the principal oxygenate used to produce RFG do not degrade the quality of RFG beyond a trivial amount. As a result, EPA is proposing regulations that would specifically allow *de minimis* amounts of incidental oxygenate, and that would specify the oxygenate amounts that would be considered *de minimis.* However, EPA is also proposing that these incidental oxygenates could not have been intentionally blended, because the purpose of this proposed provision is to address inadvertent oxygenate anomalies and not to provide additional oxygenate blending options.

5. Every-Batch Sampling and Testing Requirement for Splash Blenders (Proposed § 80.69(b)(5))

Under § 80.69(b)(4), an oxygenate blender who meets the oxygen standard on average is required to sample and test each batch of RFG produced to determine the batch's oxygen content, and assign a number to the batch for reporting purposes. This every-batch sampling and testing requirement was intended to be applied regardless of

whether the oxygenate blending is carried out in a large terminal tank or through blending in trucks (sometimes called splash blending).

Every-batch sampling and testing is required in order to give the oxygenate blender the best information with which to calculate the average oxygen content of RFG produced. EPA believes that oxygenate blenders, like other parties who produce RFG, should use adequate procedures to determine, with great certainty, the oxygen content of RBOB produced. This is particularly true of parties who meet the oxygen standard (or other standards) on average, because, in part, any errors in calculating average oxygen content could result in the transfer to other parties of invalid oxygen credits. Every-batch sampling and testing provides this certainty.

However, EPA believes that this every-batch sampling requirement adds significant difficulties in the case of oxygenate splash blenders. As a result, EPA is proposing to add § 80.69(b)(5) which would allow oxygenate splash blenders to meet the oxygen standard on average without conducting every-batch sampling and testing under certain conditions. These conditions, which are described below, would require the oxygenate blender to use procedures that give certainty about oxygen use, and that, taken together, EPA believes are as effective as every-batch sampling.

a. *Computer-controlled oxygenate blending required.* Under the proposal, the oxygenate blending would have to be carried out using computer-controlled in-line or sequential blending that operates in such a manner that the volumes of oxygenate and RBOB are automatically dispensed when a particular grade of gasoline is selected for loading into a truck, and where no operator instructions are required regarding the oxygenate-RBOB proportions when an individual truck is loaded. Thus, this alternative averaging approach would not be available where the oxygenate and RBOB are separately metered into a truck, regardless of whether the separate metering occurs at the same terminal or at different terminals.

b. *Oxygenate blender must operate blending equipment.* The oxygenate blender would be required to be the party who operates the computer-controlled in-line or sequential blending equipment. Thus, this alternative averaging approach would not be available to a party who receives delivery of splash blended RFG into trucks at a terminal if the terminal is not operated by that party, regardless of whether the receiving party is a registered oxygenate blender.

c. *Compliance calculations.* The oxygenate blender would be required to base its compliance calculations on the volumes and properties of RBOB and oxygenate used during a period no longer than one calendar month. In calculating the oxygen content of the RFG produced, the oxygenate blender would be required to use either assumptions regarding the specific gravities of the oxygenate and RBOB blended, or the oxygenate blender would be required to measure the measured specific gravities of all oxygenate and RBOB blended in the blending operation. Similarly, with regard to the denaturant content of the ethanol (if used), an oxygenate blender would be required to use a denaturant content of 5 vol% and to support this value with documents from the ethanol supplier and a quality assurance program, or the oxygenate blender would be required to determine the denaturant content of all ethanol used through sampling and testing.

d. *Quality assurance sampling and testing.* An oxygenate blender who meets the oxygen standard on average using these procedures would be required to conduct a program of quality assurance sampling and testing of the RFG produced, using the procedures and at the frequencies specified under § 80.69(e)(2).

e. *Attest procedures (§§ 80.129 and 80.134).* Under § 80.65(h) any oxygenate blender who meets the oxygen standard on average is required to commission an annual attest engagement, to be conducted under the terms of subpart F. EPA is proposing to add attest procedures that would apply in the case of an oxygenate splash blender who meets the oxygen standard on average under the proposed procedures. In addition, EPA is proposing record keeping requirements that would apply to such an oxygenate blender. The records which would be kept are those EPA believes are necessary to an EPA auditor, or an independent auditor, to ensure the proposed procedures were properly completed.

G. References to Renewable Oxygenate Requirements (§ 80.83)

On August 2, 1994, EPA promulgated regulations that would have required the use of ''renewable'' oxygenates to meet a portion of the oxygenate standard for RFG. *See,* 59 FR 39290 (August 2, 1994). However, implementation of the renewable oxygenate requirements was stayed effective September 13, 1994, as a result of a legal challenge filed in the United States Court of Appeals for the DC Circuit. *See,* 59 FR 60715 (November 28, 1994). The Court of Appeals ultimately held that the renewable oxygenate requirements for RFG are invalid, as they are not authorized under sections 211 (c) or (k) of the Clean Air Act. American Petroleum Institute v. EPA, 52 F.3rd 1113 (D.C. Cir. 1995).

This proposal would remove the regulatory language covered by that decision.

The proposed changes relating to renewable oxygenates are shown in the following table.

§ 80.2(ss)	Current paragraph is deleted because it applies only to renewable oxygenate requirements. A new paragraph (ss) is proposed which would define ''tank truck.''
§ 80.2(tt)	Paragraph is deleted because it applies only to renewable oxygenate requirements.
§ 80.2(uu)	Paragraph is deleted because it applies only to renewable oxygenate requirements.
§ 80.65(d)(2)(vi) (C) through (E)	Paragraphs are deleted because they apply only to renewable oxygenate requirements.
§ 80.83	Current section is deleted because it applies only to renewable oxygenate requirements. A new section 80.83 is proposed which would provide procedures for handling gasoline treated as blendstock.
§ 80.128(e)(2)	Paragraph is revised to delete language that applies only to renewable oxygenate requirements.
§ 80.128(e)(6)	Paragraph is deleted because it applies only to renewable oxygenate requirements.
§ 80.129(a)	Paragraph is revised to delete language that applies only to renewable oxygenate requirements.
§ 80.129(d)(3)(iii)	Paragraph is deleted because it applies only to renewable oxygenate requirements.

In certain cases, the deleted text is replaced by regulatory language discussed elsewhere in this proposal.

H. Covered Areas (§ 80.70)

Under Clean Air Act § 211(k)(10)(D), any ozone nonattainment area that is reclassified as Severe becomes an RFG covered area. This inclusion in the RFG program occurs one year following the date of reclassification.

Effective June 1, 1995, the Sacramento, California, ozone nonattainment area was reclassified from Serious to Severe (60 FR 20237 (April 25, 1995)). Sacramento, therefore, became a covered area as of June 1, 1996. Today's proposal would update the list of RFG covered areas in § 80.70 to include Sacramento.

I. Record Keeping Requirements (§ 80.74)

1. Clarification of test results record keeping (§§ 80.74(a) and 80.104(a))

Sections 80.74(a)(2)(iii) and 80.104(a)(2)(i) require regulated parties to keep the results of tests conducted of reformulated and conventional gasoline. Parties have asked EPA to clarify this requirement, and in particular have asked whether these regulations require parties to keep copies of all documents that contain test results.

In order to clarify these requirements, EPA is proposing changes to §§ 80.74(a)(2)(iii) and 80.104(a)(2)(i), that would specify that parties are required to keep the original result for each test performed. Thus, for example, where a test is performed using a testing apparatus that automatically generates a printed document containing the test result, this printed document must be kept. Where a test is performed using an apparatus that does not generate a print out EPA is proposing that the party would be required to keep the first recorded test result, such as the chemist's laboratory log book.

In addition, EPA is proposing that parties would be required to keep any other record that contains a test result that is not identical to the original result. A non-identical test result could occur where a party determines that an original test result is in error because of laboratory error, for example. In such a case, the party would be required to keep both the original test result and the corrected test result. This proposed requirement would allow EPA, during the course of an audit or inspection, to review changes that are made to test results, to determine if the changes are appropriate.

2. Records To Be Kept by Refiners and Importers (Proposed § 80.74(b)(7))

EPA is proposing to add § 80.74(b)(7) which would require retention of records that reflect the physical movement of gasoline treated as blendstock (GTAB) from the point of importation to the point of blending to produce reformulated gasoline. (*See* Preamble Section V.C. concerning the proposed requirements for GTAB.)

3. Records To Be Kept by Independent Laboratories (Proposed § 80.74(h))

EPA is proposing to add § 80.74(h) which would require laboratories serving as independent laboratories under proposed § 80.72 to retain records as required under §§ 80.74(a)(2) and 80.72(c)(1).

J. Product Transfer Documentation (§§ 80.77 and 80.106)

Product transfer documentation (PTD) requirements at §§ 80.77 and 80.106 are intended to insure that on each occasion that any person transfers custody or title of any RFG, RBOB or conventional gasoline, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale-purchaser-consumer facility, the transferor produce, and provide to the transferee, documents that contain certain information. This information would enable the transferee to know enough about the gasoline being received to meet the requirements of the RFG program. In addition, the PTD documents, which parties are required to keep under §§ 80.74(a)(1) and 80.104(a)(2)(vi) and (vii), help EPA identify the source of any gasoline found to violate applicable standards.

EPA today is proposing to amend §§ 80.77 and 80.106 to clarify the following PTD requirements.

1. Introductory Text of §§ 80.77 and 80.106

Section 80.77 requires a transferor to provide PTDs to the transferee on each occasion involving a transfer of custody or title of RFG or RBOB. Section 80.77 does not distinguish between transfers of custody and transfers of title concerning the timing necessary for transfer of PTD information. EPA, however, believes the two situations may differ in this regard. In the case of transfers of custody, the PTD information should be transferred before, during, or *immediately* following the actual transfer because the transferee will have custody of the gasoline in question and must know how to handle it. However, since transfers of title do not always involve the physical handling of the gasoline, EPA believes a transferee should have the option to rely on the custody transferee to properly handle the gasoline (e.g., where the custody transferee is a common carrier pipeline.) Therefore, in the case of title transfers, EPA believes there is little need for the required PTD information to be transferred at the time of the transfer of the product. Accordingly, EPA is proposing, in the case of title transfers, to allow up to thirty days in which to transfer the required information. EPA believes this timing would allow parties to transfer the required information using documents that are transferred as a part of normal business dealings, and as a result would ease the burden of meeting the PTD requirements.

The introductory text of § 80.77 excludes from the PTD requirements gasoline sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility. Section 80.106 does not contain this exclusion, which EPA believes was an inadvertent omission when the final rule was promulgated. Accordingly, EPA is proposing to revise § 80.106 to conform to § 80.77 in this regard. EPA is also proposing to modify the introductory text of § 80.77 to clarify that this exclusion applies to gasoline sold or dispensed at a retail outlet or wholesale purchaser-consumer facility for use by any ultimate consumer, and not only for use in motor vehicles.

In addition, EPA now believes that the PTD information is of little value when conventional gasoline is delivered *to* a retailer or wholesale purchaser-consumer in a conventional gasoline area. Accordingly, EPA is proposing to exclude from the PTD requirements transfers of conventional gasoline to retailers and wholesale-purchaser consumers in conventional gasoline areas. Note, however, that the PTD requirements of § 80.106 would continue to apply for all other transfers of conventional gasoline. Note also that the PTD requirements of § 80.77 for RFG and RBOB would continue to apply to *all* transfers of RFG and RBOB (other than when the gasoline is sold or dispensed by a retail outlet or wholesale purchaser-consumer facility for use by ultimate consumers), including transfers in which RFG is delivered to a retail outlet or wholesale purchaser-consumer.

2. Identification of the Gasoline (§ 80.77(f) and § 80.77(g)(3)).

EPA is proposing to amend § 80.77(f) to delete reference to conventional gasoline, since the requirements of § 80.77 do not apply to conventional gasoline. EPA is proposing to amend

§ 80.77(g)(3) to delete reference to RBOB. This section requires parties to identify whether the product contains ethanol, and RBOB, by definition, does not contain oxygenate. In addition, EPA is proposing to add references to RBOB to §§ 80.77 (c) and (f) to specify that these PTD requirements apply to RBOB as well as to RFG and conventional gasoline.

3. Elimination of PTD Requirement for Inclusion of Registration Numbers (§ 80.77(j) and § 80.106(a)(1)(vi))

Sections 80.77(j) and 80.106(a)(1)(vi) require, in the case of transferors and transferees who are refiners, importers or oxygenate blenders, that the EPA assigned registration number of those persons be included on the PTDs. EPA received comments that this requirement is overly burdensome in certain circumstances, particularly downstream of the refiner/importer/oxygenate blender where such information may not be readily available. Based on experience with the program, EPA believes that this requirement has only limited value as a means of identifying and tracking the gasoline, and that EPA will be able to adequately enforce the regulations without inclusion of the assigned registration number on the transfer documents. As a result, EPA is proposing to eliminate the requirements to include registration numbers in PTDs.

4. Use of Product Codes (proposed § 80.77(j))

The petroleum industry historically has used product codes to identify product type in business transactions involving the transfer of title or custody of petroleum products. For example, all pipelines that transport refined petroleum products use codes to identify the various types of petroleum products that are transported. These product codes are well-known to persons who operate a pipeline, or who supply products to or receive products from a pipeline. These pipeline codes are used as a shorthand for the myriad petroleum products moving through the distribution system, and make product identification easier.[19] In addition, product codes are used to identify petroleum products in many of the documents used to memorialize transfers of title and custody in normal business dealings, in part because the codes occupy less space on the documents than the full product names would require.

EPA is proposing to add § 80.77(j) to allow the use of product codes for certain information required on PTDs to accommodate this practice, but under conditions that would ensure that the codes would satisfy the goals of the PTD requirement. In particular, EPA is proposing that product codes could be used to satisfy PTD requirements related to identifying the product type (i.e., RFG, RBOB or conventional gasoline); for RFG and RBOB, the designations and minimum and maximum standards; and for RBOB, the oxygenate blending specifications. Product codes, used to meet these PTD requirements would have to fully reflect the PTD requirements. Thus, a product code that referred to ''VOC controlled RFG,'' without more, would not meet the requirement in § 80.77(g)(1)(i) to separately identify RFG that is VOC controlled for Region 1 and Region 2. Similarly, where product codes are used to identify minimum and maximum standards, as required in § 80.77(g)(2), the product codes would have to reflect the actual numerical value for the minimum and maximum standards.

In addition, EPA is proposing that the codes would have to be standardized throughout the distribution system in which they are used, and that transferees would have to be given the information necessary to know the meaning of the product codes.

EPA is not proposing that product codes could be used to satisfy PTD requirements unrelated to product types. It is EPA's understanding that product codes used in normal business practice are limited to product types. In addition, EPA believes that other PTD information, such as the name and address of the transferor and transferee, volume of product, and date of transfer, is included in full text in documents historically used to memorialize transfers of petroleum products.

In addition, EPA is not proposing that product codes could be used for transfers of gasoline to truck carriers, retail outlets, or wholesale purchaser-consumer facilities. EPA believes that these types of regulated parties may not be sufficiently familiar with product codes to know their full meaning. This belief is based, in part, on EPA's experience in enforcing compliance with the RFG requirements by truck carriers, retailers and wholesale users. EPA has found that in most cases where codes were used to supply required PTD information to these parties, the parties did not know the meaning of the product codes even where the gasoline supplier had previously provided the information necessary to interpret the product codes.

V. Enforcement

A. Prohibitions (§ 80.78)

1. Clarification of Prohibitions (§ 80.78(a) (1) through (4))

Sections 80.78(a) (1) and (2) prohibit activities that could result in the use of non-RFG in RFG covered areas. Specifically, these sections prohibit the manufacture and marketing of gasoline represented to be RFG unless the gasoline meets the requirements for federally certified RFG, and prohibit the distribution and sale of non-RFG for use by ultimate consumers in RFG covered areas. EPA believes, however, that the current text of § 80.78(a) should be made clearer with regard to the scope of these prohibitions. As a result, EPA is proposing to revise the introductory text of § 80.78(a)(1) and § 80.78(a)(2), to clarify these prohibitions. In addition, EPA is proposing to delete § 80.78(a)(3), since this section refers to a conventional gasoline marker and the regulations currently do not require a marker for a conventional gasoline. EPA is also proposing to revise § 80.78(a)(4) for purposes of consistency with the revised text of §§ 80.78(a) (1) and (2).

2. Addition of ''Causation'' of Prohibited Activities (§ 80.78(a)(10))

Section 80.78(a) prohibits certain conduct on the part of parties who are engaged in gasoline industry activities such as gasoline manufacturing and selling, distributing, dispensing, supplying, storing, or transporting. Under this subsection, however, parties currently are liable for ''causing'' prohibited conduct only in the case of gasoline that is transported in violation of the regulations.

EPA now believes there are other situations where a party may, in fact, cause another to commit a prohibited act, and in those cases, the causing party also should be liable for the violation. For example, a distributor who delivers to a retail outlet reformulated gasoline that fails to meet one or more standards would have caused the retailer to sell and offer for sale prohibited gasoline.

As a result, EPA is proposing that parties would be liable not only for committing prohibited actions, but also for causing another party to commit a prohibited act.

3. Transition from Simple Model to Complex Model in 1998

Under § 80.41(i), refiners and importers of both reformulated and conventional gasoline have the option of using either the simple model or the

[19] For example, Colonial Pipeline product code A1 means: gasoline; RFG; VOC-controlled for Region 1; non-OPRG; simple model; 87 octane; benzene maximum of 1.18 vol%; oxygen minimum of 1.5 wt% and maximum of 2.7 wt%; RVP maximum of 7.4 psi; and no heavy metals.

early complex model prior to January 1, 1998. Particularly in the case of producers of reformulated gasoline, EPA believes that most parties will elect the simple model standards. Beginning on January 1, 1998, however, refiners and importers must meet the complex model standards for all reformulated and conventional gasoline produced or imported. As a result, in January 1998, it will be necessary for parties to transition from the simple model to the complex model, yet the current regulations do not specify how regulated parties should accomplish this transition. Therefore, EPA now is proposing the manner in which this transition would occur.

Under the proposal, any gasoline produced or imported during calendar year 1997, through December 31, 1997, would be subject to the simple or early complex model standards in the same manner as during calendar years 1995 and 1996. Thus, any simple or early complex model standards that are met on an annual average basis for 1997 would be met for all gasoline produced during calendar year 1997.

Any gasoline produced or imported beginning on January 1, 1998, would be subject to the complex model standards. Thus, conventional gasoline produced during calendar 1998 would be subject to the annual average anti-dumping complex model standards specified in section 101(b)(3), and reformulated gasoline produced during calendar 1998 would be subject to the Phase I complex model standards specified in §§ 80.41 (c) and (d).

However, beginning on January 1, 1998, the gasoline located in the distribution system would be a mixture of gasoline produced to meet the simple model standards and gasoline produced to meet the complex model standards. In the case of reformulated gasoline, such a mixture may not meet certain standards that apply at downstream locations or that are evaluated under the gasoline quality surveys, i.e., the toxics and NO_X emissions performance standards.[20] As a result, EPA is proposing that gasoline quality surveys conducted during the period January 1, 1998, through March 31, 1998, will not include evaluation for toxics or NO_X emissions performance. During this period, however, EPA would continue to enforce the complex model standards for oxygen and benzene content that apply at downstream locations, and gasoline quality surveys conducted during this period would include evaluations for oxygen and benzene content. Beginning on May 1, 1998, all applicable complex model standards would be enforced at all locations, and gasoline quality surveys would evaluate with all complex model standards.

EPA believes that the three month period, January through March 1998, would be sufficient time for parties to transition the gasoline at all locations in the distribution system from gasoline produced to meet simple model standards to gasoline produced to meet complex model standards. This transition period is similar to the time necessary to transition to the VOC-control standards each Spring; i.e., terminals are able to complete their transition to the new standard about 60 days after refiners begin producing gasoline to the new standard, and retail outlets complete their transition during the next 30 days.

4. Amount of Oxygenate Permitted to be Added to RBOB (§ 80.78(a)(7))

Section 80.78(a)(7) requires that RBOB may be blended only with oxygenate of the type and amount, or within the range of amounts, specified by the refiner or importer at the time the RBOB was produced or imported. Today's proposal revises § 80.78(1)(7) to clarify that parties may add oxygenate amounts in excess of the minimum required by the refiner or importer up to the amount allowed by the oxygen maximum standard under § 80.41(g).[21]

5. Categories of Gasoline Use within Covered Areas that are Exempt from RFG Requirements (proposed § 80.78(a)(11))

Section 211(k)(5) of the Clean Air Act describes the scope of the requirement to use RFG in the reformulated gasoline covered areas:

> (5) Prohibition.—Effective beginning January 1, 1995, each of the following shall be a violation of this section:
>
> (A) The sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area.
>
> * * * * *

This statutory prohibition on the sale or dispensing of conventional gasoline in RFG covered areas is not restricted to gasoline used to fuel motor vehicles, but rather applies to *all* gasoline sold or dispensed within an RFG covered area to *any* consumer, regardless of the use. The prohibition, therefore, would include gasoline sold or dispensed for uses such as in motor vehicles, boats, construction equipment, recreational vehicles, and lawn and garden equipment.

EPA is proposing to exempt parties from this prohibition in the following limited situations: gasoline used for research, development and testing purposes; aviation gasoline sold or dispensed for use in aircraft, including gasoline that has properties identical to motor vehicle gasoline that is sold or dispensed solely for use in aircraft; and gasoline sold or dispensed for use in racing vehicles.

EPA recognizes that there may be facilities located within an RFG covered area that conduct beneficial research, development, and testing programs which require the use of conventional gasoline. Today's proposed rule, therefore, contains provisions for obtaining an exemption from the prohibitions at § 80.78(a)(1) for persons distributing, transporting, storing, selling or dispensing conventional gasoline used for research, development, and testing purposes within RFG covered areas.

To be exempted from the prohibitions at § 80.78(a)(1) for research, development or testing under today's proposed rule, the gasoline: would have to be properly identified in product transfer documents as conventional gasoline to be used only for research, development, or testing (as applicable); could not be sold to or from retail gasoline outlets; could not be sold to or from wholesale purchaser-consumer facilities unless the wholesale purchaser-consumer is associated with the research, development, or testing; and would have to be covered by an

[20] There is no simple model NO_X standard, so that a mixture of simple model and complex model gasoline could fail to meet the complex model NO_X standard. Similarly, a mixture of simple and complex model gasoline could not be evaluated for compliance with either the simple model or the complex model toxics emissions performance standards.

The standards for oxygen and benzene content are the same under the simple and complex models, so that a mixture of simple and complex model reformulated gasoline could be evaluated for compliance with these standards. The standards for VOC and NO_X emissions performance are not evaluated for downstream compliance until the beginning of the high ozone season on May 1 each year, and as a result should not be affected by the transition from the simple to the complex model in early 1998.

[21] The amount of oxygen added also may not exceed the maximum amount allowed under section 211(f) of the Clean Air Act. The maximum amount allowed under section 211(f) is the amount that is substantially similar to gasoline used in the motor vehicle certification process, or allowed under a waiver granted under section 211(f)(4). In 1991, EPA issued an interpretative rule increasing the maximum amount of oxygen that EPA believes is allowed under the substantially similar criteria of section 211(f) from 2.0 to 2.7 wt% oxygen. *See* 56 FR 5352 (February 11, 1991). Ethanol is allowed in amounts up to 10% volume pursuant to a waiver granted under section 211(f)(4). *See* 44 FR 20777 (April 6, 1979).

annual research notification to EPA that includes information that describes the purpose and scope of the program. EPA believes that these are the least onerous requirements for industry which also will ensure that non-RFG gasoline is used only for a legitimate research, development, and testing purpose. Parties should be aware, however, that the exemption proposed in today's rule would not exempt gasoline used for research, development, and testing from complying with any federal conventional gasoline requirements.

Under today's proposal, any person distributing, transporting, storing, selling or dispensing aviation and racing gasoline would be required to clearly identify the gasoline as not reformulated to be exempted from the prohibitions at § 80.78(a)(1). If any of the restricted gasoline were used in a manner inconsistent with the restriction, a violation of the prohibited activity would have occurred, and any person selling, dispensing, or using the gasoline would be liable for the violation.

EPA is proposing that the racing vehicle exemption would apply only in the case of vehicles that are used exclusively as racing vehicles in races that are sanctioned by generally recognized race sanctioning bodies. In addition, the exception would apply only in the case of vehicles that do not meet the definition of ''motor vehicle'' under Clean Air Act section 216(2) and section 85.1703 [22] and that are not registered or licensed for use on or operated on public roads or highways. Examples of generally recognized race sanctioning bodies include the National Association for Stock Car Auto Racing, the Sports Car Club of America, the National Hot Rod Association, the American Motorcyclist Association, and the American Power Boat Association. The racing vehicle exemption applies to use of racing vehicles during practice and qualifying for, and competition in sanctioned races, and applies to motorcycles and boats used exclusively in sanctioned races.

The rationale for the proposed exemption for aviation gasoline used to fuel aircraft is based on safety considerations. Aviation gasoline must satisfy performance criteria that are relevant to the safe operation of aircraft, and this safety consideration outweighs the very limited potential for adverse environmental effects from conventional gasoline used in this manner. In addition, aircraft emissions normally would not be confined to the covered area where the aircraft is fueled, and could occur in significant part outside any RFG covered area. The rationale for the proposed exemption for racing gasoline is based on the special performance requirements for true race vehicles and the limited volumes of gasoline involved. The environmental impact from these exemptions is trivial or minimal, and the burden from refusing these exemptions is potentially significant. EPA believes the exemptions are warranted under these limited circumstances. *See Alabama Power Company* v. *Costle,* 636 F.2d 323, 357 (D.C. Cir.1979).

Nevertheless, EPA requests comments on whether the racing vehicle exemption would cause increased air pollution in RFG covered areas that is not trivial, and if so, whether such an environmental effect would make the racing vehicle exemption inappropriate.

6. Changing Service of Gasoline Storage Tanks (§ 80.78(a) (12) and (13))

Section 80.78(a) requires the segregation of several categories of gasoline. These categories include the following:

Reformulated gasoline may not be mixed with conventional gasoline and sold as reformulated gasoline.

Reformulated gasoline blendstock for oxygenate blending (RBOB) may not be mixed with reformulated gasoline or conventional gasoline, and RBOB's that have different oxygen requirements must be segregated from each other.

During the period January 1 through September 15 each year VOC-controlled reformulated gasoline that is produced using ethanol must be segregated from VOC-controlled reformulated gasoline that is produced using any other oxygenate, including at the retail level.

Oxygenated fuels program reformulated gasoline (OPRG) must be segregated from non-OPRG designated reformulated gasoline.

These segregation requirements preclude the mixing of *any* amount of the gasolines that must be segregated.[23] Thus, if the type of gasoline stored in a tank is changed (a change in the tank's service), and the old gasoline type and the new gasoline type must be segregated, the new gasoline may not be added unless the tank is completely free of any amount of the old gasoline type.

A gasoline storage tank's service also may be changed in a manner that results in some volume of blendstocks being mixed with reformulated or conventional gasoline. For example, a storage tank's service could be changed from blendstock (e.g., natural gasoline, raffinate, naphtha) to reformulated or conventional gasoline, which would result in mixing some volume of blendstock with the reformulated or conventional gasoline. Under §§ 80.65(c), 80.78(a)(5) and 80.101(d)(1) a party who combines *any* volume of blendstock with reformulated or conventional gasoline has produced additional volume of gasoline, which constitutes refining for which the refiner must meet all standards and requirements that apply to refiners of reformulated or conventional gasoline.

EPA recognizes that when many gasoline storage tanks are pumped as low as possible a residual volume of gasoline or blendstock remains in the tank (called the tank ''heel''), and in the terminal's manifolds and pipes that serve the tank. It is very difficult but not impossible to eliminate these residual volumes. As a result, EPA is proposing that in the limited situation related to changing the service of a gasoline storage tank, pipe, or manifold for legitimate business reasons that are unrelated to any goal of mixing dissimilar gasolines or blendstock, that parties would be allowed to mix products that normally must remain segregated. Under the proposal, parties changing the service of a gasoline storage tank, pipe or manifold would have to meet a number of conditions and constraints that are specified in the proposed regulations, including measures that would minimize the volumes of dissimilar gasolines that are mixed. In addition, when any mixture would be classified as reformulated gasoline the party would be required to sample and test the gasoline subsequent to mixing to show the mixture meets all applicable reformulated gasoline standards.

EPA also is proposing an additional option that would apply in the case of a transition from reformulated gasoline blendstock for oxygenate blending (''RBOB'') to RFG, and vice versa, at a terminal where oxygenate is blended in trucks (splash-blended). This option would be available only in a case where the oxygenate blender is unable to meet the tank transition requirements discussed above.

[22] Under § 85.1703 a vehicle is a ''motor vehicle'' if it is self propelled and capable of transporting a person or materials, unless the vehicle meets one or more of the following criteria: (1) A maximum speed of not more than 25 miles per hour; (2) the absence of features customary for street use, such as a reverse gear, a differential, and required safety features; or (3) the presence of features that render the vehicle highly unsuitable for street use, such as tracks.

[23] Reformulated gasoline may be mixed with conventional gasoline, so long as the mixture is classified in the product transfer documents as conventional gasoline and is used only outside any reformulated gasoline covered area.

This option is being proposed because in some cases the requirements for tank transition under the proposed regulatory revisions are not feasible without risk that a terminal would have to be closed during at least part of the transition period. For example, consider a terminal operator who wants to supply RFG containing MTBE during the summer VOC season, and RFG containing ethanol outside the VOC season. During the VOC season this party's storage tank would contain MTBE-based RFG, while outside the VOC season the storage tank would contain RBOB that would be splash-blended with ethanol at the terminal. As a result, the party's terminal tank would have to transition from RBOB to RFG in the spring, and from RFG to RBOB in the fall. Under the change-of-service requirements described above, in the spring the storage tank's RBOB content would have to be drawn-down to the minimum level possible through normal pumping operations before any RFG could be added to the tank. In order to meet this requirement, however, the party may have to take the storage tank out of service if the ''minimum level'' is reached before new product is available to be transferred into the tank. If the terminal has limited tankage it could be unable to supply gasoline during the time the storage tank remains out of service, which could adversely affect gasoline supplies for some parties. The same difficulty could occur when transitioning from RFG to RBOB in the fall.

As a result, EPA is proposing an option that would allow a party to receive RFG in a tank containing RBOB in the Spring prior to the beginning of the VOC season, and to receive RBOB in a tank containing RFG in the Fall subsequent to the end of the VOC season. This option is intended to minimize the likelihood a party would have to take a tank out of service in order to transition product types.

Under this option, parties could have a mixture of RFG and RBOB in a storage tank during the transition period. The option would require parties to ensure that all RFG downstream standards, including the oxygen standard, are met during the transition. In particular, parties would be required to adjust the rate of splash-blended oxygenate based on sampling and testing of the RFG/RBOB mixture and the RFG produced subsequent to splash blending. In addition, the transition must occur outside the period VOC control standards apply at the terminal—normally May 1 through September 15 each year.

B. Liability and Defenses (§ 80.79)

1. Branded Refiner Defenses for Violations at Branded Retail Outlets Directly Supplied by the Refiner (§ 80.79(b) (2) and (3))

Section 80.79(b)(2) specifies the affirmative defense elements that must be shown by a refiner for violations of the reformulated gasoline standards that are found at branded downstream facilities. As currently promulgated, this section addresses violations that are caused by a reseller, distributor, oxygenate blender, or carrier that is supplied by the refiner, or by a retailer or wholesale purchaser-consumer who is supplied by one of these parties. The regulation does not specifically address the case of a branded retailer or wholesale purchaser-consumer who is supplied directly by the refiner. In addition, the current regulation is silent regarding the defenses that would apply in the case of a violation occurring at a facility carrying the brand name of an importer who is not also a refiner.

EPA believes the defense provisions should address violations that occur at facilities that display the brand name of an importer that would parallel the defense elements that apply to branded refiners, as well as violations that are caused by retailers or wholesale purchaser-consumers that are directly supplied by a refiner or importer. EPA believes that the degree of control available to importers over their branded retail outlets is the same as the degree of control available to refiners over their branded retail outlets. This control primarily is available through contractual obligations that the refiner and importer can impose on distributors and retailers who distribute or sell gasoline under the brand name. As a result, EPA is proposing modifications to § 80.79(b)(2) that would make these changes.

2. Truck Carrier Defenses (§ 80.79(c)(3); Proposed § 80.2(ss); Modifications to §§ 80.28(g)(1)(iii); 80.30(g)(1)(i))

Section 80.79(b) specifies the defenses for violations of the prohibited activities under the reformulated gasoline program. Section 80.79(b)(1) states that a party, who is presumed liable for a violation, can avoid liability if it can show: (1) That it did not cause the violation, (2) the existence of appropriate product transfer documents for the gasoline in question, and (3) that it conducted an appropriate quality assurance sampling and testing program.

These defenses apply to all regulated parties, including carriers. In addition, under § 80.79(b)(1)(iii)(B) a carrier may rely on properly conducted quality assurance sampling and testing program conducted by another party. Carrier is defined at 40 CFR 80.2(t) as a party who stores or transports gasoline without taking title to the gasoline.

For one category of carriers—truck carriers—sampling and testing may not always be the most appropriate form of quality assurance. The purpose of a quality assurance requirement is, first and foremost, to institutionalize preventive measures as the best way to detect and avoid violations. The most typical role of truck carriers in the gasoline distribution system is to transport gasoline from a terminal to a retail outlet or wholesale consumer. Most violations caused by truck carriers result when an inappropriate type of gasoline is delivered. For example, a truck carrier would have caused a violation if gasoline designated as conventional is delivered by the carrier to a retail outlet located in a reformulated gasoline covered area. The most appropriate quality assurance for a truck carrier to implement to avoid this type of violation would be driver training on the proper types of gasoline to deliver, and management oversight of product transfer documents to ensure the proper type of gasoline has been delivered.

It is EPA's understanding that truck carriers almost always load gasoline into empty truck compartments. To the extent this is true, it would be very unlikely the carrier could be responsible if the gasoline loaded into the truck were off-spec for a regulated standard, such as benzene or oxygen content. As a result, sampling and testing of gasoline obtained from a truck compartment would not be particularly effective for detecting violations caused by the carrier. In addition, EPA has received comments from industry regarding the practicability of drawing samples from truck compartments during the loading process, or subsequent to loading. These comments conclude that the technical aspects of collecting gasoline samples from truck compartments make such sampling difficult, but not impossible. For example, the sampler normally would be required to climb onto the top of the truck trailer in order to gain access to the compartment lid, which could be difficult particularly in adverse weather conditions.

As a result, EPA is proposing to modify the defense elements under 40 CFR 80.79 as they pertain to truck carriers, to state that an oversight program by a truck carrier may consist of, instead of sampling and testing, a program to monitor compliance with the

requirements related to gasoline transport or storage, such as a program to properly train truck drivers and review product transfer documents to ensure that the proper type of gasoline is delivered. In addition, EPA is proposing to add a definition of tank truck carrier to 40 CFR 80.2.

EPA is not proposing a similar change to the reformulated gasoline defense provisions for carriers other than truck carriers, such as pipelines, barge operators, or for-hire terminals. EPA believes carriers in these other categories are better able to collect gasoline samples, and samples of the gasoline being transported or stored by these categories are collected for commercial reasons on a routine basis in the normal course of business. Nevertheless, EPA requests comments regarding whether the changes proposed for truck carriers should also be applied to other types of carriers.

EPA also is proposing similar changes to the defense provisions for truck carriers in the case of violations of the volatility requirements at 40 CFR 80.28(g)(1), and violations of the diesel sulfur requirements at 40 CFR 80.30(g)(1). The rationale for changing the volatility and diesel sulfur defense provisions for truck carriers is the same as is discussed above for reformulated gasoline.

C. Gasoline Treated as Blendstock (Proposed § 80.83; Minor Changes to § 80.74 and § 80.104)

Under 40 CFR 80.65(c) and 80.101(d) an importer must include all imported product that meets the definition of gasoline in the importer's compliance calculations for either reformulated or conventional gasoline. If this imported gasoline is then processed by blending with additional blendstock, the subsequent blending constitutes a refinery operation for which all refiner requirements must be met, including refinery standards, refiner sampling and testing, independent sampling and testing in the case of reformulated gasoline, recordkeeping, reporting, and attest engagements. Further, the reformulated gasoline or anti-dumping standards for such an operation must be met solely on the basis of the blendstocks used, and the previously imported (and previously accounted for) gasoline may not be included. This is true regardless of whether the subsequent blending-refining is conducted by the original importer of the gasoline, or by another party.

One consequence of this requirement is that importers are not able to conduct remedial blending of imported gasoline that is deficient with regard to a specification (i.e., is ''off-spec'') prior to certification as reformulated or conventional gasoline. For example, consider an importer who receives a cargo of gasoline that the importer intends to import as reformulated gasoline, but that on arrival in the United States has a benzene content of 1.35 vol%, which is in excess of the maximum benzene standard of 1.30 vol%. Because this gasoline fails to meet one of the reformulated gasoline standards it cannot be imported as reformulated, and the importers only option is to import the gasoline as conventional. Moreover, the importer cannot import the gasoline as reformulated and subsequently add blendstock to reduce the benzene content, and the gasoline cannot be imported as conventional and converted to reformulated subsequent to remedial blending. The financial consequences to an importer of downgrading a shipload of gasoline from reformulated to conventional could be significant.

This constraint on imported gasoline does not apply in the case of a refinery where gasoline is produced that is off-spec. Consider a refiner who produces a batch of reformulated or conventional gasoline and who determines that the gasoline is off-spec prior to the gasoline leaving the refinery or being fungibly mixed at the refinery. The refiner can delay designating the gasoline as a batch of RFG, reblend the batch to correct the off-spec condition, and designate the reblended gasoline as a batch for refinery compliance calculations.

EPA is proposing changes that would allow importers to treat imported conventional or reformulated gasoline as blendstocks (termed ''gasoline treated as blendstock,'' or ''GTAB'') in order to conduct remedial blending of off-spec imported gasoline. An importer's ability to classify imported gasoline as GTAB would be subject to significant conditions and constraints, however, that are included in the proposed regulations. For example, the GTAB could not be sold or transferred by the importer to another company prior to the completion of remedial blending. As a result, the company that imports the gasoline and classifies it as GTAB in its importer capacity also would be required to conduct remedial blending and report the blended gasoline in its refiner capacity. This proposed constraint is included in order to curtail any commerce in gasoline that has not been certified. EPA is concerned that in the absence of this constraint gasoline could be lost in the fungible distribution system without ever having been certified.

In addition, for standards that are based on a company's individual baseline (such as the standards for sulfur, T–90 and olefins for simple model reformulated gasoline, and all conventional gasoline standards) the company would be required each year to calculate an adjusted refinery compliance baseline for the refinery where the GTAB is used to produce gasoline. This adjusted compliance baseline would be calculated separately each calendar year averaging period when GTAB is used to produce gasoline, and would consist of the volume-weighted combination of the company's importer baseline at the GTAB volume for the year, and the refinery's individual baseline at refinery's gasoline volume exclusive of GTAB for the year. This proposed condition is intended to prevent a company with an individual refinery baseline that is less stringent than the company's importer baseline from using the GTAB option as a device to apply the less stringent refinery baseline to imported gasoline.

EPA has previously allowed use of this GTAB option in guidance included in *Reformulated Gasoline and Anti-Dumping Questions and Answers* (February 6, 1995). EPA experience since this guidance was issued has been that the GTAB option has been effective in providing importers appropriate flexibility to correct off-spec imported gasoline, and that the conditions and limitations have been effective in preventing compliance difficulties.

D. Treatment of Interface and Transmix (Proposed § 80.84)

When refined petroleum products are transported by pipeline the products normally are pumped sequentially, but as a continuous flow, through the pipeline. Thus, for example, the products in a pipeline may consist of the following in sequence: Premium conventional gasoline, regular conventional gasoline, premium reformulated gasoline, regular reformulated gasoline, diesel fuel, number 2 heating oil, jet fuel, etc. Where there is no mechanical separation of the product types in the pipeline, and normally there is none, some mixing of adjacent product types occurs. While the magnitude of this mixing typically is small, there nevertheless is some amount of mixing.

The petroleum product in a pipeline between two surrounding batches of petroleum product that consists of a mixture of the two surrounding batches is called ''interface.'' Where interface product consists of a mixture of gasoline and distillate (e.g., diesel fuel, heating

oil, or jet fuel), the interface is called ''transmix.''

It is EPA's understanding that historic pipeline industry practice regarding interface has been to blend the interface mixture into the two adjoining products that created the interface. Thus, for example, half of the interface between premium and regular gasoline is blended into the premium gasoline and half into the regular gasoline—called a ''fifty percent cut'' or a ''mid-point cut.'' EPA further understands that certain product types are not mixed with any other product type, such as jet fuel. As a result, for example, where there is an interface between jet fuel and heating oil, none of the interface is blended into the jet fuel, and all of the interface is blended into the heating oil—called a ''clean cut.''

Lastly, EPA understands that certain types of interface mixtures cannot easily be blended into either of the adjoining products. This would be the case where interface consists of a mixture of gasoline and distillate, commonly called ''transmix.'' EPA's understanding is that the current pipeline industry practice, when possible, is to transmit transmix via pipeline or barge to a facility designed to separate the gasoline and distillate portions—a ''transmix processing'' facility. Where transmix cannot be transported to a transmix processing facility the transmix is blended into gasoline in very small amounts, typically 0.25% to 0.5% of the gasoline by volume.

Under 40 CFR 80.78(a) parties are required to segregate certain categories of gasoline. For example, 40 CFR 80.78(a)(10) states that ''(n)o person may combine any reformulated gasoline with any conventional gasoline and sell the resulting mixture as reformulated gasoline.'' Thus, in order to sell gasoline as reformulated the gasoline cannot have been mixed with any conventional gasoline.

Under 40 CFR 80.2 (h) and (i), 80.65(a), and 80.101 the reformulated gasoline and antidumping requirements apply at any facility where gasoline is produced. Gasoline most commonly is produced at refineries where crude oil is processed into blending components, that are then combined to create gasoline. Gasoline also is produced at any other location where blendstocks are combined to create gasoline, or where blendstocks are added to gasoline to create additional gasoline volume. Moreover, EPA believes that gasoline is produced when transmix is separated into gasoline and distillate portions.

EPA now is proposing regulations that would clarify the manner in which interface product, including transmix, would be treated under the reformulated gasoline program.

The proposed regulations contain requirements for transmix processors (parties who separate transmix into diesel and gasoline), and transmix blenders (parties who blend transmix into gasoline without first separating it into diesel and gasoline). Further, the requirements for transmix processors and blenders would be different depending upon whether the gasoline produced or blended is reformulated or conventional gasoline.

Transmix processors who classify the gasoline produced as conventional would be required to exclude this transmix-based product from anti-dumping compliance calculations. If the transmix processor used blendstocks other than the transmix-based product, however, the processor would be classified as a refiner and would have to include the blendstocks (but not the transmix-based product) in anti-dumping compliance calculations for the refinery. This approach is being proposed because the gasoline portion of the transmix would have been included in the compliance calculations of the refinery that produced the gasoline, and for the transmix processor also to include the gasoline would result in double-counting. Any blendstock used in the operation normally would not previously have been accounted for, however, and therefore would have to be included in the transmix processor's accounting.

Transmix processors who classify the gasoline produced as reformulated, in contrast, would be required to *include* the transmix-based product, as well as any other blendstocks used, in the reformulated gasoline compliance calculations for the refinery. This difference in treatment for reformulated gasoline produced using transmix would be appropriate because it is possible the gasoline produced would not meet all reformulated gasoline standards. This possibility is avoided if the transmix processor were required to meet all reformulated gasoline standards.

Parties would be allowed to blend transmix into conventional gasoline where certain conditions are met: (1) The transmix must result from normal pipeline operations; and (2) either there must be no means of transporting the transmix to a transmix processor via pipeline or water, or there was a historical practice of blending transmix at the facility before 1995. In addition, the rate of transmix blending would be limited to the greater of 0.25% by volume, or the demonstrated blending rate in 1994.

Parties would be allowed to blend transmix into reformulated gasoline under conditions that are more restrictive than are proposed for conventional gasoline. The transmix would be required to result from normal pipeline operations, there could be no means of transporting the transmix to a transmix processor via pipeline or water, and the party must be unable to blend the transmix into conventional gasoline. In addition, the rate of transmix blending would be limited to a maximum of 0.25% by volume. Lastly, the party would be required to carry out a program of sampling and testing the reformulated gasoline subsequent to transmix blending to ensure the downstream standards are met, at frequencies that are included in the proposed regulations.

VI. Anti-Dumping Requirements

A. Individual Baseline Determination (§ 80.91)

1. Negligible Quantities (§§ 80.91(d)(3) and 80.91(d)(5)(iii))

The negligible quantities provision in § 80.91(d)(3) was written to promote simplification of baseline determination and to excuse testing in certain limited circumstances. Under this provision, if a refiner can show that a fuel component exists only in negligible quantities in a blendstock stream, testing that stream for the component in question is not required, and a value of zero is assigned to that component. The fuel components to which this provision applies are aromatics, olefins, benzene, sulfur, and oxygen content. Negligible quantities are defined as levels which fall below the minimum levels given in § 80.91(d)(3). This provision is not a requirement, but rather is an option designed to simplify baseline development for those refiners who can and choose to take advantage of it.

Although the negligible quantities provision was designed to simplify baseline determinations, some refiners questioned the use of zero values for components which existed in negligible quantities. Instead, they proposed the use of the minimum values given in the provision. Doing so would negate the original intention of the provision to simplify baseline determinations, but it would also recognize that the minimum values represent values below which the components cannot be measured accurately. Although the use of the minimum values would result in slightly dirtier (more lenient) baselines than would result with the use of zero values, EPA is proposing to revise § 80.91(d)(3) to allow the use of the minimum values in lieu of zero values

at the refiner's discretion. In promulgating the negligible quantities provision, EPA determined that assuming a zero value relative to the negligible threshold values would not significantly affect emissions. The same determination applies with regard to allowing the option to use the minimum values in lieu of zero values.

The negligible quantities provision applies only to Method 3 data collection for two reasons. First, the provision applies only to blendstocks, not finished gasoline. Since only Method 2 and 3 data are blendstock data, the provision cannot apply to Method 1 data. Second, the primary action of the negligible quantities provision is to excuse testing in certain cases. The only time a refiner must choose whether or not to do additional testing is when considering the sufficiency of its Method 3 data.

The negligible quantities provision reduces the burden placed on refiners collecting Method 3 data to satisfy the minimum data requirements. If a refiner can ''show'' that a fuel component exists only in negligible quantities, testing for the blendstock stream in question is not required. Instead, a refiner can assume that the level of a component is zero or, under today's proposal, the minimum value given in § 80.91(d)(3). Clearly, the showing indicates engineering judgment or past experience. A showing cannot refer to actual test data for the blendstock stream in question, because the very purpose of the negligible quantities provision is to excuse testing. Thus if a refiner has data on the stream in question, that data must be used in the determination of the baseline per § 80.91(d)(1)(i)(B).

A refiner could too easily generate a fictitiously more lenient baseline if EPA allowed test data to be used as a showing of negligible quantities. Such a refiner could test a given blendstock stream for components that are found to be essentially absent, and then lay claim to the minimum values given in the negligible quantities provision. The EPA has chosen to interpret the negligible quantities provision in a manner that is consistent with the original intent, provides additional flexibility, and yet maintains the primary goal of developing baselines which accurately represent a refiner's actual 1990 production. As a result, EPA is proposing to revise § 80.91(d)(3) to clarify that a showing under this section refers to engineering judgment or past experience and not actual test data.

One caveat on the use of actual data in the baseline determination should be clarified. If a refiner measures a blendstock stream and discovers that the measured component level of that stream is below the applicable range for the test method used, the low end of the applicable range may be substituted for the actual measured value in the baseline determination. For example, if a sulfur test method has an applicable range of .20–200 ppm and a blendstock stream is discovered to have a sulfur content of 11 ppm with that test method, the stream can be assumed to contain 20 ppm for the purposes of determining the baseline. Paragraph (d)(5)(iii) has been added to § 80.91 to codify this allowance.

2. Closely Integrated Facilities (§ 80.91(e)(1))

Section 80.91(e)(1)(i) of the reformulated gasoline regulation provides for determination of a single set of baseline fuel parameters, upon petition and approval, for two or more facilities that are geographically proximate to each other, yet not within a single refinery gate, and whose 1990 operations were significantly interconnected in 1990. While the existing provision permits EPA to set a single baseline that would then apply for each of several refineries, it does not permit these ''closely integrated facilities'' to be grouped together for all compliance purposes (including registration, recordkeeping and reporting). Rather, the provision allows a single baseline to be set for each facility it represents, and § 80.41(h) and 80.101(h) require that each refinery comply with this baseline separately, except where authorized to group refineries for compliance purposes.[24] Similarly, § 80.91(e)(1)(ii) permits EPA to set a single baseline for a blending facility which received 75 percent of its 1990 blendstock from a single refinery, or from one or more refineries owned by the same refiner and that are part of an aggregate baseline.

EPA is proposing to amend the RFG and anti-dumping regulations by adding § 80.91(e)(1)(iii), which would require facilities that have been determined to be ''closely integrated'' and granted a single baseline by EPA to demonstrate compliance with all RFG and anti-dumping requirements as if they were one facility. Furthermore, the ''closely integrated'' facilities would have a single registration and would file a single set of compliance reports. EPA believes that this change will reduce costs (including paperwork costs) to industry without any significant negative environmental impact.

[24] Combined reports may be submitted for compliance with RFG baseline-related parameters (sulfur, olefin, and T90) and anti-dumping. Other reports must be filed by each facility.

3. Extending the Valid Range for Sulfur in Conventional Gasoline (§ 80.91(f)(2)(ii))

Under the anti-dumping provisions of the final rule, refiners use their individual 1990 baselines to determine compliance with the regulations under both the simple and complex models. To comply with the anti-dumping regulations, a refiner using the complex model is subject to valid range limits for oxygen content, sulfur content, RVP, E200, E300, aromatics content, olefins content, and benzene content. All of these fuel parameters are represented in the complex model equations applicable to conventional gasoline.

Section 80.91(f)(2)(ii) allows a refiner to extend the conventional gasoline valid range for the complex model if the benzene, aromatics, or olefins values for its individual 1990 baseline fuel falls outside of the valid range specified in § 80.45(f)(1)(ii). This provision was clarified in a Direct Final Rulemaking published on July 20, 1994 (59 FR 36944). At the time of this Direct Final Rulemaking, the Agency had no reason to believe that provisions for the extension of the valid range for fuel parameters other than benzene, aromatics, and olefins on either the low or high ends were necessary. Peripheral limitations such as ASTM specifications and the volatility rule were expected to eliminate the need for valid range extensions in other cases. Since publication of the Direct Final Rule, the Agency has determined that, despite such peripheral limitations, some individual refiner baselines contained sulfur levels beyond the 1000 ppm valid range limit. According to the current regulatory requirements, such baseline fuels cannot be evaluated with the complex model. The Agency has determined that the provision for extension of the valid range limit, previously applicable only to benzene, aromatics, and olefins, should also be applicable to sulfur.

By definition, the valid range limit defines that range of values for a given fuel parameter within which the complex model is considered accurate. Extensions of the valid range limits, therefore, cannot be boundless. If the valid range limit for sulfur is extended, the refiner in question must still be limited by a valid range to eliminate the possibility that the complex model will be used for sulfur values that are very high, which might compromise the primary objective of the anti-dumping program.

The Agency has determined that the best approach to limiting the extension of the valid range for fuel benzene,

aromatics, olefins, or sulfur content is to allow target fuels to have values at least up to the baseline level. Since the baseline fuel is an ''average'' fuel of sorts, the Agency has also determined that refiners should be given some flexibility beyond the baseline value. For sulfur this flexibility will be fixed at a value of 50 ppm. Thus the extended valid range limit for sulfur would be equal to the individual refiner's baseline fuel value for sulfur, plus 50 ppm.

The Agency continues to believe that the valid range limits specified in § 80.45(f)(1)(ii) delineate the range of fuel parameter values beyond which the accuracy of the complex model is questionable. Thus the Agency has determined that any extension of the specified valid ranges for conventional gasoline should incorporate flat-line extrapolation. Under flat-line extrapolation, the complex model provides no emissions benefit or detriment when raising the value of sulfur above 1000 ppm. This flat-line extrapolation will apply to both the baseline fuel and any target fuels evaluated with the complex model under the anti-dumping regulations.

B. Anti-Dumping Standards (§ 80.101)

1. Application of Compliance Baselines Under the Complex Model (§ 80.101(f)(1) and (2))

Clean Air Act section 211(k)(8), the ''anti-dumping'' section, requires EPA to promulgate regulations that maintain the quality of gasoline produced by each refinery, based on each refinery's 1990 gasoline quality, or ''baseline.'' The intent of this section is to prevent refiners from shifting ''dirty'' blendstocks from RFG production to conventional gasoline production. This section thereby prevents the degradation in overall quality of the nation's conventional gasoline as compared to gasoline quality in 1990.

The anti-dumping regulations, at Subpart E,implement this Clean Air Act section through conventional gasoline standards that are set in relation to each refinery's 1990 baseline gasoline quality.[25] *See*, § 80.101. However, in the case of a refinery that produces a volume of gasoline during an averaging period that exceeds the refinery's 1990, or baseline, volume, § 80.101 requires that the excess volume meet anti-dumping standards that are set in relation to a baseline that reflects average U.S. gasoline quality in 1990, called the ''statutory'' baseline. Thus, under § 80.101(f) a refiner who operates a refinery with such excess gasoline volume during an averaging period is required to calculate a ''compliance baseline'' that adjusts the 1990 baseline to reflect the excess volume over 1990 levels.

The rationale for using compliance baselines is the same for both simple and complex model standards. *See* discussion at 57 FR 13488 (April 16, 1992). However, under § 80.101(b) compliance baselines apply only to simple model standards. EPA believes the absence of a requirement to use compliance baselines for complex model standards was an error of omission when § 80.101 was promulgated, and as a result is now proposing to require use of compliance baselines under the complex model.

EPA is not proposing to require use of compliance baselines under the optional complex model, even though the rationale for their use would apply. The optional complex model may be used only through 1997, and today's proposed changes will not become final until well into 1997. As a result, EPA believes it is not practical to apply compliance baselines to the optional complex model at this time.

Section 80.101(f) provides the methodology for calculating a refinery's compliance baseline. Under this provision, the calculation is based on a refinery's production volume of conventional gasoline, reformulated gasoline, RBOB and California gasoline. However, oxygenates that are blended downstream of a refinery and subsequently included in the refinery's compliance calculations for conventional gasoline and oxygenates added to RBOB are not currently included in the calculation. EPA now believes that such oxygenates should be included in a refinery's total annual production as it compares to its 1990 volume for the purpose of determining the refinery's compliance baseline . EPA believes this change is appropriate in order to keep the various provisions of § 80.101 consistent.

EPA also is proposing to change the organization of § 80.101(f), in order to make the requirements of this subsection clearer. This reorganization would not, in itself, change the substantive requirements of the subsection.

2. Elimination of the Baseline Adjustment by Refiners Who Also Are Importers (§ 80.101(f)(3))

Under the anti-dumping program all domestic refineries have individual baselines, while almost all imported gasoline is subject to the statutory baseline. However, § 80.101(f)(3) requires an importer who also operates one or more refineries to use a baseline for imported gasoline that is the average of the individual refinery baselines. This requirement is intended to address a particular ''gaming'' concern: that a refiner who operates a refinery with a stringent refinery baseline (a baseline cleaner than the statutory baseline), would produce conventional gasoline that would be exported and thereby would be excluded from the refinery's compliance calculations, but that then would be imported under the less stringent statutory baseline.

EPA now believes the requirement at § 80.101(f)(3) may be unnecessary. There may be little risk of the form of gaming described above, in part due to the cost of transporting large volumes of gasoline out of the United States in order to be exported, and then transporting the same gasoline back into the United States in order to be imported. In addition, the current requirement provides a competitive advantage to refiner/importers who operate refineries with baselines that are dirtier than the statutory baseline. Further, EPA now believes the gaming concern could be appropriately addressed by simply prohibiting parties from exporting and then importing gasoline for the purpose of obtaining a more favorable baseline for the gasoline.

As a result, EPA is proposing to eliminate the requirement for refiner/importers to calculate a special baseline for imported gasoline, and is proposing to substitute a requirement, as proposed § 80.101(j), that would prohibit the form of gaming described above.

3. Compliance Calculations for Blendstocks (§ 80.101(g)(3))

Under § 80.101(d)(4), and subject to certain conditions, refiners are allowed to include in a refinery's anti-dumping compliance calculations oxygenate that is added to the gasoline produced at a refinery where that oxygenate is blended at a facility downstream from the refinery.[26] In the case of the simple model standards, which are based only on volume-weighted parameter averages, the mechanism for including an oxygenate batch in a refinery's compliance calculations is straightforward—the oxygenate batch is included based on its volume and

[25] The discussion in this preamble section, VI.B.1, applies to importers and the gasoline imported by importers in the same way that it applies to refiners and the gasoline produced at refineries, but the text refers only to refiners and refineries for purposes of drafting economy.

[26] These conditions are aimed at ensuring that the oxygenate is blended with gasoline produced at the specific refinery in whose compliance calculations the oxygenate is included.

measured levels for sulfur, olefins, aromatics, etc.

However, in the case of the complex model's emissions performance standards the mechanism for including oxygenates in compliance calculations is less clear, because the emissions performance of an oxygenate batch cannot be directly calculated using the complex model. This difficulty results from the valid range limits of the complex model—the complex model is valid only for fuels with parameter values that are all within the valid range limits, and most oxygenates have at least some parameter values that are outside these limits. For example, pure ethanol has an RVP of 2.5 psi, which is less than the 6.4 psi minimum valid range limit for RVP.

Section 80.101(g)(3) includes a method for calculating the emissions performance of blendstocks, including oxygenates, based on the difference in emissions performance between a baseline gasoline, and the emissions performance of a hypothetical blend of baseline gasoline and an appropriate amount of the applicable blendstock. However, the § 80.101(g)(3) method is of limited use in that it only applies for refineries that only produce gasoline by adding blendstocks to finished gasoline at a single facility. It has been brought to EPA's attention that in the case of a refinery that also includes gasoline batches in its compliance calculations this method is not appropriate.[27] As a result, EPA is proposing to modify the § 80.101(g)(3) method in order that blendstock batches may be included in compliance calculations along with gasoline batches.[28]

Under the proposal, a refiner would first determine the volume and properties of each batch of blendstock used. This determination would require the refiner to sample and test each batch of blendstock received. However, in the case of oxygenates and butane the refiner could use these blendstocks' normal properties instead of sampling and testing each batch received, provided that the refiner completes proposed procedures, discussed in Preamble sections IV.F.5 and VI.B.8, that would confirm the purity of these blendstocks.

The refiner then would determine the blending rate of the blendstock. Where a blendstock batch is blended into multiple batches of gasoline, the refiner could use the cumulative blending rate. For example, consider a refiner who blends reformate into gasoline at a terminal.[29] If this refiner receives a batch of 25,000 gallons of reformate, and blends this blendstock with 300,000 gallons of gasoline, the blending rate would be 0.077 (25,000÷325,000=0.077). This would be true whether the 25,000 gallons of reformate were blended with a single 300,000 gallon gasoline batch, or with six 50,000 gallon gasoline batches regardless of the individual blending rates for the six batches.

However, EPA is proposing that a blendstock batch that is used to produce some gasoline that is classified as ''summer'' and other gasoline that is classified as ''winter'' would have to be treated as two separate batches, based on the volumes of blendstock used to produce gasoline in these two ''seasonal'' categories. In addition, and subject to this seasonal constraint, EPA is proposing that a refiner who blends oxygenate or butane at a downstream terminal would be allowed to treat as a single batch the volume of blendstock received during a period of up to one month.

Next, the refiner would calculate the properties of a hypothetical gasoline, that would reflect the properties that would result if gasoline having the refinery's ''summer'' or ''winter'' baseline values, as appropriate, were blended with the blendstock at the blending rate previously determined. These properties would be the volume weighted average for each property. Although certain properties such as distillation and RVP do not blend linearly, EPA is proposing this approach as a reasonable approximation since there is no other method to more accurately attribute the emissions effect of such downstream blending operations. Consider again the example of the refiner blending 25,000 gallons of reformate into 300,000 of gasoline at a terminal. Assume the terminal-refinery is subject to the statutory baseline, that the reformate has a benzene content of 2.10 vol%, and that all of the gasoline produced using the reformate is classified as ''summer.'' Under §§ 80.91(b)(5)(i) and 80.45(b)(2) the ''summer'' benzene statutory baseline is 1.53 vol%. The benzene content for the hypothetical gasoline blend (B_h) would be calculated as 1.57 vol% using the following equation:

$$B_h = \frac{(1.53 \times 300{,}000) + (2.10 \times 25{,}000)}{300{,}000 + 25{,}000}$$

In the case of the calculated values for sulfur and oxygen, the specific gravities of the blendstock and gasoline would be included in the calculation. The measured specific gravity of the blendstock would be used. However, EPA is proposing that refiners would be required to use a specific gravity value of 0.749 for ''summer'' gasoline and 0.738 for ''winter'' gasoline, because a refiner using the proposed procedure normally would not have measured the gasoline's specific gravity.

The emissions performance of the hypothetical gasoline then would be determined using the complex model. Under the complex model, these are the exhaust toxics and NO_X emissions performance, in mg/mi. Like for other compliance calculations involving the complex model, the ''summer'' complex model would be used for gasoline blends that are intended for use in an area subject to an EPA summertime RVP standard at a time these standards are in effect, and that has an RVP value that meets this standard. The emissions performance for all other gasoline blends would be determined using the ''winter'' complex model.

In addition, the refiner would determine the emissions performance of a gasoline having the refinery's baseline values, using the same complex model version—''summer'' or ''winter''—that was used to calculate the emissions performance of the hypothetical gasoline.

Finally, EPA is proposing an equation that would be used to calculate the emissions performance of the blendstock portion of the hypothetical gasoline blend, called the ''equivalent emissions performance.'' The equivalent emissions performance values for the blendstock, together with the blendstock

[27] Under the § 80.101(g)(3) method a refiner calculates, for each blendstock batch, the amount the emissions performance that the batch differs from the refinery's baseline; the net difference for all blendstock batches used during an averaging period must be zero. In effect, the blendstock batches constitute a separate averaging ''pool'' for compliance calculation purposes, that is not merged with the compliance calculations for a refinery's gasoline batches. As a result, for example, the § 80.101(g)(3) method would not allow a refiner to use the relatively ''clean'' emissions performance of ethanol blended with a refinery's gasoline at a downstream terminal, to help meet standards by gasoline produced at the refinery.

[28] The proposed compliance calculation method involving previously certified gasoline (PCG), discussed in Preamble Section IV.C.6., also would be available to a conventional gasoline refiner. Under the PCG proposal a refinery's compliance would be based only on the volume and properties of blendstocks that are blended by excluding the volume and properties of PCG. However, the PCG method requires the refiner to sample and test each batch of gasoline received, and each batch of gasoline produced, which may not be feasible where oxygenate is blended at a downstream terminal.

[29] The terminal in this situation would be classified as a ''refinery'' because gasoline volume is being produced through the blending of non-oxygenate blendstocks, and the refiner would be required to meet the anti-dumping standards based on the volume and properties of the blendstock used at this refinery. The gasoline used in the blending operation could not be included in compliance calculations because it would have been previously certified.

volume, would be included in the refinery's compliance calculations as a separate batch.

Consider again the example of the terminal-refiner using reformate, and assume the hypothetical gasoline blend, when evaluated under the summer complex model, had a NO_X emissions performance of 685.6 mg/mi. Using the summer baseline emissions performance for NO_X under § 80.45(b)(3) (660.0 mg/mi) and the blendstock volume fraction previously calculated (0.077), the blendstock's NO_X equivalent emissions performance (EEP) would be calculated to be 353.13 mg/mi using the following equation:

$$EEP = \frac{660.0 - (685.6 * (1 - 0.077))}{0.077}$$

The refiner in this example would include in the refinery's annual NO_X emissions performance compliance calculations a batch with a volume of 25,000 gallons (the blendstock volume), and a NO_X emissions performance of 353.13 mg/mi.

EPA is proposing that these changes to the blendstock calculation method would be effective beginning January 1, 1998. As a result, any refiner who has elected to use the early complex model and who combines blendstock with previously certified gasoline during the 1997 averaging period would use the current calculation method in § 80.101(g)(3). EPA believes this proposed timing is appropriate because it avoids the confusion and difficulties of reporting that would result if refiners used two different calculation methods during the same averaging period.

EPA also is proposing to change the organization of § 80.101(g), in order to make the requirements of this subsection clearer. This reorganization would not, in itself, change the substantive requirements of the subsection.

4. Classifying Gasoline as Summer or Winter Gasoline

(Delete §§ 80.101(g) (5) and (6); Proposed § 80.101(g)(3)(ii))

Refiners and importers who are subject to complex model standards are required to determine the emissions performance of each batch of gasoline using the ''summer'' or ''winter'' version of the complex model, as appropriate. Sections 80.101(g) (5) and (6) currently provide instructions for classifying gasoline as either summer or winter, based on the RVP of the gasoline. Gasoline with an RVP value that is less than the value required under the volatility regulations at § 80.27 must be classified as summer gasoline, and all other gasoline must be classified as winter gasoline. No other criteria is included in the regulations.

Separate summer and winter complex models are included in the regulations in order to address the seasonal factors that influence emission levels.[30] As a result, the summer complex model is appropriate for determining the emissions only for gasoline used during the summer, which generally corresponds to the high ozone season, and the winter complex model is appropriate for determining the emissions only for gasoline used outside the summer. In consequence, EPA believes the criteria for classifying gasoline as summer versus winter should include the season when the gasoline is used, and not only the RVP of the gasoline.

Another issue regarding the appropriate seasonal complex model involves gasoline used outside the continental United States in areas such as Alaska, Hawaii, Puerto Rico and the Virgin Islands. Gasoline is classified as summer gasoline for baseline purposes, under § 80.91(d)(1)(i)(A)(*1*), only when the gasoline is ''produced and intended for sale to satisfy federal summer volatility standards.'' The federal summer volatility standards, in § 80.27, apply only to gasoline used in the continental United States. As a result, the emissions of all gasoline used outside the continental United States were calculated using the winter complex model for baseline purposes.

The anti-dumping standards are based on a comparison of the emissions of a refinery's gasoline during an averaging period with the refinery's baseline emissions. This comparison is valid only if the same criteria are used in the baseline and in the averaging period for classifying gasoline as summer or winter.

As a result, under proposed § 80.101(g)(3)(ii), gasoline would be classified as summer gasoline only where the gasoline both meets a federal RVP standard under § 80.27, and is intended for use in an area subject to the RVP standards during the period these standards are in effect. Thus, all gasoline produced for use in the continental United States between May 1 and September 15 each year would be classified as summer gasoline. In addition, any low RVP gasoline produced before May that is intended to ''blend-down'' the RVP of gasoline storage tanks in advance of the RVP season also would be classified as summer gasoline. Lastly, all gasoline produced for use outside the continental United States, where the federal RVP standards do not apply, would be classified as winter gasoline year-round.

5. Adjustment and Aggregation of Refineries That Exchange Ownership and That Are Not Wholly Owned (§ 80.101(h))

Section 80.101(h) provides that refiners who operate more than one refinery may aggregate their refineries for purposes of achieving compliance with the anti-dumping standards. However, the regulations include no instructions regarding whether a refiner may aggregate a refinery that is operated by more than one refiner. EPA is concerned that enforcement difficulties could result if refiners were allowed aggregation of refineries with joint owners. Consider for example, hypothetical refinery 1, that is jointly owned by refiners A and B and hypothetical refinery 2 that is jointly owned by refiners A and C. In this example, refineries 1 and 2 are aggregated and these aggregated refineries fail to meet the anti-dumping standards. In this situation both refiners B and C could argue that the violation occurred as a result of actions that occurred at a refinery with which they were not involved and consequently should not be liable. In consequence, it would be difficult to establish the liable party in such a situation.

As a result, EPA believes that aggregation should be available only for refineries with a single person who meets the definition of ''refiner'' for the refinery, or where the persons who meet the definition of refiner for multiple refineries are identical, and is proposing to require this aggregation condition.

Section 80.91(f)(4) provides instructions regarding the adjustment of aggregate baselines where a refinery that is part of an aggregation is shut down or is transferred to another owner. This section provides that where an aggregated refinery is shut down or transferred the baseline is recalculated to reflect the loss of the shut down or transferred refinery, and where a refinery is acquired the acquiring refiner must make an aggregation election regarding the acquired refinery. However, there are no parallel instructions in § 80.101(h) regarding compliance for an aggregated refinery that is shut down or transferred.

EPA believes the baseline requirements and the compliance requirements regarding aggregated refineries should be consistent.

[30] The principal difference between the summer and the winter complex models is that the summer model includes evaporative emissions, while the winter complex model does not. Evaporative emissions largely are a function of ambient temperatures.

Therefore, EPA is proposing to adopt for compliance purposes the instructions in § 80.91(f)(4). In addition, EPA is proposing to require that when a refinery is transferred during the course of an averaging period that each refiner would be responsible for meeting applicable standards during the period it was the refiner for the refinery. EPA also is proposing that the aggregation election for an acquired refinery would have to be made effective at the beginning of the subsequent averaging period. This timing proposal would minimize the number of refineries that could be part of different aggregations during a single averaging period, and the confusion and enforcement difficulties that result from such a situation.

6. Elimination of Composite Sampling and the Inclusion of Sample Retention Requirements (Current § 80.101(i)(2); Proposed § 80.101(i)(1)(iii))

Section 80.101(i), in general, requires that refiners and importers sample and test every batch of conventional gasoline, and under certain circumstances blendstocks used to produce conventional gasoline, for the purpose of demonstrating compliance with the requirements of this subpart. For the purpose of meeting this requirement, refiners and importers currently may combine samples from more than one batch of gasoline for testing purposes in accordance with the specified protocols under § 80.101(i)(2). It was EPA's initial belief that since this procedure was permitted for the development of baseline data, it would be appropriate for demonstrating compliance.

EPA now is concerned that composite sampling may not provide the accurate results necessary for measuring compliance by refiners and importers under the anti-dumping program, and may also pose significant risk with regard to the enforcement and assurance of compliance. EPA's primary concern is that the accuracy of composite sampling relies on accurate volumetric proportioning and blending of individual batch samples. Since these normally will be relatively small volumes of gasoline, there is a substantial potential for inaccurate proportioning and blending. For example, one refiner commented to the Agency that the current compositing option has the potential for causing inconsistent lab results. EPA now believes this is a difficult process to complete accurately. Equally significant is EPA's concern that the volume fractions can readily be altered, either intentionally or inadvertently, with little or no backup means for EPA to detect or verify such alterations. Such alterations would render the reported analyses invalid thus providing little or no assurance of compliance with this subpart by regulated parties.

Further, compositing of samples has the potential to expand the effect of any errors in formulating or testing a composite sample. Compliance with the conventional gasoline standards is calculated using sample test results weighted for the volume of gasoline represented by the sample. As a result, any incorrect test result for a composite sample would apply to the entire volume of gasoline represented by the composite sample, which could be all gasoline produced during a month, and not just to the volume of a single gasoline batch.

For the above reasons, EPA believes that composite sampling and analysis as provided under § 80.101(i)(2) is inappropriate. Therefore, EPA is proposing to eliminate the sample compositing option under § 80.101(i)(2). EPA's objective in this proposal is to provide certainty of the accuracy of reports of conventional gasoline quality that generally are comparable to the certainty that results from per batch testing. EPA seeks comments on the cost of this proposal and other options that would achieve this objective at a reduced burden to regulated parties.

One alternative option would be to require every-batch testing for certain parameters, and to allow parties to use composite samples for other parameters. In order to evaluate this alternative option, EPA seeks comments on which parameters parties normally test on an every batch basis, whether for operational or commercial purposes. In addition, EPA requests comment on any cost savings that would result from this option as compared to testing all parameters for every batch.

Another alternative option would allow compositing, but with a cap on the volume of gasoline that could be included in any composite sample. The objective of this alternative option would be to mitigate the cost of sampling and testing for refiners, typically small refiners, who produce a large number of very small batches. As a result, the volume cap could be set at the typical batch size for a typical refinery. EPA requests comment on the magnitude of the volume cap that would be appropriate under this alternative option, and on the cost savings that would result from this option as compared to every-batch testing.

In addition, EPA is concerned that since there is no independent verification of the accuracy of test results of individual batches of gasoline, EPA has a very limited ability to monitor compliance with the conventional gasoline requirements. Although the independent sampling and testing requirement of the reformulated gasoline program is critical to ensuring compliance with the stringent RFG standards, the same requirement may be excessive for the anti-dumping program. However, EPA believes some limited ability to verify the accuracy of sample analysis results is appropriate as a means of encouraging quality control and monitoring compliance as a deterrent to cheating.

Therefore, EPA is proposing a new requirement under § 80.101(i)(1)(iii) that refiners and importers retain samples from each batch of conventional gasoline produced or imported for a period of 30 days and provide such samples to EPA upon request. EPA would plan to periodically request samples from individual refiners, either on a random basis or when it has reason to be suspect, in order to perform its own gasoline quality analyses. This requirement would apply to conventional gasoline, gasoline blendstocks that become conventional gasoline solely upon the addition of oxygenate and blendstocks required for compliance calculations purposes under § 80.102(e)(2). The sample retention requirement would not apply to oxygenates blended downstream of the refinery or import facility. The Agency believes that refiners and importers often retain samples for some period for their own internal quality control purposes and, as a result, this requirement will not create a significantly increased burden for the industry. EPA seeks comments on the cost or other impacts of this proposal. In addition, EPA seeks comment on the cost savings that would result if the required retention period were reduced to 15 days.

EPA recognizes that some refiners blend conventional gasoline ''in-line'' and ship directly to the pipeline without transferring completed batches to a storage tank. In this case, sampling in-line using a ''compositing'' methodology as the batch is being produced is the only practical means to obtain a representative sample from such batches. Today's proposal to eliminate composite sampling of multiple batches would allow continued use of in-line blend compositing within a batch. Further, EPA does not intend to establish any formal means of petitioning for conventional gasoline in-line blending as currently exists for reformulated gasoline blending. Therefore, EPA believes that refiners

that blend in-line, without transferring the final blend to a storage tank, should continue to composite in-line provided they do so in accordance with the industry established automatic sampling procedures established by ASTM D 4177–95, ''Standard Practice for Automatic Sampling of Petroleum and Petroleum Products''. The manual compositing of samples from an in-line blender creates the same quality and compliance concerns discussed earlier. Further, EPA believes the automatic sampling requirements proposed under § 80.8(b), and as referenced in proposed § 80.47 and revised § 80.101, already establish the procedures required for refiners in order to continue in-line blending of conventional gasoline.

One of the issues surrounding the elimination of compositing as a method for compliance verification by conventional gasoline producers is the cost of the additional testing. EPA recognizes that the cost of meeting the additional testing requirements by using an outside laboratory may pose a significant expense for some refineries and, therefore, it would be preferable if refiners could meet their testing requirements internally. Based on the results of recent refinery compliance monitoring since the beginning of the RFG/Anti-dumping program, EPA believes that most refiners have equipment required to perform the regulatory tests at their refinery except for sulfur under the current regulatory test method ASTM D 2622. In an effort to minimize the potential cost of the additional testing required through the proposed elimination of sample compositing, EPA examined cost effective alternative test methods to ASTM D 2622 available for determining sulfur content in conventional gasoline. EPA has observed data that suggests that ASTM D 5453–93 (''Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence''), when properly calibrated and correlated to ASTM D 2622, can be used on gasoline samples containing sulfur in the range typical of commercial gasoline. EPA is, therefore, proposing that ASTM D 5453–93 be allowed as an alternative test method for determining sulfur content in conventional gasoline only until September 1, 1998. This date is being proposed based on EPA's anticipated completion of a performance based test method rulemaking as discussed at 61 FR 58305, November 13, 1996. EPA requests comment on the cost of this equipment and whether this method provides sulfur test results comparable to the current regulatory method.

7. Imports of Gasoline From Canada by Truck (§ 80.101(i)(3))

Under 40 CFR 80.65 (b) and (c), and 80.101(d) and (i), the requirements that apply to imported gasoline apply to each batch of imported gasoline regardless of the mode of transportation. The requirements for each batch include sampling and testing, independent sampling and testing for reformulated gasoline, record keeping, reporting and attest engagements. Thus, an importer who imports gasoline into the United States by truck is required to meet these requirements, including sampling and testing, for each gasoline batch, and in such a situation a batch would consist of the gasoline contained in the truck if homogeneous or in each truck compartment if the truck's gasoline is not homogeneous.

EPA understands that the every-batch requirements may be difficult to meet when gasoline is imported by truck, because of the relatively small batch volumes. As a result, EPA is proposing a limited alternative method by which certain importers could meet the requirements for conventional gasoline that is imported into the United States via truck. This proposed approach would be limited to imported conventional gasoline, and would not apply in the case of imported reformulated gasoline, because of the additional level of environmental concern associated with reformulated gasoline.

This proposed approach would be based on the importer meeting the conventional gasoline standards on a per-gallon basis, which is different than the normal approach of meeting conventional gasoline standards on average. Per-gallon compliance is being proposed because under this proposal the importer would not be required to sample and test each truck load—each batch—of imported gasoline, which is necessary in order to demonstrate compliance with a standard on average. Rather, the importer would be allowed to rely on sampling and testing conducted by the operator of the truck loading terminal in Canada or Mexico to verify that the gasoline meets all conventional gasoline standards that apply to the importer.

For example, if an importer's gasoline is subject to the statutory baseline set out at § 80.91(c)(5), under the simple model the standards for imported conventional gasoline, specified at § 80.101(b)(1), are the following: sulfur—422.5 ppm; T90—415 °F; olefins—13.5 vol%; and exhaust benzene emissions—6.45. Under § 80.101(a) these conventional gasoline standards are met on average over each calendar year averaging period. If this importer elected to import gasoline via truck under the proposed approach, however, the importer would be required to demonstrate that each gallon of this gasoline met each of these standards. The environmental consequences of this proposal would be neutral, because by meeting the average standard on an every-gallon basis the standard also is being met on average.

The proposal also includes the means by which the importer would be required to demonstrate the gasoline meets the applicable standards on an every-gallon basis. The gasoline in the storage tank from which the importer's trucks are loaded would have to be sampled and tested subsequent to each receipt of gasoline, and these tests would have to show the gasoline meets the applicable standards. This sampling and testing could be conducted by the terminal operator. For each truck load of imported gasoline the importer would have to obtain from the terminal operator documents that state the properties of the gasoline. The importer then would treat each truck load of imported conventional gasoline as a separate batch for purposes of the record keeping and reporting requirements.

The terminal operator in most cases would not be subject to United States laws, so the proposal contains safeguards that are intended to ensure the gasoline in fact meets the applicable standards. First, the importer would be required to conduct an independent program of quality assurance sampling and testing of the gasoline dispensed to the importer. This sampling and testing would have to be at a rate specified in the proposed regulations, and the sampling would have to be unannounced to the terminal operator. In addition, EPA inspectors would have to be given access to conduct inspections at the truck loading terminal and at any laboratory where samples collected pursuant to this proposed approach are analyzed. These inspections could be unannounced, and would include sampling and testing, and record reviews.

EPA previously has allowed conventional gasoline to be imported by truck in a manner that essentially is identical to the option now being proposed, in guidance included in *Reformulated Gasoline and Anti-Dumping Questions and Answers* (October 29, 1994). EPA's experience since this guidance was issued has been that the approach facilitates imports of conventional gasoline by truck, and that

the sampling and testing requirements are appropriate enforcement safeguards.

EPA requests comment on this proposed approach for parties who import conventional gasoline via truck. In particular, EPA requests comment of the proposed provisions that deal with requirements that apply to persons located outside the United States, and to the need for EPA inspectors to conduct inspections at terminals located outside the United States.

8. Butane Blending Issue (§ 80.101(i)(4))

The addition of blendstock, including butane, to reformulated or conventional gasoline constitutes the production of gasoline, with the result that such a blender is considered a refiner under the reformulated and conventional gasoline regulations, who is subject to all standards and requirements that apply to refiners. These requirements include meeting the standards applicable to reformulated and conventional gasoline, sampling and testing, record keeping, and reporting. Under §§ 80.65(i) and 80.101(e)(1) the reformulated or conventional gasoline with which the blendstock is blended must be excluded from the blender-refiner's compliance calculations. In effect, the reformulated and conventional gasoline standards must be met based on the blendstock properties alone. Under § 80.101(i)(1)(i), refiners who produce conventional gasoline by combining blendstock with previously-certified conventional gasoline may determine compliance with the anti-dumping standards by sampling and testing the blendstock following each receipt of blendstock.

EPA understands that butane is a blendstock that historically has been blended with gasoline, particularly in the wintertime. This butane blending occurs in part because butane increases the volatility of gasoline, and the commercial specifications for wintertime gasoline allows (or requires) higher volatility levels than for summertime gasoline. In addition, there are economic reasons for blending butane, because butane generally costs less than gasoline. Butane generally is not blended with gasoline that will be used during the high ozone season (May 1 through September 15), because the increased volatility of gasoline blended with butane could violate the federal or state volatility standards that apply during that period.

EPA understands that a significant impediment to blending butane into gasoline outside the high ozone season is the requirement that refiners must sample each batch of conventional or reformulated gasoline produced, or in the case of conventional gasoline sampling each batch of blendstock. This sampling requirement interferes with butane blending because butane typically arrives at blend terminals, and is blended in relatively small quantities. As a result, a butane blending operation would be required to sample at a frequency that could be restrictive for some parties.

In the case of butane blending into conventional gasoline that occurs outside the high ozone season, EPA believes there may be little adverse environmental impact provided that the butane is of sufficient purity, and that much of the butane used for blending with gasoline is of such purity. However, ozone is of environmental concern during the ''shoulder'' periods immediately preceding and immediately following the high ozone season, and the increased RVP from butane that is blended during the shoulder periods may cause adverse environmental impacts particularly in ozone non-attainment areas.

Nevertheless, EPA is proposing an alternative sampling and testing option that would be available to parties who blend butane into conventional gasoline that is used outside the high ozone season. Under this proposed option a party who blends butane into conventional gasoline would continue to be classified as a refiner, and would be liable for all refiner requirements. However, the blender would have an additional sampling and testing option. The blender-refiner would be able to demonstrate compliance with the conventional gasoline standards on the basis of the butane specifications provided by the butane supplier, subject to certain conditions that are specified in the proposed regulations.

EPA is not proposing that parties who blend butane into RFG would be able to use this relaxed approach to sampling and testing because of concern for adverse environmental impacts during the shoulder periods. If butane blending with RFG were made more convenient, as is proposed for conventional gasoline, an increase in the volatility of RFG during the high ozone season's shoulder periods could result.

EPA requests comment on the potential for adverse environmental effects from butane blending with conventional gasoline during the shoulder periods, particularly at terminals serving non-RFG ozone non-attainment areas, and whether any such potential would be reason for EPA to decline to promulgate the proposed regulatory changes to facilitate butane blending with conventional gasoline. In particular, EPA requests comment on whether the flexibility for butane blending with conventional gasoline should be limited to terminals serving areas that are in attainment for ozone, which would be consistent with the decision to not propose change to facilitate butane blending with RFG. In addition, EPA requests comment on whether butane blending with conventional gasoline should be facilitated only during a period that is outside the high ozone season plus a shoulder period—for example, between October 15 through March 31 each year.

EPA previously has allowed butane blending in a manner that essentially is identical to the option now being proposed, in guidance included in *Reformulated Gasoline and Anti-Dumping Questions and Answers* (October 3, 1994). EPA's experience since this guidance was issued has been that the approach facilitates butane blending with conventional gasoline, and that certification mechanisms are appropriate.

EPA requests comment on this proposal to relax the sampling and testing associated with blending butane with conventional gasoline. In addition, EPA requests comment on the proposal that this additional flexibility not be extended to butane blending with reformulated gasoline.

C. Controls Applicable to Blendstocks (§ 80.102)

Under the anti-dumping program refiners are required to track the volume of certain blendstocks produced and transferred to others and to include blendstocks in their compliance calculations if the blendstock volume exceeds certain thresholds. The purpose of these blendstock requirements is to prevent a particular form of ''gaming'': transferring blendstock produced at a refinery with a baseline more stringent than the statutory baseline to a refinery with the statutory baseline to be blended into gasoline in order that the blendstock would be subject to more lenient standards. *See* the discussion at 59 FR 7801 (February 16, 1994).

As a result of comments received from industry since the anti-dumping program began, EPA now is proposing several modifications to the blendstock tracking and accounting requirements.

1. Blendstock Tracking for Refineries With the Statutory Baseline (§ 80.102(f)(1)(i))

Section 80.102(f)(1)(i) exempts a refinery with a baseline less stringent than the statutory baseline from blendstock tracking. However, the form of gaming that is the focus of blendstock tracking also is not possible in the case

of a refinery with a baseline that is equal to the statutory baseline, and EPA believes the omission of such refineries from the § 80.102(f)(1)(i) exemption was an error at the time this section was promulgated. As a result, EPA is proposing to add refineries with the statutory baseline to the § 80.102(f)(1)(i) exemption.

2. Products That May Be Excluded From the Blendstock Tracking Requirements (§ 80.102(a))

Categories of blendstock that are unlikely to be involved in the blendstock gaming scenario are exempt from the blendstock tracking requirements. Thus, for example, the list of applicable blendstocks that must be tracked under § 80.102(a) is limited to blendstocks that adversely impact air quality; § 80.102(d)(3) excludes from blendstock tracking those blendstocks that are not likely to be used for conventional gasoline blending; and § 80.102(f) exempts certain parties with limited blendstock production volume from blendstock accounting.

EPA now believes that the blendstock tracking requirements could be further limited without jeopardizing the environmental purpose of this section. The proposed changes relate to petroleum products that would be unlikely candidates for conventional gasoline blending. EPA believes that petroleum products with an initial boiling point less than 75 °F or an end point greater than 450 °F are not suitable for gasoline blending and, therefore, could be excluded from the category of blendstocks that refiners must track. As a result, EPA is proposing to exclude products with these boiling ranges from blendstock tracking.

EPA also now believes that certain highly refined or pure grade petroleum products are unlikely to be used for gasoline blending, and that these products can be identified by price or tendered volume. For example, EPA believes that where a petroleum product is sold at a price that is 100% above the market price of regular conventional gasoline it is unlikely the purchaser will use the product for blending gasoline. Similarly, EPA believes that products tendered in volumes less than 1,000 gallons are unlikely to be used in gasoline blending. Therefore, EPA is proposing to exempt products that meet either of these criteria from the blendstock tracking requirements. Further, blendstocks for which the refiner has evidence are used to produce RFG need not be included in the ratio calculations. EPA is proposing that such products also be excluded under § 80.102(d)(3).

3. Inclusion of Products in the Blendstock to Gasoline Ratio Calculations (§ 80.102(d) (1) and (2))

As discussed previously under the compliance baseline calculations, oxygenates added to either conventional gasoline or RBOB had been previously excluded from such calculations. EPA now believes such products are significant to the total volume considerations of a refiner and for consistency should be included in the blendstock to gasoline ratio calculations as well. EPA, therefore, is proposing in §§ 80.102(d) (1) and (2) that oxygenates blended downstream into conventional gasoline under § 80.101(d)(4)(ii) and oxygenates added to RBOB, as determined under § 80.65(e)(1)(ii), be included in the denominator of the compliance year ratio calculations.

4. Exclusion of Products From the Blendstock Accounting Requirements (§ 80.102(d)(3)).

Section 80.102(d)(3) exempts certain categories of petroleum products from the blendstock tracking requirements, where the product's use makes blendstock tracking inappropriate. For example, petroleum products are exempt from blendstock tracking if the products are exported, are used as a refinery feedstock, or are transferred between aggregated refineries. Under § 80.102(e) a party that has exceeded certain blendstock volume thresholds is required to include all blendstocks in its compliance calculations, and the exemptions under § 80.102(d)(3) are not applied.

EPA now believes the exemptions in § 80.102(d)(3) also should apply to the blendstock accounting requirements, under the same rationale that justifies these exclusion under blendstock tracking, and is proposing this change to the blendstock accounting requirements under § 80.102(e).

5. Attest Engagements Involving Aggregated Refineries (§ 80.102 Introductory Text and §§ 80.102 (b) and (c); Subpart F)

Section 80.101(h)(2)(iii) states that the aggregation election applies to the blendstock tracking requirements, and § 80.102(d)(3)(iv) exempts from blendstock tracking the blendstocks that are transferred between aggregated refineries. However, EPA believes that for purposes of conducting attest engagements under subpart F, the attest engagements should be conducted separately for each refinery, but this refinery-specific approach to blendstock tracking attest procedures is not clear in § 80.102 or in subpart F.

The attest requirements are organized around individual refineries, and it would create unnecessary complications to require a different organization only for the purpose of reviewing compliance with the blendstock tracking requirements. As a result, EPA is proposing to clarify the attest procedures in Subpart F to clarify that blendstock tracking attest procedures must be conducted separately for each refinery. In the case of aggregated refineries the blendstock tracking attest procedures would be separately performed for each refinery, taking into account the blendstock transfers to refineries in the same aggregation. If each refinery in an aggregation separately satisfies the blendstock tracking requirements, then EPA believes the aggregated refineries would have satisfied these requirements overall.

D. Record Keeping Requirements (§ 80.104)

EPA is proposing to modify § 80.104 to clarify that batch information must be kept for oxygenate blended downstream of a refinery where the oxygenate is included in the refinery's compliance calculations.

In addition, EPA is proposing record keeping requirements that would apply in the case of imported GTAB, that would reflect the physical movement of GTAB to the point of blending to produce gasoline. (*See* Preamble Section V.C. concerning requirements for GTAB generally.)

E. Reporting Requirements (§ 80.105)

1. Modification of Information That Must Be Reported (§ 80.105(a)(5)(iv))

Section 80.105 requires refiners and importers to report various information regarding each batch of conventional gasoline produced or imported during the averaging period. This includes the grade of the gasoline produced. § 80.105(a)(5)(iv). EPA now believes it is unnecessary to include this grade information in reports to EPA, and is proposing to eliminate this reporting requirement.

In addition, EPA now believes that in the case of ethanol batches it is unnecessary to include the ethanol properties in the batch report to EPA, because the properties of a pure compound, such as ethanol, are known. Therefore, EPA is proposing to eliminate the requirement that parties report the properties of ethanol.

2. Date for Submission of Attest Engagement Reports (§ 80.105(c))

Section 80.105(c) requires that attest engagement reports involving conventional gasoline must be submitted by May 30 each year. However, § 80.75(m) requires that attest engagement reports for RFG must be submitted by May 31 each year. This inconsistency in reporting deadlines was inadvertent when these sections were promulgated, and, as a result, EPA is proposing to conform the dates by adopting May 31 as the deadline for submitting conventional gasoline attest reports.

VII. Attest Engagements

Under §§ 80.65(h), 80.75(m), and 80.105(c) refiners and importers, and reformulated gasoline oxygenate blenders who achieve compliance on average, are required to commission an audit each year to review compliance with certain requirements of the reformulated gasoline and anti-dumping program. The audit requirements are specified in 40 CFR part 80, subpart F. Under these regulations the auditor evaluates compliance with the specified requirements by completing audit procedures, called ''agreed upon procedures,'' that are included in the regulations for each requirement—the auditor ''attests'' to the results of the agreed upon procedures. As a result, the overall audit is called an ''attest engagement.''

EPA now is proposing a number of changes to the attest engagement requirements.

1. Modified Agreed Upon Procedures (§§ 80.128 and 80.129; Proposed §§ 80.133 and 80.134))

The agreed upon procedures for refiners and importers are specified in § 80.128, and for oxygenate blenders in § 80.129. In addition, the headnotes of § 80.128 allow parties to satisfy the attest engagement requirement using other agreed upon procedures if the party obtains prior approval from EPA.

EPA received comments from industry, and from auditors who conducted attest engagements under this program, that the agreed upon procedures in §§ 80.128 and 80.129 should be modified in order to be more efficient. Moreover, a group of auditors who were working in this area convened under the auspices of the American Institute of Certified Public Accountants (AICPA) to develop new attest procedures. This group submitted modified attest procedures to EPA in January 1996, and asked EPA to approve these procedures for use. On March 15, 1996, EPA approved use of the attest procedures AICPA submitted, with certain modifications, under the authority of § 80.128. EPA now is proposing to include these modified attest procedures in the regulations.

The modified attest procedures do not differ significantly in substance from the procedures in §§ 80.128 and 80.129. The principal difference between the modified attest procedures and the procedures in §§ 80.128 and 80.129 is that the modified procedures includes criteria for identifying when certain attest procedures, or categories of attest procedures, are unnecessary for a particular attest engagement. For example, attest procedures address the blendstock tracking requirements under § 80.102. Under § 80.128, the auditor is required to complete a full slate of attest procedures that scrutinize each category of blendstocks relevant to the § 80.102 requirements. Under the modified attest procedures for blendstock tracking, however, the procedures are arranged in a sequence that allows the auditor to identify categories of blendstock tracking attest procedures that are unnecessary, and to avoid conducting these procedures.

These modified attest procedures were used successfully by numerous auditors for attest engagements for the 1995 reporting period.

The modified attest procedures also include definitions not included in the original procedures, but these definitions do not change the substance of the original procedures. However, in today's version of the modified attest procedures, EPA is proposing a new definition for ''laboratory analysis'' that would constitute a substantive change.

Under both the original and modified attest procedures, auditors are required to review laboratory analysis results of various types, and, *inter alia*, compare the results with reports to EPA. The form of the laboratory analysis results that an auditor must review has not been specified, however. EPA has learned that, as a result, auditors often review only a company's laboratory analysis results as transcribed into the computer system used to calculate compliance with standards. EPA has found through its own audits of refiners and importers, however, that the original laboratory results and the results recorded in a computer system sometimes are different. These differences often result from simple data entry errors, although on occasion the reason for the difference is less benign. As a result, EPA is proposing that where attest procedures call for the review of a laboratory analysis result, the auditor would be required to review the original laboratory result. Thus, for example, in the case of a testing apparatus that generates a printout of the test results, only review of this printout would satisfy an attest procedure that calls for review of the laboratory result, or where test results are first recorded in the chemist's laboratory log book, only review of this log book would satisfy the requirement. Review of a transcribed version of these original test results would not suffice.

This proposed definition of laboratory analysis is consistent with the proposed change to the record keeping requirement dealing with laboratory analyses, discussed above, that requires parties to keep copies of original test results.

EPA is proposing that the original attest procedures in §§ 80.128 and 80.129 would continue to be available as alternatives to the attest procedures now being proposed, but only through the attest for the 1997 reporting period. Under this proposal, only the attest procedures in proposed §§ 80.133 and 80.134 could be used to meet the attest engagement requirements beginning with the attest engagements for the 1998 reporting period.

EPA is proposing to phase out the original attest procedures because we believe the modified attest procedures are superior, and ultimately should be used for all attest engagements. In addition, EPA believes oversight of the attest requirement, including reviews of attest reports, would be more efficient if all attest engagements were based on the same agreed upon procedures. Nevertheless, EPA requests comment on whether the original attest procedures should be available for use indefinitely.

In addition, EPA is proposing that during the period when both the original and the modified attest procedures are available parties would be required to use either the original attest procedures for refiners and importers under § 80.128 in its entirety, or the modified attest procedures for refiners and importers under § 80.133 in its entirety. A party would not be allowed to use a mixture of attest procedures from § 80.128 and § 80.133. Similarly, an oxygenate blender would be required to use the attest procedures in § 80.129 or in § 80.134, and could mix attest procedures from both sections. The reason for this constraint is that the different attest procedure sections contain different requirements that are organized differently, and, at least in part, the logic of the sections would be lost if these sections are not completed in their entirety.

2. Agreed Upon Procedure Reports (§ 80.130(a))

Section 80.130 requires the CPA or CIA who conducts an attest engagement to issue a report that summarizes the procedures performed and findings. The regulations do not specify greater detail of what must be included in an attest report, however. EPA now believes it is necessary to specify certain items of information that should be included in each attest engagement report. This conclusion by EPA results from its review of the first attest engagement reports, for the 1995 reporting period, that were submitted to EPA at the end of May, 1996. These attest reports varied significantly in the amount of detail that was included, but many reports were too scant to allow any meaningful review by EPA. In fact, some attest reports stated simply that the attest engagement had been conducted, and nothing more.

The purpose of the attest engagement reports is, at least in part, to enable the regulated party, and EPA, to gauge whether the attest engagement was properly performed through a review of the report, and in the case of findings, to put those findings into perspective including whether the findings raise issues regarding compliance by the refiner or importer. Where the attest report includes none of the details of the procedures completed, this review is not possible. As a result EPA now is proposing certain information about each attest engagement that must be included in all attest engagement reports.

Initially, EPA is proposing that attest engagement reports would have to identify who conducted the attest engagement, and give a telephone number of the auditor. This would allow EPA to easily contact the auditor in case questions arise. In addition, the report would have to identify the company and facility that was the subject of the audit.

More substantively, attest engagement reports would be required to include the volumes of gasoline, and the number of batches, ascertained during the engagement in various categories. Auditors are required to verify the volume and batch number information, so this information is easily available to the auditor for inclusion in the report. EPA believes the required volume and batch information could be included in the report in the form of a simple table, which would require little effort to prepare.

In numerous instances the attest procedures require the auditor to obtain listings of all documents in various categories, and to review in more detail a random sampling of the documents. The procedures for selecting these samples are specified in § 80.127. EPA is proposing that for each occasion when such a sample is selected, the audit report would be required to include certain details of this sampling process, including the size of the population being sampled, the size of the sample selected, and the method used to ensure the sample was randomly selected. Inclusion of these details would enable EPA to verify that the sampling was properly completed, and to put in better perspective any findings that result from the auditor's review of the sample.

3. Attest Engagement Document Retention (§ 80.130(b))

Section 80.130(b) currently requires CPAs and CIAs who conduct attest engagements to retain ''all records pertaining to the performance of each agreed upon procedure and pertaining to the creation of the agreed upon procedures report* * *.'' EPA's normal practice when conducting an enforcement audit of a refiner, importer or oxygenate blender is to include an audit of the attest engagement, to ensure the engagement was completed as required. These audits of attest engagements require EPA to review the auditor's audit records.

During the course of conducting these enforcement audits, however, EPA discovered that many auditors retained a scant record of the conduct of their attest engagements. This absence of more comprehensive documentation made EPA's audits of the attest engagements more difficult.

As a result, EPA is proposing more specific regulatory requirements regarding the documents that auditors would be required to retain. The first category would be documents the auditor reviews that are created by the company that is the subject of the attest engagement. These company-created documents include laboratory analyses, inventory reconciliations and product transfer documents. The second category would be documents prepared by the auditor during the course of the attest engagement that summarize the conduct and work product of the attest engagement, commonly called ''work papers.'' The third category would include computer data and/or the input, output and results of computer programs used by the auditor to conduct the audit. The last category would be correspondence between the auditor and the company being audited on the subject of the attest engagement.

EPA believes the proposed record retention requirements would not expand the current record retention requirements, which apply to ''all'' records pertaining to attest engagements. The proposed requirements merely clarify that certain records are in the scope of the records EPA intends that auditors should retain.

4. Attest Procedures for GTAB (Proposed § 80.131)

EPA is proposing procedures by which importers may treat imported gasoline as blendstock (''gasoline treated as blendstock'' or ''GTAB'') in proposed § 80.83. As a result, EPA also is proposing attest procedures that would apply in the case of an importer who utilizes the GTAB option. The proposed GTAB attest procedures follow the general model of the attest procedures included in §§ 80.128, 80.129, 80.133 and 80.140. In particular, the attest procedures proposed for GTAB would instruct the auditor to track the movement of a portion of the GTAB batches to ensure the movement and subsequent use of the GTAB is consistent with the GTAB requirements.

5. Attest Procedures for Refiners With In-Line Blending Waivers From Independent Sampling and Testing (§ 80.65(f); Proposed § 80.132)

Under § 80.65(f) refiners and importers of reformulated gasoline are required to carry out a program of independent sampling and testing, with one exception. This exception applies in the case of a refiner who has obtained an EPA-approved waiver from the independent sampling and testing requirements on the basis of producing reformulated gasoline using an appropriately sophisticated computer-controlled in-line blending operation (an ''in-line blending waiver''). See, § 80.65(f)(4). In addition, under § 80.65(f)(4)(ii) any refiner with an in-line blending waiver is required to carry out an independent audit of each batch produced using the in-line blending operation. These audits constitute a check on the reported gasoline properties for in-line blended gasoline, which is a surrogate for the independent sampling and testing required for gasoline not produced under an in-line blending waiver.

The current regulations do not adequately describe the scope of in-line blending audits, however, and EPA is concerned that the in-line blending audits refiners have conducted have not been sufficiently comprehensive. As a result, EPA is proposing attest procedures that would have to be

conducted for any refiner with an in-line blending waiver.

All in-line blending waivers that EPA has granted require the refiner to collect a volumetrically proportional composite sample of each batch of in-line blended gasoline. This sample is collected using an automatic sampling apparatus that collects a portion of the gasoline being produced during the entire blending period, that is proportional to the volume of gasoline being produced any time. The refiner is required, by the terms of its waiver, to use the analysis of this composite sample as the basis of the report to EPA of the batch properties, i.e., as the ''certification'' analysis, or the ''primary analysis result.''

In-line blending waivers also require the refiner to obtain secondary analysis results for each regulated parameter, for use during the in-line blending audit to corroborate the primary analysis results. These confirmatory analysis results are of three general types: (1) Results from analyzers that automatically collect and analyze samples from the blend on a continuous or very frequent basis, called ''on-line'' analysis results; (2) results from samples that are collected from the batch on a less frequent basis and analyzed at a separate laboratory, sometimes called ''grab samples'' or ''off-line'' analysis results; and (3) results from samples of the blendstocks used to produce the batch, together with the proportions of the blendstocks used.

The attest procedures proposed for in-line blending waiver situations are divided into two broad parts. First, the auditor would review the EPA-approved in-line blending waiver, to identify the requirements regarding the collection, analysis and recording of the primary analysis result, and all confirmatory analysis results. In the second part of the procedures, the auditor would compare the primary analysis result with the confirmatory analysis results for each regulated parameter. Detailed attest procedures are proposed for these primary/confirmatory comparisons.

In the case of parameters that are confirmed using on-line analysis results, the auditor would identify the on-line analysis results that correspond to twelve discrete times during the blend. These twelve confirmatory results then would be compared with the primary result.

In the case of parameters confirmed using off-line analysis results, the auditor would compare the primary result with a randomly selected portion of the confirmatory results.

For parameters confirmed using blendstock analysis results, the auditor would, for twelve discrete times during the blend, identify the proportions of the different blendstocks being used, and the analysis results for these blendstocks. The confirmatory analysis result for the parameter at issue for each discrete time then would be calculated as the volume-weighted total of the blendstock analysis results for that parameter.

Under the proposed attest procedures, each confirmatory analysis result would be evaluated in several ways. First, the auditor would determine if the confirmatory sample was collected, analyzed and recorded in accordance with the petition as approved by EPA. Second, the confirmatory analysis result would be compared with the primary analysis result. EPA understands that there normally will be some difference between the primary and confirmatory analysis results. Nevertheless, the magnitude and direction of the differences would give the auditor, the refiner, and EPA important information relevant to whether the primary analysis result is accurate.

The third evaluation of the confirmatory analysis result would address compliance with per-gallon standards. The per-gallon standards are oxygen and benzene under the complex model—the per-gallon minimum or maximum where the standard is being met on average, or the per-gallon standard where the standard is being met per gallon. In addition, and as discussed above in preamble section III.A.1, the complex model valid range limits are per-gallon standards for all parameters. Under § 80.41, each of these standards must be met on a per-gallon basis, and no portion of in-line blended gasoline may violate these standards even if a blend meets the standards overall. The auditor would report as a finding any analysis result that violates an applicable per-gallon standard.

EPA is proposing that the in-line blending waiver attest engagement initially would review a random sample of the in-line blended batches. This would be a departure from the current requirement that *each* batch of in-line blended gasoline must be audited. Under the proposal, if any primary/confirmatory comparison differed by an amount greater than the ranges specified in § 80.65(e) for independent sampling and testing analysis comparisons, or if any sample violated a per-gallon standard, this random sample would be expanded.

Under § 80.65(f)(4)(ii)(C), reports for attest engagements must be submitted by February 28 each year for the prior calendar year. This attest reporting deadline is significantly earlier than the May 31 deadline for other attest reports. EPA now believes that the overall attest engagement activity, and the reports for those attest engagements, would benefit if the dates were harmonized. As a result, EPA is proposing that the in-line blending waiver attest reports would be submitted by May 31 each year for the prior calendar year's activity. As a result of this proposed timing change, EPA believes that refiners would be able to commission a single attest engagement that would address all refinery activities, including the proposed in-line blending waiver attest procedures, and to submit reports for all attest engagement work at the same time.

EPA requests comment on this proposal to harmonize the reporting date for attest engagements, and the requirement that a single report be submitted that reflects all attest engagement work for a calendar year reporting period.

EPA also requests comment on the proposed in-line blending waiver attest procedures in general. In particular, EPA requests comment on whether each batch of in-line blended gasoline should be audited in every case, as opposed to the statistical sampling approach being proposed. In addition, EPA requests comment on an option of auditing a portion of the batches of each grade of in-line blended gasoline. The rationale for requiring grade-specific sampling is that for any particular refinery the diversity in gasoline quality between grades is likely to be greater than the diversity in quality between batches of the same grade.

VIII. Environmental and Economic Impacts

The environmental impacts of today's proposal would be minimal, if any. Most of the revisions proposed today are the result of a determination that certain regulatory requirements may be relaxed without detriment to the environment. Economic impacts would be generally beneficial to affected parties due to the additional flexibility proposed in today's notice. Anti-competitive effects would not be expected. The environmental and economic impacts of the reformulated gasoline program are described in the Regulatory Impact Analysis supporting the December 1993 rule, which is available in Public Docket A–92–12 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

IX. Public Participation

EPA desires full public participation in arriving at its final decisions and solicits comments on all aspects of this proposal. Wherever applicable, full

supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the EPA Air Docket, Docket A–97–03 (See **ADDRESSES**). See the **DATES** section for the deadline for submission of comments.

Today's rule proposes a variety of modifications to the standards and requirements for reformulated and conventional gasoline. While many of the proposed modifications would reduce compliance burdens on industry, a few modifications may have the effect of restricting compliance flexibility. EPA specifically solicits comments on the need to take the actions that would reduce this flexibility, including comments on whether there are less restrictive measures that EPA may take.

Any proprietary information being submitted for the Agency's consideration should be markedly distinguished from other submittal information and clearly labeled ''Confidential Business Information.'' Proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that it is not inadvertently placed in the docket. Information thus labeled and directed shall be covered by a claim of confidentiality and 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 a submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

X. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed revisions contained in today's action would affect small business refiners, importers, oxygenate blenders, distributors, wholesale purchaser-consumers, and retailers of gasoline. In addition, this action would affect small business laboratories that serve as independent laboratories for purposes of fulfilling the independent sampling and testing requirement for reformulated gasoline. However, for the following reasons, EPA has determined that this action would not have an *adverse* economic impact on these entities.

In the case of small business oxygenate blenders, distributors, wholesale purchaser-consumers and retailers of gasoline, the proposed revisions would provide greater flexibility and clarity with regard to existing requirements and would not have an adverse impact on these entities. However, the revision which would disallow the use of composite sampling of conventional gasoline would impose an additional burden on small refiners and importers that do not have the laboratory capability to test for all parameters and must send samples to other laboratories for testing. Composite sampling allows refiners and importers to demonstrate compliance based on the testing of fewer gasoline samples. EPA believes, however, that the increased flexibility created by the relaxation and deletion of other refiner and importer requirements under today's action would more than offset any burden created by disallowing composite sampling. Today's action, for example, proposes provisions which would: Allow importers to treat finished gasoline as blendstock to provide flexibility to correct off-spec imported gasoline; allow refiners to use conventional gasoline to produce RFG, which is currently prohibited; modify the sampling and testing requirements for refiners who produce gasoline by blending butane; eliminate the requirement for refiners of conventional gasoline who also import gasoline to calculate a special baseline for their imported gasoline; modify the requirements for every-batch testing of gasoline imported by truck; make the requirements for the accounting of blendstocks for conventional gasoline less restrictive; make the attest engagement procedures more efficient; and modify the reporting requirements for conventional gasoline to delete the requirements to report the grade of gasoline and include ethanol properties in the batch report. Other provisions would aid refiners and importers by clarifying and providing additional guidance with regard to existing requirements. EPA is also proposing provisions which would minimize the effect of disallowing composite sampling by allowing an alternative test method for sulfur content. EPA believes that most refiners have the equipment required to perform the regulatory tests at their refinery except for sulfur under the current regulatory test method. Today's action would allow the use of a cost effective alternative test method for sulfur until September 1, 1998, the date on which EPA anticipates completion of a performance based test method rulemaking.

With regard to small business laboratories, there would be no increase in economic burden as a result of today's action. This action proposes to impose regulatory liability on entities serving as independent laboratories for failure to perform the duties necessary to fulfill the independent sampling and testing requirement (i.e., following prescribed procedures, retaining records, reporting to EPA). However, there would be no additional costs to either the laboratories or the refiners or importers who contract for the laboratory services, since the refiners and importers would continue to contract and pay for these services as they do under the current regulations. In addition, this action is not expected to affect a substantial number of small business laboratories, as the total number of laboratories currently registered with EPA is well under 100.

The EPA prepared a Regulatory Flexibility Analysis (RFA) for the final rule establishing standards for reformulated and conventional gasoline (59 FR 7716 (February 16, 1994)), which includes an analysis of the impact of these regulations on small refiners. The RFA is in the docket for that rulemaking: EPA Air Docket A–92–2.

XI. 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 action under the

terms of the Executive Order 12866, and is therefore not subject to OMB review.

XII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1591.09) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW., Washington, DC 20460 or by calling (202) 260–2740.

Although many of the revisions proposed in today's rule will have the effect of reducing the information collection requirements of the RFG/anti-dumping regulations, the proposed deletion of the composite sampling provision will mean that refiners and importers of conventional gasoline will be required to test each batch of gasoline rather than test a composite sample comprised of samples of two or more batches of gasoline. As discussed in Preamble Section VI.B.6., EPA is proposing this revision because EPA believes that composite sampling may not provide the accurate results necessary for measuring compliance by refiners and importers under the anti-dumping program, and may pose a significant risk with regard to the enforcement and assurance of compliance.

The EPA estimates that refiners and importers currently spend approximately 1.67 hours of information collection per batch for compliance testing of conventional gasoline pursuant to the reformulated gasoline and anti-dumping final rule. This is the estimated burden above the hours refiners had expended on testing prior to promulgation of the rule. Most refiners had been testing every batch of conventional gasoline for some of the same properties for which testing is required under the rule.

Under the current rule, samples of conventional gasoline may be composited over a period up to one month. At a rate of one test per month, the number of hours spent per refiner/importer per year would be 20.04 hours. EPA estimates that there are approximately 230 refiners and importers subject to this rule. If all of these refiners and importers were to base their compliance on one composite sample per month, the total burden on industry would be 4,609.20 hours per year. EPA believes, however, that many refiners and importers currently conduct tests on every batch of gasoline rather than on composite samples, or test composite samples comprised of fewer batches than are produced over a one-month period. EPA believes, therefore, that, in practice, the number of hours currently spent on testing by industry is likely to be much greater than this figure.

EPA estimates that, without the composite sampling option, refiners and importers would test an average of approximately 158 batches of conventional gasoline per refiner/importer per year. Applying the estimate of 1.67 hours per batch, the total number of hours per refiner/importer per year would be 263.86 hours, or a total of 60,687.80 hours industry-wide. If all 230 refiners and importers currently were basing compliance on one composite sample per month, the incremental burden of this action on industry would be 56,078.60 hours. At an estimated cost of $53.31 per test for information collection, the total incremental cost of the additional testing burden to industry would be approximately $1,790,150. However, as discussed above, most refiners conducted every-batch testing of some properties prior to promulgation of the final rule, and many refiners currently test every batch for compliance purposes rather than base compliance on the testing of composite samples. Therefore, EPA believes that the incremental burden of this proposed action on industry would be much smaller.

This action also proposes to eliminate the per-gallon NO_X minimum standards for complex model averaged RFG, and increase the number of compliance surveys required beginning in 1998 and thereafter from 50 to 70. EPA is proposing to eliminate the NO_X per-gallon minimum standards because these standards may impose substantial costs in producing RFG without commensurate benefits to the environment. (See Preamble Section III.A.1.). The NO_X per-gallon minimum standards were included in the final rule as a tool to assure an even distribution of NO_X benefits from area to area. However, EPA believes that a less costly alternative, an increase in the number of required surveys, would achieve a similar level of assurance of even distribution of NO_X benefits. EPA estimates that the incremental cost burden of these additional surveys will be roughly $1,100,000 industry-wide (20 additional surveys at approximately $55,000 each), or about $7,333 per RFG refiner or importer ($1,100,000 150 refiners/importers). The increased cost burden due to the additional survey requirement, however, would be more than offset by the elimination of the burden on industry imposed by the per-gallon NO_X minimum standards.

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.

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.

Comments are requested 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. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 11, 1997, a comment to OMB is best assured of having its full effect if OMB receives it by August 11, 1997. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

XIII. 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 expenditure by State, local, and tribal governments, in the

aggregate; or by the private section, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the 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 does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burdens of the reformulated gasoline program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

XIV. Statutory Authority

The statutory authority for the actions proposed today is granted to EPA by sections 114, 211 (c) and (k), and 301 of the Clean Air Act, as amended; 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

List of Subject in 40 CFR Part 80

Environmental Protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: June 24, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.2 is amended by removing and reserving paragraphs (y), (z), (tt) and (uu), and revising paragraphs (w), (ee), (gg) and (ss) to read as follows:

§ 80.2 Definitions.

* * * * *

(w) *Previously certified gasoline* means reformulated or conventional gasoline or RBOB that has been produced by a refiner or oxygenate blender, or imported by an importer, in accordance with applicable standards and requirements, and that the refiner, oxygenate blender or importer has included or will include in the compliance calculations for reformulated or conventional gasoline.

* * * * *

(ee) *Reformulated gasoline* means any gasoline whose formulation has been certified under § 80.40, and which meets each of the standards and requirements prescribed under § 80.41.

* * * * *

(gg) *Batch of gasoline* means a quantity of gasoline that is homogeneous with regard to those properties that are specified for conventional or reformulated gasoline.

* * * * *

(ss) *Tank truck* means a truck and/or trailer used to transport or cause the transportation of gasoline or diesel fuel, that meets the definition of motor vehicle in section 216(2) of the Act.

* * * * *

3. Section 80.3 is revised to read as follows:

§ 80.3 Test methods.

(a) *Lead content.* Lead content shall be determined in accordance with American Society for Testing and Materials (ASTM) standard method D 3237–90, entitled ''Standard Test Method for Lead in Gasoline by Atomic Absorption Spectroscopy'', or ASTM standard method D 5059–92, entitled ''Standard Test Method for Lead in Gasoline by X-Ray Spectroscopy''.

(b) *Phosphorus content.* Phosphorus content shall be determined using ASTM standard method D 3231–94, entitled ''Standard Test Method for Phosphorus in Gasoline''.

(c) *Reid vapor pressure (RVP).* Reid Vapor Pressure (RVP) shall be determined using the test method specified in § 80.46(c).

(d) *Oxygen and oxygenate content.* Oxygen and oxygenate content, including ethanol content in percentage by volume, shall be determined using the test methods specified in § 80.46(g). The volume per-cent ethanol in fuel shall be calculated using the following equation:

$$V_{Etoh}(\%) = (Wt_{Etoh}(\%)) * (D_{fuel}/0.7939)$$

Where:

V_{etoh} = Concentration of Ethanol by Volume.

Wt_{Etoh} = Concentration of Ethanol by Weight.

D_{fuel} = Relative Density of Fuel under Study @ 60 °F.

(e) *Cetane index.* The cetane index of diesel fuel shall be determined using ASTM standard method D 976–91, entitled ''Standard Methods for Calculated Cetane Index of Distillate Fuels.''

(f) *Sulfur content.* Sulfur content shall be determined using the test method specified in § 80.46(a). ASTM D 4294–90 may be used as an alternative method for determining the sulfur content in diesel fuel.

(g) *Aromatic content of diesel fuel.* The aromatic content of diesel fuel shall be determined using ASTM standard method D 5186–96, entitled ''Standard Test Method for Determination of Aromatic Content of Diesel Fuel by Supercritical Fluid Chromatography.'' Mass per-cent diesel aromatics shall be converted to volume per-cent diesel aromatics using the following equation:

$$Vol\% = (Mass\% * 0.916) + 1.33$$

Where Mass% refers to the output from D 5186–96.

(h) *Incorporations by reference.* ASTM standard test methods, D 3237–90, D 5059–92, D 3231–94, D 976–91, and D 5186–96 are incorporated by reference. These incorporations by reference were 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 the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

4. Section 80.8 is added to subpart A to read as follows:

§ 80.8 Sampling methods for gasoline and diesel fuel.

The sampling methods specified in this section shall be used to collect samples of gasoline and diesel fuel for purposes of determining compliance with the requirements of this part.

(a) *Manual sampling.* Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in American Society for Testing and Materials (ASTM) method D 4057–95, entitled ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products.''

(b) *Automatic sampling.* Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM method D 4177–95, entitled ''Standard Practice for Automatic Sampling of Petroleum and Petroleum Products.''

(c) *Sampling and sample handling for volatility measurement.* Samples to be analyzed for Reid Vapor Pressure (RVP)

shall be collected and handled according to the applicable procedures in ASTM method D 5842–95, entitled ''Standard Practice for Sampling and Handling of Fuels for Volatility Measurement.''

(d) *Sample compositing.* Composite samples shall be prepared using the applicable procedures in ASTM method D 5854–96, entitled ''Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products.''

(e) *Incorporations by reference.* ASTM standard practices D 4057–95, D 4177–95, D 5842–95, and D 5854–96, are incorporated by reference. These incorporations by reference were 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 the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, (202) 523–4534.

5. Section 80.27 is amended by revising paragraph (b) and the first three sentences of paragraph (d)(2) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(b) *Determination of compliance.* Compliance with the standards listed in paragraph (a) of this section shall be determined using the sampling methods specified in § 80.8, and the testing method specified § 80.3(c).

* * * * *

(d) * * *

(2) In order to qualify for the special regulatory treatment specified in paragraph (d)(1) of this section, gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined using the test method specified in § 80.3(d). * * *

* * * * *

6. Section 80.28 is amended by adding paragraph (g)(1)(iii) to read as follows:

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

* * * * *

(g) * * *

(1) * * *

(iii) An oversight program under paragraph (g)(1)(ii) of this section need not include periodic sampling and testing of gasoline in a tank truck operated by a common carrier, but in lieu of such tank truck sampling and testing, the common carrier shall demonstrate evidence of an oversight program for monitoring compliance with the volatility requirements of § 80.27 relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records normally received in the ordinary course of business concerning gasoline quality and delivery.

* * * * *

7. Section 80.29 is amended by revising paragraph (b) to read as follows:

§ 80.29 Controls and prohibitions on diesel fuel quality.

* * * * *

(b) *Determination of compliance.* (1) Any diesel fuel that does not show visible evidence of being dyed with either 1,4-dialkylamino-anthraquinone (which has a characteristic blue-green color in diesel fuel) or dye solvent red 164 (which has a characteristic red color in diesel fuel) shall be considered to be available for use in diesel motor vehicles and motor vehicle engines, and shall be subject to the prohibitions of paragraph (a) of this section.

(2) Compliance with the standards listed in paragraph (a) of this section shall be determined using the applicable sampling methods specified in § 80.8, and the testing methods specified in § 80.3.

* * * * *

8. Section 80.30 is amended by revising paragraph (g)(1)(i) to read as follows:

§ 80.30 Liability for violations of diesel fuel control and prohibitions.

* * * * *

(g) * * *

(1) * * *

(i) Evidence of an oversight program conducted by the carrier, for monitoring the diesel fuel stored or transported by that carrier, such as periodic sampling and testing of the cetane index and sulfur percentage of incoming diesel fuel. Such an oversight program need not include periodic sampling and testing of diesel fuel in a tank truck operated by a common carrier, but in lieu of such tank truck sampling and testing the common carrier shall demonstrate evidence of an oversight program for monitoring compliance with the diesel fuel requirements of § 80.29 relating to the transport or storage of diesel fuel by tank truck, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records normally received in the ordinary course of business concerning diesel fuel quality and delivery; and

* * * * *

9. Section 80.41 is amended by revising paragraphs (d) and (f), introductory text the tables in paragraphs (d) and (f); adding paragraph (h)(3); and revising paragraph (p) to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(d) *Phase I complex model averaged standards.* The Phase I ''complex model'' standards for compliance when achieved on average are as follows:

PHASE I COMPLEX MODEL AVERAGED STANDARDS

VOC emissions performance reduction (percent)Gasoline designated for VOC-Control Region 1:	
Standard	≥36.6
Per-Gallon Minimum	≥32.6
Gasoline designated for VOC-Control Region 2:	
Standard	≥17.1
Per-Gallon Minimum	≥13.1
Toxics air pollutants emissions performance reduction (percent)	≥16.5
NO_X emissions performance reduction (percent)	≥1.5
Oxygen content (percent, by weight)	
Standard	≥2.1
Per-Gallon Minimum	≥1.5
Benzene (percent, by volume):	
Standard	≤0.95

PHASE I COMPLEX MODEL AVERAGED STANDARDS—Continued

Per-Gallon Maximum	≤1.30

* * * * *

(f) *Phase II complex model averaged standards.* The Phase II ''complex model'' standards for compliance when achieved on average are as follows:

PHASE II COMPLEX MODEL AVERAGED STANDARDS

VOC emissions performance reduction (percent) Gasoline designated for VOC-Control Region 1:	
Standard	≥29.0
Per-Gallon Minimum	≥25.0
Gasoline designated for VOC-Control Region 2:	
Standard	≥27.4
Per-Gallon Minimum	≥23.4
Toxic air pollutants emissions performance reduction (percent)	≥21.5
NO_X emissions performance reduction (percent).	
Gasoline designated as VOC-Controlled	≥6.8
Gasoline not designated as VOC-Controlled	≥1.5
Oxygen content (percent, by weight):	
Standard	≥2.1
Per-Gallon Minimum	≥1.5
Benzene (percent, by volume):	
Standard	≤0.95
Per-Gallon Minimum	≤1.30

* * * * *

(h) * * *

(3) (i) In the case of reformulated gasoline subject to the simple model standards, the simple model limits specified at § 80.42(c)(1).

(ii) In the case of reformulated gasoline subject to the complex model standards, the complex model limits specified at § 80.45(f)(1)(i).

* * * * *

(p) *Effective date for changed minimum or maximum standards.* In the case of any minimum or maximum standard that is changed to be more stringent by operation of paragraphs (k), (m), (n), or (o) of this section, the effective date for such change shall be the following number of days following the date EPA announces the change:

(1) 60 days for refinery or import facilities;

(2) 150 days for retail outlets and wholesale purchaser-consumer facilities; and

(3) 120 days for all other facilities.

* * * * *

10. Section 80.45 is amended by revising paragraphs (c)(1)(iv)(B), (c)(1)(iv)(C)(*6*), (c)(1)(iv)(D)(*6*), (c)(1)(iv)(D)(*12*), (c)(1)(iv)(D)(*13*); (d)(1)(iv)(B); and (f)(1)(i) to read as follows:

§ 80.45 Complex emissions model.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(B) (*1*) For fuels with E200, E300 and/or ARO levels outside the ranges defined in Table 6, $Y_{VOC}(t)$ shall be defined for Phase I:

$$Y_{VOC}(t)=100\% \times 0.52 \times [\exp(v_1(et))/\exp(v_1(b)) - 1] +100\% \times 0.48 \times [\exp(v_2(et))/\exp(v_2(b)) - 1] +\{100\% \times 0.52 \times [\exp(v_1(et))/\exp(v_1(b))] \times [\{[(0.0002144 \times E200_{et}) - 0.014470] \times \Delta E200\} +\{[(0.0008174 \times E300_{et}) - 0.068624 - (0.000348 \times ARO_{et})] \times \Delta E300\} +\{(-0.000348 \times E300_{et}) + 0.0323712 \times \Delta ARO\}]\} +\{100\% \times 0.48 \times [\exp(v_2(et))/\exp(v_2(b))] \times [\{[(0.000212 \times E200_{et}) - 0.01350] \times \Delta E200\} +\{[(0.000816 \times E300_{et}) - 0.06233 - (0.00029 \times ARO_{et})] \times \Delta E300\} +\{[(-0.00029 \times E300_{et}) + 0.028204] \times \Delta ARO\}]\}$$

(*2*) For Phase II:

$$Y_{VOC}(t)=100\% \times 0.444 \times [\exp(v_1(et))/\exp(v_1(b)) - 1] +100\% \times 0.556 \times [\exp(v_2(et))/\exp(v_2(b)) - 1] +\{100\% \times 0.444 \times [\exp(v_1(et))/\exp(v_1(b))] \times [\{[(0.0002144 \times E200_{et}) - 0.014470] \times \Delta E200\} +\{[(0.0008174 \times E300_{et}) - 0.068624 - (0.000348 \times ARO_{et})] \times \Delta E300\} +\{[(-0.000348 \times E300_{et}) + 0.0323712] \times \Delta ARO\}]\} +\{100\% \times 0.556 \times [\exp(v_2(et))/\exp(v_2(b))] \times [\{[(0.000212 \times E200_{et}) - 0.01350] \times \Delta E200\} +\{[(0.000816 \times E300_{et}) - 0.06233 - (0.00029 \times ARO\Delta et)] \times \Delta E300\} +\{[(-0.00029 \times E300_{et}) + 0.028204] \times \Delta ARO\}]\}$$

* * * * *

(C) * * *

(*6*) If [80.32+(0.390 × ARO)] exceeds 94 for the target fuel, and the target fuel value for E300 exceeds 94, then the E300 value for the ''edge target'' fuel shall be set equal to 94 volume percent.

* * * * *

(*D*) * * *

(*6*) If [79.75+(0.385 × ARO)] exceeds 94 for the target fuel, and the target fuel value for E300 exceeds 94, then the E300 value for the ''edge target'' fuel shall be set equal to 94 volume percent.

* * * * *

(*12*) If the E300 level of the target fuel is less than 72 percent, then ΔE300 shall be set equal to (E300 − 72 percent).

(*13*) If the E300 level of the target fuel is greater than 94 volume percent and (79.75 + (0.385 × ARO) also is greater than 94, then ΔE300 shall be set equal to (E300 − 94 volume percent)* * *

* * * * *

(d) * * *

(1) * * *

(iv) * * *

(B) For fuels with SUL, OLE, and/or ARO levels outside the ranges defined in Table 7 of paragraph (d)(1)(iv)(A) of this section, $Y_{NOX}(t)$ shall be defined as:

(*1*) For Phase I:

$$Y_{NOX}(t)=100\% \times 0.82 \times [\exp(n_1(et))/\exp(n_1(b)) - 1] +100\% \times 0.18 \times [\exp(n_2(et))/\exp(n_2(b)) - 1] +\{100\% \times 0.82 \times [\exp(n_1(et))/\exp(n_1(b))] \times [\{[(-0.00000133 \times SUL_{et}) + 0.000692] \times \Delta SUL\} \times \{[(-0.000238 \times ARO_{et}) + 0.0083632] \times \Delta ARO\} +\{[(0.000733 \times OLE_{et}) - 0.002774] \times \Delta OLE\}]\}$$

$+\{100\% \times 0.18 \times [\exp(n_2(et))/\exp(n_2(b))]$
$\times [\{0.000252 \times \Delta SUL\}$
$+\{[(-0.0001599 \times ARO_{et})+0.007097] \times \Delta ARO\}$
$+\{[(0.000732 \times OLE_{et}) - 0.00276] \times \Delta OLE\}]\}$

For Phase II:

* * * * *

(f) * * *

(1) * * *

(i) * * *

For reformulated gasolines:

Fuel property	Acceptable range
Oxygen	0.00—4.0 weight percent.
Sulfur	0.0—500.0 parts per million by weight.
RVP	6.4—10.0 pounds per square inch.
E200	30.0—70.0 evaporated percent.
E300	70.0—100.0 evaporated percent.
Aromatics	0.0—55.0 volume percent.
Olefins	0.0—25.0 volume percent.
Benzene ..	0.0—2.0 volume percent.

* * * * *

11. Section 80.46 is amended by revising paragraphs (a) through (e) (f)(3), (g) and (h); and adding paragraph (i) to read as follows:

§ 80.46 Measurement of reformulated and conventional gasoline fuel parameters.

(a) *Sulfur.* (1) Sulfur content shall be determined using American Society for Testing and Materials (ASTM) standard method D 2622–94, entitled ''Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry.''

(2) Alternative test method for conventional gasoline.

(i) Prior to September 1, 1998, any refiner or importer may determine sulfur content in conventional gasoline using standard method ASTM D 5453–93, entitled ''Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence'', provided that

(ii) the test result is correlated with the method specified in paragraph (a)(1) of this section.

(b) *Olefins.* Olefin content shall be determined using ASTM standard method D 1319–95a, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.''

(c) *Reid vapor pressure (RVP).* (1) Reid Vapor Pressure (RVP) shall be determined using ASTM standard method D 5191–96, entitled ''Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method),'' provided that—

(2) The RVP equivalent is calculated using the following equation:

RVP (PSI) = (0.956 * x) − 0.347
or
RVP (kPa) = (0.956 * x) − 2.39

Where:

x = The total measured pressure in PSI or kPa

(d) *Distillation.* (1) Distillation parameters shall be determined using ASTM standard method D 86–96, entitled ''Standard Test Method for Distillation of Petroleum Products;'' except that

(2) The figures for repeatability and reproducibility given in degrees Fahrenheit in Table 9 in the ASTM method are incorrect, and shall not be used.

(e) *Benzene.* Benzene content shall be determined using either:

(1)(i) ASTM standard method D 3606–96, entitled ''Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography;'' except that

(ii) Instrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D 3606–96 when present; or

(2) The gas chromatography method specified in paragraphs (f) (1) and (2) of this section.

(f) * * *

(3)(i) Prior to September 1, 1998, any refiner or importer may determine aromatics content using ASTM standard method D 1319–95a, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption,'' for purposes of meeting any testing requirement involving aromatics content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) *Oxygen and oxygenate content.* (1) Oxygen and oxygenate content shall be determined using ASTM standard method D 5599–95, entitled ''Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Sensitive Flame Ionization Detection.''

(2)(i) Prior to September 1, 1998, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C_1 to C_4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D 4815–94a, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C_1 to C_4 Alcohols in Gasoline by Gas Chromatography,'' for purposes of meeting any testing requirement; provided that

(ii) The refiner or importer test result is correlated with the method set forth in paragraph (g)(1) of this section.

(h) *Butane test methods.* (1) Sulfur content in butane shall be determined using ASTM D 5623–94, entitled ''Standard Test Method for Sulfur Compounds in Light Petroleum Liquids by Gas Chromatography and Sulfur Selective Detection.''

(2) Light hydrocarbon content in butane shall be determined using ASTM D 2163–91, entitled ''Standard Test Method for Analysis of Liquefied Petroleum (LP) Gas and Propene Concentrates by Gas Chromatography.''

(3) Benzene and aromatic content of butane shall be determined using the Gas Producers Association (GPA) method 2186–95, entitled ''Tentative Method for the Extended Analysis of Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Temperature Programmed Gas Chromatography.''

(i) *Incorporations by reference.* ASTM standard methods D 3606–96, D 1319–95a, D 4815–94a, D 2622–94, D 5453–93, D 86–96, D 5191–96, D 5599–95, D 5623–94, D 2163–91, and GPA 2186–95 are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the ASTM standard methods may be obtained from the American Society of Testing Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies of GPA method 2186–95 may be obtained from the Gas Producers Association, 6526 East 60th Street, Tulsa, OK 74145. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street SW., Washington, DC 20460 or at the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, (202) 523–4534.

12. Section 80.47 is added to subpart D to read as follows:

§ 80.47 Sampling of reformulated and conventional gasoline and RBOB.

(a) *Sample collection, handling, and compositing procedures.* Any person who samples reformulated or conventional gasoline, or blendstocks used to produce reformulated or conventional gasoline, in order to meet any requirement of subparts D or E shall follow the procedures specified in § 80.8.

(b) *Determination of homogeneity for reformulated and conventional gasoline.* Homogeneity of the gasoline shall be determined prior to preparation of, or analysis of, the sample used to establish the batch properties for purposes of §§ 80.65(e), 80.72 and 80.101(i). Homogeneity shall be determined as follows.

(1) Where the gasoline contained in a single tank or compartment is to be treated as a single batch:

(i) By collecting, at a minimum, upper, middle, and lower spot or tap samples following the procedures referenced in §§ 80.8 (a) and (c); or

(ii)(A) By following procedures for tank mixing that result in complete tank homogeneity, that the party is able to demonstrate through historic sampling and testing data for the same types of blendstocks, storage tank configuration, mixing apparatus, and mixing protocol; and

(B) By collecting, at a minimum, upper, middle, and lower spot or tap samples of the batch, analyzing these samples for gravity, and demonstrating that the gravity values do not differ by more than 0.3° API, unless it is not possible to collect spot or tap samples from the storage tank.

(2) Where the product contained in a marine vessel with multiple compartments is to be treated as a single batch, by collecting a sample from each compartment using the running sample collection procedure referenced in §§ 80.8 (a) and (c).

(3) The samples collected under paragraphs (b)(1)(i) and (b)(2) of this section shall be analyzed for each parameter for which the batch is subject to, or that is used to calculate an emissions performance for which the batch is subject to, a standard specified in § 80.41 or § 80.101.

(4) The analyses under paragraph (b)(3) of this section shall use the test methods specified in § 80.46, or alternative test methods for which the party is able to demonstrate correlation to the values obtained by the methods specified in § 80.46.

(5)(i) For gasoline to be considered homogeneous, the maximum difference in the analytical results of samples collected under paragraphs (b)(1)(i) and (b)(2) of this section shall be no larger than the range specified in § 80.65(e)(2)(i) for each parameter; however

(ii) In no case may any sample violate a per-gallon minimum or maximum standard under § 80.41 that is applicable to the batch.

(6) If the gasoline meets the criteria to be considered homogeneous, it may be treated as a batch pursuant to § 80.2(gg).

(c) *Additional sampling options for imported gasoline.* (1) In the case of imported reformulated gasoline, the gasoline contained in marine vessels with multiple compartments may be treated as a single batch of reformulated gasoline and the properties may be based on a volume weighted composite sample prepared using the procedures referenced in § 80.8(d) provided that:

(i) All of the gasoline contained in the multiple compartments is transferred to a single shore tank; or

(ii) The gasoline from the vessel is transferred to multiple shore tanks and is determined for each tank separately to meet all per-gallon minimum or maximum standards under § 80.41 that are applicable to the batch, using the following procedure:

(A) The gasoline contained in the storage tanks prior to the transfer of any gasoline from the vessel (the ''heels'') shall be sampled and tested using the test methods specified in § 80.46, or alternative test methods for which the party is able to demonstrate correlation to the values obtained by the methods specified in § 80.46;

(B) The gasoline contained in the storage tanks subsequent to the transfer of all gasoline from the vessel shall be sampled and tested using the test methods specified in § 80.46, or alternative test methods for which the party is able to demonstrate correlation to the values obtained by the methods specified in § 80.46; and

(C) The volume and properties of the heels shall be subtracted from the volume and properties of the filled tanks to determine the volume and properties of the gasoline from the vessel only.

(iii) RVP is determined using the volume weighted average of the individual compartment sample results, analyzed prior to preparation of the batch composite sample.

(2) In the case of imported reformulated gasoline, the gasoline transferred to shore tanks from marine tank vessels may be certified based on shore tank sampling following the procedures of paragraphs (c)(1)(ii) (A) through (C) of this section, except that testing must be performed using only the methods specified in § 80.46.

(3) In the case of imported conventional gasoline the gasoline contained in marine vessels with multiple compartments may be treated as a single batch, provided that gasolines of different octane grades (e.g., premium, mid-grade and regular) are treated as separate batches.

(d) *Requirements for RBOB.* Each requirement of this section that applies to reformulated gasoline also applies to RBOB.

13. Section 80.49 is amended by revising the paragraph (a) introductory text, the entry for ''New Parameter'' in the table in paragraph (a)(1), paragraph (a)(3), introductory text, and the first three sentences in paragraph (b), introductory text, to read as follows:

§ 80.49 Fuels to be used in augmenting the complex emission model through vehicle testing.

* * * * *

(a) Seven fuels (hereinafter called the ''addition fuels'') shall be tested for the purpose of augmenting the complex emission model with a parameter not currently included in the complex emission model. The properties of the addition fuels are specified in paragraphs (a)(1) and (2) of this section. The addition fuels shall be specified with at least the same level of detail and precision as in § 80.49(a)(5)(i), and

(1) * * *

Fuel property	Fuels						
	1	2	3	4	5	6	7
*	*	*		*	*		
New Parameter[1]	C	(C+B)/2	B	C	B	C	B

[1] C = Candidate level, B = Baseline level.

* * * * *

(3) The addition fuels shall be specified with at least the same level of detail and precision as in § 80.49(a)(5)(i), and this information shall be included in the petition submitted to the Administrator

requesting augmentation of the complex emission model.

* * * * *

(b) Three fuels (hereinafter called ''extention fuels'') shall be tested for the purpose of extending the valid range of the complex emission model for a parameter currently included in the complex emission model. The properties of the extension fuels are specified in paragraphs (b)(2) through (4) of this section. The extension fuels shall be specified with at least the same level of detail and precision as in § 80.49(a)(5)(i), and * * *

* * * * *

14. Section 80.50 is amended by revising paragraph (a)(2) to read as follows:

§ 80.50 General test procedure requirements for augmentation of the emission models.

(a) * * *

(2) Toxics emissions must be measured when testing the extension fuels per the requirements of § 80.49(b) or when testing addition fuels 1, 2, or 3 per the requirements of § 80.49 (a).

* * * * *

15. Section 80.65 is amended by:

a. Revising paragraphs (d)(2)(vi)(A), (B), and (C); removing paragraphs (d)(2)(vi)(D) and (d)(2)(vi)(E); and revising paragraph (d)(3);

b. Revising paragraph (e)(1); to adding an entry for ''total oxygen content'' in the table in paragraph (e)(2)(i), and revising the first sentence of paragraph (e)(2)(ii)(B);

c. Revising paragraphs (f), (g), (h), and (i); and

d. Adding paragraph (j), to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(d) * * *

(2) * * *

(vi) * * *

(A) Any oxygenate;

(B) Ether only; or

(C) Oxygenate of a type and amount that is specified by the refiner or importer.

(3)(i) The requirements of this paragraph (d)(3) apply to each batch of:

(A) Reformulated or conventional gasoline, or RBOB, produced by a refiner, or imported by an importer;

(B) Reformulated gasoline produced by an oxygenate blender who meets the oxygen standard on average;

(C) Oxygenate added to conventional gasoline downstream of the refinery where the oxygenate is included in refinery compliance calculations under § 80.101(g); and

(D) Each batch of blendstock produced or imported and transferred if blendstock accounting is required under § 80.102(e).

(ii) Each batch identified in paragraph (d)(3)(i) of this section shall be assigned a number (the ''batch number''), consisting of the EPA-assigned refiner, importer or oxygenate blender registration number, the EPA-assigned facility registration number, the last two digits of the year in which the batch was produced, imported or blended, and a unique number for the batch, beginning with the number one for the first batch produced, imported or blended each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g. 4321-54321–95–0000001, 4321–54321–95–0000002, etc.).

(e) *Determination of volume and properties.* (1) Each refiner or importer shall for each batch of reformulated gasoline or RBOB produced or imported determine the volume, and the value of each of the properties specified in paragraph (e)(2)(i) of this section, except that the value for RVP must be determined only in the case of reformulated gasoline or RBOB that is VOC-controlled. These determinations shall:

(i) Be based on a representative sample of the reformulated gasoline or RBOB that is:

(A) Collected from a quantity of gasoline or RBOB that has been determined to be homogeneous as specified in § 80.47(b);

(B) Collected using the methodologies specified in § 80.8; and

(C) Analyzed using the methodologies specified in § 80.46;

(ii) In the case of RBOB, follow the oxygenate blending instructions specified in § 80.69(a)(2);

(iii) Be carried out either by the refiner or importer, or by an independent laboratory, as part of an independent analysis program under § 80.72 ; and

(iv) Be completed prior to the gasoline or RBOB leaving the refinery or import facility for each parameter that is subject to, or that is used to calculate an emissions performance that is subject to, a minimum or maximum standard specified in §§ 80.41 (a) through (f).

* * * * *

(2) * * *

(i) * * *

Fuel property	Range
* * * * *	
Total oxygen content	0.10wt%.

(ii)* * *

(B) The refiner or importer shall have the gasoline analyzed for the property at one additional independent laboratory.* * *

(f) Independent analysis requirement. (1) Any refiner or importer of reformulated gasoline or RBOB shall meet the independent analysis requirements specified under § 80.72; except that

(2) Any refiner that produces reformulated gasoline using computer-controlled in-line blending equipment is exempt from the independent sampling and testing requirements specified in paragraphs (f)(1) of this section, provided that such refiner:

(i) Obtains from EPA an exemption from these requirements. In order to seek such an exemption, the refiner shall submit a petition to EPA, such petition to include:

(A) A description of the refiner's computer-controlled in-line blending operation, including a description of:

(1) The location of the operation;

(2) The length of time the refiner has used the operation;

(*3*) The volumes of gasoline produced using the operation since the refiner began the operation or during the previous three years, whichever is shorter, by grade;

(*4*) The movement of the gasoline produced using the operation to the point of fungible mixing, including any points where all or portions of the gasoline produced is accumulated in gasoline storage tanks;

(*5*) The physical lay-out of the operation;

(*6*) The automated control system, including the method of monitoring and controlling blend properties and proportions;

(*7*) Any sampling and analysis of gasoline that is conducted as a part of the operation, including on-line, off-line, and composite, and a description of the methods of sampling, the methods of analysis, the parameters analyzed and the frequency of such analyses, and any written, printed, or computer-stored results of such analyses, including information on the retention of such results;

(*8*) Any sampling and analysis of gasoline produced by the operation that occurs downstream from the blending operation prior to fungible mixing of the gasoline, including any such sampling and analysis by the refiner and by any purchaser, pipeline or other carrier, or by independent laboratories;

(*9*) Any quality assurance procedures that are carried out over the operation; and

(*10*) Any occasion(s) during the previous three years when the refiner adjusted any physical or chemical property of any gasoline produced using the operation downstream from the operation, including the nature of the adjustment and the reason the gasoline had properties that required adjustment; and

(B) A description of the independent audit program of the refiner's computer-controlled in-line blending operation that the refiner proposes will satisfy the requirements of this paragraph (f)(2); and

(ii) Carries out an attest engagement of the refinery's computer-controlled in-line blending operation for each calendar year reporting period, as follows:

(A) The audit shall follow the in-line blending attest procedures specified in § 80.132;

(B) The results of the in-line blending attest engagement shall be reported as specified in § 80.130, and shall be included in the attest report submitted to EPA no later than May 31 of each year; and

(C) The attest engagement shall be carried out by an auditor who meets the criteria specified in § 80.125; and

(iii) Complies with any other requirements that EPA includes as part of the exemption.

* * * * *

(g) [Reserved]

(h) *Compliance audits.* Any refiner or importer of reformulated gasoline or RBOB, and any oxygenate blender of any RBOB who meets the oxygen standard on average, shall have the reformulated gasoline and RBOB it produced, imported or blended during each calendar year audited for compliance with the requirements of this subpart D, in accordance with the requirements of subpart F, at the conclusion of each calendar year. This audit requirement must be met separately for each refinery and for each importer.

(i) *Exclusion of previously certified gasoline.* Any refiner who combines blendstock with previously certified reformulated or conventional gasoline to produce reformulated gasoline or RBOB shall exclude the previously certified gasoline for purposes of demonstrating compliance with the standards under § 80.41. This exclusion shall be accomplished separately by the refiner for each refinery as follows.

(1)(i) Determine the volume and properties for each batch of previously certified gasoline received that is used to produce reformulated gasoline or RBOB, using the procedures in paragraph (e)(1) of this section and in § 80.66, and the independent analysis requirements in paragraph (f) of this section in the case of previously certified reformulated gasoline.

(ii) (A) In the case of previously certified reformulated gasoline determine the emissions performances for toxics and NO_X, and VOC for VOC-controlled reformulated gasoline, and the designations for VOC control and OPRG.

(B) In the case of previously certified conventional gasoline determine the exhaust toxics and NO_X emissions performances.

(2) The volume and properties of any batch of gasoline produced using previously certified gasoline shall be determined without regard to the previously certified gasoline content.

(3) In the case of any parameter or emissions performance standard that has been designated by the refiner, for the refinery, to be met on a per-gallon basis under paragraph (d)(2)(v) of this section, the per-gallon standard that applies to any batch of reformulated gasoline or RBOB produced:

(i) Using any previously certified reformulated gasoline shall be the more stringent of:

(A) The per-gallon standard that applies to the refinery under § 80.41; or

(B) the most stringent value for that parameter or emissions performance for any previously certified reformulated gasoline used to produce the batch; or

(ii) Using any previously certified conventional gasoline shall be the standard that applies to the refinery under § 80.41.

(4) In the case of any parameter or emissions performance standard that has been designated by the refiner, for the refinery, to be met on average under paragraph (d)(2)(v) of this section, any previously certified gasoline shall be excluded from the refinery's compliance calculations as follows.

(i) The volume and properties of any batch of previously certified reformulated gasoline received at the refinery that is used to produce reformulated gasoline or RBOB shall be included in compliance calculations for the standard under § 80.67(g):

(A) As a negative batch, by multiplying the term V_i in § 80.67(g)(1)(ii) (i.e., the batch volume) times negative 1;

(B) In the averaging categories that correspond to the designations regarding VOC control and OPRG of the previously certified gasoline batch when received; and

(C) The net volume of gasoline in the refinery's compliance calculations shall be positive in each of the following categories where the standard is being met on average:

Standard	Gasoline category that must have net positive volume
Oxygen	All RFG.[1]
	RFG that is non-OPRG.
Benzene	All RFG and RBOB.
VOC emissions performance	RFG and RBOB that is VOC-controlled for Region 1.
	RFG and RBOB that is VOC-controlled for Region 2.
Toxics emissions performance	All RFG and RBOB.
NO_X emissions performance	All RFG and RBOB.
	RFG and RBOB that is VOC-controlled.

[1] "RFG" is an abbreviation for reformulated gasoline.

(ii) The volume and properties of any batch of previously certified conventional gasoline received at the refinery that is used to produce reformulated gasoline or RBOB:

(A) Shall be included in the refinery's anti-dumping compliance calculations under § 80.101(g) as a negative batch; and

(B) The net volume of gasoline in the refinery's anti-dumping compliance calculations shall be positive.

(5) Any refiner, but no other person, may use the procedures specified in this paragraph (i) to combine previously certified conventional gasoline with reformulated gasoline, to reclassify conventional gasoline into reformulated gasoline, or to change the designations of reformulated gasoline with regard to VOC control and OPRG.

(6) Nothing in this paragraph (i) prevents any party from combining

previously certified reformulated gasolines from different sources in a manner that does not violate the prohibitions in § 80.78(a).

(j) *Importer certification of marine tank vessels.* Importers shall sample each batch of imported RFG, RBOB, and conventional gasoline:

(1) At the time and place that is allowed by the U.S. Customs Service under 19 CFR 151.42 *Controls on unlading and gauging;* and

(2) Following the sampling requirements in § 80.47; however, in no case shall the volume of a single batch be larger than the volume reported as a single item of merchandise in the U.S. Customs Service entry for summary documentation as specified by 19 CFR part 141, Subparts D, E, and F, and 19 CFR part 142, subparts A and B.

16. Section 80.67 is amended by adding paragraph (g)(1)(iii) and revising paragraph (h)(1)(iv) to read as follows:

§ 80.67 Compliance on average.

* * * * *

(g) * * *

(1) * * *

(iii) Where the product being evaluated is RBOB, the V_i term under paragraphs (g)(1) (i) and (ii) of this section shall be the volume of reformulated gasoline that will result when the RBOB is blended with the type and amount of oxygenate specified for the RBOB under § 80.69(a)(2)(i).

* * * * *

(h) * * *

(1) * * *

(iv) The credits are transferred, either through inter-company or intra-company transfers, directly from the refiner, importer, or oxygenate blender that creates the credits to the refiner, importer, or oxygenate blender that uses the credits to achieve compliance;

* * * * *

17. Section 80.68 is amended by:

a. Revising paragraphs (b)(1)(iv) and (b)(2)(ii);

b. Revising paragraphs (c)(4)(i) and (c)(4)(ii);

c. Revising paragraphs (c)(9)(i)(B) and (c)(9)(ii)(B);

d. Revising paragraph (c)(10)(ii), and adding paragraphs (c)(10)(iii), (c)(10)(iv) and (c)(10)(v);

e. Revising paragraph (c)(11);

f. Revising paragraph (c)(12); and

g. Revising paragraphs (c)(13)(iii) (A) and (B), to read as follows:

§ 80.68 Compliance surveys.

* * * * *

(b) * * *

(1) * * *

(iv) 70 surveys shall be conducted in 1998 and thereafter.

(2) * * *

(ii) In the event that any covered area(s) fails a survey or survey series according to the criteria set forth in paragraph (c) of this section, the annual decreases in the numbers of surveys prescribed by paragraph (b)(1) of this section, as adjusted by paragraph (b)(2)(i) of this section, shall be adjusted as follows in the year following the year of the failure. * * *

* * * * *

(c) * * *

(4) * * *

(i) An oxygen and benzene survey series shall consist of all surveys conducted in a single covered area during a single calendar year, and a toxics survey series shall consist of all surveys conducted in a single covered area during a single calendar year except for surveys conducted during the period January 1, 1998 through April 30, 1998.

(ii) A NO_X survey series shall consist of all surveys conducted in a single covered area during the periods January 1 through May 31 (except for surveys conducted during the period January 1, 1998 through April 30, 1998), and September 16 through December 31 during a single calendar year.

* * * * *

(9)(i) * * *

(B) The annual average of the toxics emissions reduction percentages for all samples from a survey series shall be calculated according to the following formula [31]:

$$AATER = \left(\left(\frac{\sum_{i=1}^{s_1} \left(\frac{\sum_{j=1}^{n_1} TER_{1,j}}{n_1} \right)_i}{s_1} \right) \times 0.468 \right) + \left(\left(\frac{\sum_{i=1}^{s_2} \left(\frac{\sum_{j=1}^{n_2} TER_{2,j}}{n2} \right)_i}{s_2} \right) \times 0.532 \right)$$

Where:

AATER=the annual average toxics emissions reduction

$TER_{1,j}$=the toxics emissions reduction for sample j of gasoline collected during the high ozone season

$TER_{2,j}$=the toxics emissions reduction for sample j of gasoline collected outside the high ozone season

n_1=the number of gasoline samples collected during a one-week survey conducted within the high ozone season

s_1=the number of one-week surveys conducted within the high ozone season

n_2=the number of gasoline samples collected during a one-week survey conducted outside the high ozone season

s_2=the number of one-week surveys conducted outside of the high ozone season

* * * * *

(ii) * * *

(B) The annual average of the toxics emissions reduction percentages for a

[31] The formula requires, first, that the toxic reductions of samples taken in each one-week survey be averaged to obtain an average for each such survey. Then these survey averages are, themselves, averaged separately for high-ozone and non-high-ozone season surveys, to obtain two overall averages. These overall averages are each to be multiplied by a seasonal weight (0.468 for high-ozone season and 0.532 for non-high ozone season) and the resulting products added together to obtain the average annual toxic emission reduction.

survey series shall be calculated according to the formula specified in paragraph (c)(9)(i)(B) of this section; and

* * * * *

(10) * * *

(ii) The average NO_X emission reduction percentage for each single week-long NO_X survey shall be calculated as the average of all NO_X emission reduction percentages from the survey.

(iii) The covered area shall have failed a NO_X survey if the average NO_X emissions reduction percentage for all survey samples is less than the applicable Phase I or Phase II complex model per-gallon standard for NO_X emissions reduction.

(iv) The average NO_X emission reduction percentage for a NO_X survey series shall be calculated according to the following formula:

$$ANER = \frac{\sum_{i=1}^{s}\left(\frac{\sum_{j=1}^{n} NER_j}{n}\right)_i}{s}$$

Where:

ANER=the average NO_X emission reduction percentage for a NO_X survey series,

n=the number of gasoline samples taken in the course of a week-long NO_X survey,

NER_j=the NO_X emissions reduction percentage for gasoline sample j determined according to the appropriate methodology at § 80.45, and

S=the number of week-long NO_X surveys conducted during the year

(v) The covered area shall have failed a NO_X survey series if the average NO_X emissions reduction percentage for the series, as computed in paragraph (c)(10)(iv) of this section, is less than the applicable Phase I or Phase II complex model per gallon standard for NO_X emissions reduction.

(11)(i) The results of each benzene content survey series conducted in any covered area shall be determined according to the following formula:

$$AABC = \frac{\sum_{i=1}^{s}\left(\frac{\sum_{j=1}^{n} BC_j}{n}\right)_i}{s}$$

Where:

AABC = the annual average benzene content for a benzene content survey series,

n = the number of gasoline samples taken in the course of a week-long benzene content survey,

BC_j = the benzene content for gasoline sample j taken in the course of a week-long benzene content survey, and

S = the number of week-long benzene content surveys conducted during the year.

(ii) If the annual average benzene content computed in paragraph (c)(11)(i) of this section is greater than 1.000 percent by volume, the covered area shall have failed a benzene content survey series.

(12)(i) The results of each oxygen content survey series conducted in any covered area shall be determined according to the following formula:

$$AAOC = \frac{\sum_{i=1}^{s}\left(\frac{\sum_{j=1}^{n} OC_j}{n}\right)_i}{s}$$

Where:

AAOC = the annual average oxygen content for an oxygen content survey series,

n = the number of gasoline samples taken in the course of a week-long oxygen content survey,

Oc_j = the oxygen content for gasoline sample j taken in the course of a week-long oxygen content survey, and

S = the number of week-long oxygen content surveys conducted during the year.

(ii) If the annual average oxygen content computed in paragraph (c)(12)(i) of this section is less than 2.00 percent by weight, the covered area shall have failed an oxygen content survey series.

* * * * *

(13) * * *

(iii) Include procedures such that the number of samples included in each survey or survey series (whichever is applicable) assures that:

(A) In the case of simple model surveys or survey series, the average levels of oxygen, benzene, RVP, and aromatic hydrocarbons are determined with a 95% confidence level, with error of less than 0.1 psi for RVP, 0.05% for benzene (by volume), and 0.1% for oxygen (by weight); and

(B) In the case of complex model surveys or survey series, the average levels of oxygen, benzene, RVP, aromatic hydrocarbons, olefins, T–50, T–90 and sulfur are determined with a 95% confidence level, with error of less than 0.1 psi for RVP, 0.05% for benzene (by volume), 0.1% for oxygen (by weight), 0.5% for olefins (by volume), 5° F. for T–50 and T–90, and 10 ppm for sulfur; or an equivalent level of precision for the complex model-determined emissions parameters; and

* * * * *

18. Section 80.69 is amended by:

a. Revising paragraphs (a)(2), (a)(6)(iv), and the introductory text of (a)(7);

b. Removing and reserving paragraph (a)(4), and removing paragraphs (a)(8), (a)(9), and (a)(10);

c. Revising paragraph (b)(1), and adding paragraph (b)(5); and

d. Revising (paragraph (e), introductory text, paragraphs (e)(2)(i)(A) and (e)(2)(v) to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

* * * * *

(a) * * *

(2) * * *

(i) Adding oxygenate to a representative sample of the RBOB, as follows:

(A) Where the RBOB is designated as any-oxygenate, add ethanol so that the resulting reformulated gasoline has a maximum oxygen content of 2.0 wt%;

(B) Where the RBOB is designated as ether-only, add MTBE so that the resulting reformulated gasoline has a maximum oxygen content of 2.0 wt%; or

(C) Where the RBOB has oxygenate blending instructions other than ''any-oxygenate'' or ''ether-only'' and where the refiner or importer meets the contractual and quality assurance requirements in paragraphs (a)(5) through (a)(7) of this section:

(*1*) Add the oxygenate specified for the RBOB, or if more than one oxygenate is allowed, from the following list of oxygenates add the first that is specified: Ethanol, MTBE, ETBE, any other specified oxygenate; and

(*2*) Add the volume of oxygenate specified for the RBOB, or if a range is specified, add the minimum vol%; or

(D) Where the RBOB has oxygenate blending instructions other than ''any-oxygenate'' or ''ether-only,'' and where the refiner or importer fails to meet the contractual and quality assurance requirements in paragraphs (a)(5) through (a)(7) of this section, add 4.0 vol% ethanol; and

(ii) Determining the properties and characteristics, including the oxygen and oxygenate content, of the resulting

gasoline using the methodology specified in § 80.65(e).

* * * * *

(4) [Reserved]

* * * * *

(6) * * *

(iv) Carry out the quality assurance sampling and testing requirements for oxygenate blenders specified in § 80.69(e)(2);

(7) Conduct a quality assurance sampling and testing program to be carried out at the facilities of each oxygenate blender who blends any RBOB produced or imported by the refiner or importer with any oxygenate, to determine whether the reformulated gasoline which has been produced through blending contains the oxygen type and oxygen amount specified by the refiner or importer, and complies with the standard for oxygen specified in § 80.41. The testing shall use the oxygen and oxygenate test method specified in § 80.46(g).

* * * * *

(b) * * *

(1) Add oxygenate as follows.

(i) For RBOB designated as ''any oxygenate'' add any oxygenate.

(ii) For RBOB designated as ''ether-only'' add an ether oxygenate (e.g., MTBE, ETBE, TAME, or butanol).

(iii) For RBOB designated as either ''any-oxygenate'' or ''ether-only'' add an amount of oxygenate that:

(A) Is equal to or greater than the minimum oxygen or oxygenate content specified for the RBOB, or the amount of oxygenate necessary for the resulting reformulated gasoline to meet the applicable oxygen minimum standard, whichever is greater; and

(B) Does not exceed the applicable oxygen maximum content requirement.

(iv) For RBOB not designated ''any-oxygenate'' or ''ether-only'' add oxygenate of the type specified for the RBOB, and in an amount that is equal to or greater than the minimum amount specified for the RBOB and that is equal to or less than the oxygen maximum standards in § 80.41.

(v) In addition to the oxygenates specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, the RFG produced using RBOB may contain an amount of other oxygenate, provided that the other oxygenate:

(A) Has a maximum volume of:

(*1*) 0.4 volume % ethanol; *or*

(*2*) 0.6 volume % MTBE, ETBE, TAME or butanol; *or*

(*3*) 0.2 volume % methanol; and

(B) Was not added intentionally.

* * * * *

(5) Oxygenate blenders who blend oxygenate in trucks are not subject to the requirements of paragraph (b)(4) of this section, provided that the following requirements are met:

(i) The oxygenate blending shall be carried out using computer-controlled in-line or sequential blending that operates in such a manner that the volumes of oxygenate and RBOB are automatically dispensed when a particular grade of gasoline is selected for loading into a truck, and no operator instructions are required regarding the oxygenate-RBOB proportions when an individual truck is loaded.

(ii) The oxygenate blender shall be the party who operates the computer-controlled in-line or sequential blending equipment.

(iii) The oxygenate blender shall base its compliance calculations on the volumes and properties of RBOB and oxygenate used during a period not longer than one calendar month.

(iv)(A) In calculating the oxygen content of for each batch of RFG produced, the oxygenate blender shall use the following equation:

$$W_o = \frac{V_o * d_o * O_o}{(V_g * d_g) + (V_o * d_o)}$$

Where:

W_o=weight percent oxygen in blend from oxygenate

V_o=volume percent oxygenate

d_o = density of oxygenate (g/ml)

O_o=weight fraction oxygen in oxygenate

V_g=volume of gasoline

d_g=density of gasoline

(B) And where the densities and weight fractions of oxygen are used:

Oxygenate	Density at 60 °F (gm/ml)	Weight fraction oxygen
ethanol	0.7939	0.3473
ethyl t-butyl ether (ETBE)	0.7452	0.1566
ethyl t-amyl ether (ETAE)	0.7452	0.1566
methanol	0.7963	0.4993
methyl t-butyl ether (MTBE)	0.7460	0.1815
t-amyl methyl ether (TAME)	0.7758	0.1566
diisopropyl ether (DIPE)	0.7282	0.1566
t-butyl alcohol	0.7922	0.2158
n-propanol	0.8080	0.2662

(v) In determining the volume % ethanol to use in paragraph (b)(5)(iv) of this section, the denaturant content of ethanol (if used), shall be either:

(A) 5 vol%, provided that the oxygenate blender conducts a program of quality assurance sampling the ethanol used, as follows:

(*1*) The frequency of the sampling and testing shall be at least one sample every month;

(*2*) In the event an ethanol sample from this quality assurance program has an oxygenate purity level of less than 92.1%, the oxygenate blender must:

(i) Use the greater denaturant content for all oxygen compliance calculations for the ethanol that was tested, and;

(ii) Increase the frequency of quality assurance sampling and testing to one sample every two weeks, and must maintain this frequency until four successive samples show an ethanol purity content that is equal to or greater than 92.1%.

(*3*) The formula for calculating denaturant content based upon ethanol purity is the following:

$$DC = 99.01 - \left(\frac{OP}{0.98} * 100 \right)$$

Where:

DC=denaturant content, in vol%

OP=measured ethanol purity, expressed as decimal or

(B) The measured denaturant content for each batch of oxygenate used to produce RFG.

(vi) During each oxygen averaging period, the oxygenate blender shall use only the assumed denaturant content of ethanol (if used) or only the measured denaturant content for all compliance

calculations for an oxygenate blending facility.

(vii) The oxygenate blender shall conduct a program of quality assurance sampling and testing the RFG produced using the procedures and at the frequencies specified under § 80.69(e)(2).

* * * * *

(e) *Additional requirements for oxygenate blenders who blend oxygenate in trucks.* Any oxygenate blender, other than a terminal storage tank blender specified in § 80.69(c), shall:

* * * * *

(2) * * *

(i) * * *

(A) Prior to combining the resulting gasoline with any other gasoline; or

* * * * *

(v) In the event the testing results for any sample indicate the gasoline does not contain the specified type and amount of oxygenate (within the ranges specified in § 80.65(e)(2)(i)):

* * * * *

19. Section 80.70 is amended by adding paragraph (l) to read as follows:

§ 80.70 Covered areas.

* * * * *

(l) The Sacramento, California, ozone nonattainment area, redesignated as a severe ozone nonattainment area effective June 1, 1995, is a covered area for purposes of subpart D, beginning on June 1, 1996. The Sacramento, California ozone nonattainment area is comprised of:

(1) All portions of El Dorado County except that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake. (See 40 CFR 81.275)

(2) All portions of Placer County except that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: commencing at the point common to the aforementioned drainage area crest line and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian (M.D.B.&M.), and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, M.D.B.&M., thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, M.D.B.&M., to the intersection with the said drainage area crest line, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crest line in a northeasterly, then northwesterly direction to the point of beginning. (See 40 CFR 81.275)

(3) That portion of Solano County which lies north and east of a line described as follows. Description of boundary in Solano County between San Francisco and Sacramento: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T. 6 N., R. 2 W., M.D.B.&M., thence east along said ¼ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W., thence east along a line common to T. 5 N. and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10, T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8, T. 3 N., R. 2 E., thence east to the boundary between Solano and

(4) The southern portion of Sutter County described as follows. South of a line connecting the northern border of Yolo County to the southwest tip of Yuba County and continuing along the southern Yuba County border to Placer County.

(5) The northern portion of Sutter County described as follows: North of a line connecting the northern border of Yolo County to the southwest tip of Yuba County and continuing along the southern Yuba County border to Placer County.

20. Section 80.72 is added to subpart D to read as follows:

§ 80.72 Independent analysis requirements.

(a) *Independent sampling and analysis required.* Any refiner or importer of reformulated gasoline or RBOB shall carry out a program of independent sample collection and analyses for the reformulated gasoline it produces or imports, which meets the requirements of one of the following two options:

(1) *Option 1.* The refiner or importer shall, for each batch of reformulated gasoline or RBOB that is produced or imported, have the gasoline sampled and tested by the designated independent laboratory according to the requirements specified in this section.

(2) *Option 2.* The refiner or importer shall have a periodic independent testing program carried out for all reformulated gasoline or RBOB produced or imported, which shall consist of the designated independent laboratory sampling each batch of reformulated gasoline or RBOB, and analyzing each sample identified under paragraph (d) of this section, according to the requirements specified in this section.

(b) *Designation of independent laboratory.* (1) Any refiner or importer shall designate one independent laboratory for each refinery or import facility at which reformulated gasoline or RBOB is produced or imported, and shall identify this laboratory to EPA under the registration requirements of § 80.76.

(2) In order to be considered independent:

(i) The laboratory shall not be operated by any refiner or importer who produces or imports reformulated gasoline or RBOB, or by any refiner or importer that is part of a corporate organization that includes a refiner or importer of reformulated gasoline or RBOB, including subsidiary corporations, parent corporations and subsidiaries thereof, and employees of any of these corporations;

(ii) The laboratory shall be free from any interest in any refiner or importer; and

(iii) The refiner or importer shall be free from any interest in the laboratory; however

(iv) Notwithstanding the restrictions in paragraphs (b)(2)(i) through (iii) of this section, a laboratory shall be considered independent if it is owned or operated by a gasoline pipeline company, regardless of ownership or operation of the gasoline pipeline company by refiners or importers, provided that such pipeline company is owned and operated by four or more refiners or importers.

(3) Use of a laboratory that is debarred, suspended, or proposed for debarment pursuant to the Governmentwide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, FAR 48 subpart 9.4, shall be deemed noncompliance with the requirements of this section.

(4) Any laboratory that fails to comply with the requirements of this section shall be subject to debarment or suspension under Governmentwide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility regulations, Federal Acquisition Regulations FAR 48 subpart 9.4.

(c) *Sampling and reporting.* For all samples collected or analyzed pursuant to the requirements of this section, the

refiner or importer shall have the independent laboratory:

(1) Collect a representative sample from the batch of reformulated gasoline following the sampling procedures specified in § 80.47;

(2) Determine which standards are being met on a per-gallon basis and which standards are being met on average, and obtain the refiner's or importer's assigned batch number for the batch being sampled;

(3) Determine the volume of the batch;

(4) Determine the identification number of the gasoline storage tank or tanks in which the batch was stored at the time the sample was collected;

(5) Determine the date and time the batch became finished reformulated gasoline, and the date and time the sample was collected;

(6) Determine the grade of the batch (e.g., premium, mid-grade, or regular); and

(7) In the case of reformulated gasoline produced through computer-controlled in-line blending, determine the date and time the blending process began and the date and time the blending process ended, unless exempt under § 80.65(f)(2);

(8) Retain each sample for a period of 30 days, except that this period shall be extended to a period of up to 180 days upon request by EPA; and

(9) Supply to EPA any sample collected or a portion of any such sample, according to the requirements of paragraph (f) of this section.

(d) *Selecting samples for analysis.* A refiner or importer shall have any laboratory serving as the independent laboratory under the periodic independent analysis option of paragraph (a)(2) of this section, for each refinery or importer, analyze gasoline samples identified as follows:

(1) *General instructions.* (i) Samples must be selected for analysis for each two week period. Each two-week period begins on Sunday night at midnight, and lasts for the subsequent two weeks. The first two-week period begins at midnight on August 7, 1994, the second two-week period begins at midnight on August 21, 1994, etc.

(ii) EPA may issue special instructions for selecting samples for analysis for any specific refiner, refinery, importer, or independent lab that differ in whole or in part from the instructions contained in this paragraph (d), and if such special instructions are issued they must be followed instead of the instructions contained in this protocol.

(2) *Identify samples for the current analysis cycle.* (i) Identify each sample of RFG or RBOB collected during the preceding two-week period, and the refiner or importer assigned batch identification number for each sample.

(ii) Add any samples carried over from a prior analysis cycle, from paragraphs (d)(3)(i) and (ii) of this section.

(iii) Order the samples from the preceding two-week period, plus any carry over samples, in chronological order using the batch identification number for each sample.

(3) *Determine the number of samples to be analyzed.*

(i) The number of samples that must be analyzed for the current analysis cycle is the number of samples identified under paragraph (d)(2) of this section that is evenly divisible by ten.

(ii) Any remainder from this division is the number of samples that must be carried over to the subsequent analysis cycle. Any carry over samples must be those with the largest batch identification numbers.

Example. If the number of samples identified under paragraph (d)(2) is thirty seven, with batch numbers 4321–54321–95–002534 through 4321–54321–95–002570, the number of samples that must be analyzed in the current analysis cycle is three, and seven samples must be carried over to the subsequent analysis cycle. The specific samples that must be carried over are those seven with the largest batch identification numbers, or samples 4321–54321–95–002564 through 4321–54321–95–002570.

(iii) To the extent any sample carry over would result in a sample being retained by the independent lab for more than 30 days, this sample shall be retained by the independent laboratory until the sample is not carried over to a subsequent analysis cycle, but for a maximum of 180 days.

(iv)(A) If the number of samples identified under paragraph (d)(2) of this section is less than ten, then all samples should be carried over to the subsequent analysis cycle.

(B) If the number of samples identified under paragraph (d)(2) of this section is less than ten, and any sample carry over would result in a sample being retained for more than 180 days, then one sample must be analyzed from the number, and none of the samples would be carried over to the subsequent analysis cycle.

(4) *Identify which samples to analyze.* (i) Identify the beginning point for using the Random Number Table at paragraph (d)(4)(ii) of this section for the current analysis cycle.

(A) Identify the last two digits from the closing point for the Dow Jones Industrial Average as reported in the Wall Street Journal for the first day the New York Stock Exchange is open following the close of the preceding two-week period.

Example. For the two-week period ending at midnight on Sunday, August 20, the relevant two digits would be the last two digits for the close for the Dow Jones Industrial Average for Monday, August 21, as reported in the Wall Street Journal for Tuesday, August 22. If this Dow Jones Industrial Average close is 3,741.06, the relevant two digits would be 06.

(B) The beginning point for the Random Number Table at paragraph (d)(4)(ii) of this section for the current analysis cycle is the row number (from Column A of the Random Number Table) that corresponds to the number identified under paragraph (d)(4)(i)(A) of this section. Using the example from paragraph (d)(4)(i)(A) of this section, the applicable row number would be 06, and the first random number would be 27.

(ii) Random Number Table:

Column	
A	B
00	60
01	77
02	38
03	16
04	45
05	39
06	27
07	93
08	97
09	37
10	06
11	18
12	98
13	05
14	92
15	72
16	71
17	87
18	20
19	41
20	00
21	78
22	33
23	61
24	75
25	25
26	54
27	80
28	32
29	17
30	15
31	63
32	04
33	21
34	90
35	68
36	58
37	13
38	47
39	91
40	95
41	01
42	02
43	76
44	79

Column A	Column B
45	19
46	11
47	88
48	73
49	43
50	74
51	12
52	31
53	85
54	94
55	35
56	40
57	55
58	86
59	34
60	22
61	46
62	89
63	70
64	50
65	03
66	09
67	67
68	42
69	82
70	84
71	96
72	28
73	66
74	49
75	23
76	26
77	81
78	65
79	29
80	64
81	57
82	59
83	83
84	10
85	52
86	53
87	30
88	48
89	69
90	24
91	62
92	99
93	51
94	56
95	36
96	08
97	14
98	07
99	44

(iii) For each sample for the current analysis cycle under paragraph (d)(2) of this section, excluding any samples carried over to the subsequent analysis cycle under paragraphs (d)(3)(ii) or (d)(3)(iv)(A) of this section, identify the last two digits of the batch identification number. This process is illustrated in the following table:

If the batch number is:	The last two digits are:
4321–54321–95–002533	33
4321–54321–95–002593	93

(iv) Compare the two digit number from Column B of the Random Number Table at the beginning point identified under paragraph (d)(4)(ii) of this section (the first random number) with each of the two digit sample numbers identified under paragraph (d)(4)(iii) of this section.

(v) If the first random number matches any sample number, this sample is identified as a sample for analysis. If the random number matches more than one sample number, only the sample with the lowest batch identification number is identified as a sample for analysis.

(vi) If the first random number does not match any sample number, then move to the next number in the Random Number Table, and repeat the process described under paragraph (d)(4)(v) of this section. In the example under paragraph (d)(4)(iii) of this section, there is no match for the first random number (27), but there is a match for the second random number (93), and sample number 4321–54321–95–002593 would be identified for analysis.

(vii) Continue this process until the number of samples identified for analysis equals the number under paragraphs (d)(3)(i) or (d)(4)(ii) of this section.

(e) *Analysis of samples.* (1) Any independent laboratory who analyzes a sample under the requirements of this section shall use the analysis methodologies specified in § 80.46.

(2) If a sample to be analyzed is of RBOB, the sample first must be blended with oxygenate as follows:

(i) If the RBOB is designated as any-oxygenate, ethanol shall be blended at a volume that results in 2.0 wt% oxygen;

(ii) If the RBOB is designated as ether-only, MTBE shall be blended at a volume that results in 2.0 wt% oxygen;

(iii) If the RBOB is other than any-oxygenate or ether-only, the RBOB shall be blended with the oxygenate specified for the RBOB, or if more than one oxygenate is allowed, from the following list of oxygenates the first that is allowed by the refiner's instructions: Ethanol, MTBE, ETBE, any other specified oxygenate. The volume of oxygenate shall be the volume specified in the refiner's instructions, or if a range is specified, the minimum volume specified.

(f) *Shipment of samples to EPA.*—(1) *Quality assurance samples.* Any laboratory serving as the independent laboratory under this section shall, for each refinery or importer, supply certain gasoline samples to EPA according to the following requirements. Notwithstanding the gasoline samples identified in this paragraph (f), EPA may specify a different frequency for sending samples to EPA for any refiner, refinery, importer, or independent lab, and if such different frequency is specified it must be followed.

(2) *Refiners and importers using the periodic independent analysis option.* (i) In the case of samples identified for analysis under paragraph (d) of this section, for each thirty-third sample that is analyzed for each refinery or importer a portion of the sample must be sent to EPA.

(ii) In the case of samples that are not identified for analysis under paragraph (d) of this section, each thirty-third sample that is collected for each refinery or importer but that is not analyzed by the independent laboratory must be sent to EPA.

(3) *Refiners and importers using the 100% independent analysis option.* In the case of refiners and importers using the 100% independent analysis option of paragraph (a)(1) of this section, for every thirty-third sample that is analyzed for each refinery or importer, a portion of the sample must be sent to EPA.

(4) *Samples that violate applicable standards.* (i) The remaining portion of each sample that violates an applicable per-gallon standard must be labeled as such and shipped to EPA.

(ii) The applicable standards are those specified under § 80.41. In the case of standards being met on a per-gallon basis, the per-gallon standards are the applicable standards. In the case of standards being met on an average basis,

the per-gallon minimums and maximums are the applicable standards. Beginning on January 1, 1998, per-gallon standards include the complex model range limits specified under § 80.41(h)(3).

(5) *Sample shipping procedures.* (i) Each sample sent to EPA must be sealed in containers and transported in accordance with the procedures specified in § 80.8, and identified with the independent lab's name and registration number and the sample information specified in paragraphs (e)(1) through (7) of this section.

(ii) The quantity of sample that must be sent is: in the case of samples that have been analyzed by the independent lab, the entire volume remaining following the laboratory analysis which should be a minimum of 330mL; and in the case of samples that have not been analyzed by the independent lab, a minimum of 70% of one quart.

(iii) Samples identified for shipping to EPA must be sent via an overnight package service or a comparable means to the address and following procedures specified by EPA.

21. Section 80.74 is amended by revising paragraphs (a)(2)(iii), (b)(2), (b)(5) and (b)(6), and adding paragraphs (b)(7), (b)(8), (b)(9), and (h) to read as follows:

§ 80.74 Recordkeeping requirements.

* * * * *

(a) * * *

(2) * * *

(iii) (A) The results of the test as originally printed by the testing apparatus, or where no printed result is generated by the testing apparatus, the results as originally recorded by the person who performed the tests; and

(B) Any record that contains results for the test that are not identical to the results recorded in paragraph (a)(2)(iii)(A); and

* * * * *

(b) * * *

(2) The information specified in § 80.47(b) used to establish gasoline homogeneity;

* * * * *

(5) In the case of any refinery or importer subject to the simple model standards, the calculations used to determine the 1990 baseline levels of sulfur, T–90, and olefins, and the calculations used to determine compliance with the standards for these parameters;

(6) In the case of any refinery or importer subject to the complex model standards before January 1, 1998, the calculations used to determine the baseline levels of VOC, toxics, and NO_x emissions performance;

(7) In the case of any imported GTAB, records that reflect the storage and physical movement of the GTAB from the point of importation to the point of blending to produce reformulated gasoline; and

(8) In the case of any gasoline classified as previously certified gasoline under the terms of § 80.65(i):

(i) Results of the tests to determine the properties and volume of the previously certified gasoline when received at the refinery; and

(ii) Records that reflect the storage and movement of the previously certified gasoline within the refinery to the point the previously certified gasoline is used to produce reformulated gasoline.

(9) In the case of any transmix blended with gasoline, records that reflect the volumes of gasoline and transmix that are blended.

* * * * *

(h) *Independent laboratories.* The refiner or importer shall have any laboratory serving as an independent laboratory under § 80.72 keep the records specified in paragraphs (a)(2) (i) through (iii), (b) (1) through (3), and (b)(4)(i) of this section, and records containing the information specified under § 80.72(c)(1).

* * * * *

22. Section 80.75 is amended by:

(a) Revising paragraph (a), introductory text;

(b) Revising paragraphs (a)(2)(vi) and(a)(2)(vii), and adding paragraphs (a)(2)(viii) and (a)(2)(ix);

(c) Revising paragraph (a)(3);

(d) Revising and redesignating paragraph (n) as paragraph (o), and adding paragraph (n) to read as follows:

§ 80.75 Reporting requirements.

* * * * *

(a) *Quarterly reports for reformulated gasoline.* Any refiner or importer that produces or imports any reformulated gasoline or RBOB, and any oxygenate blender that produces reformulated gasoline meeting the oxygen standard on average, shall submit quarterly reports to the Administrator for each refinery or oxygenate blending facility at which such reformulated gasoline or RBOB was produced and for all such reformulated gasoline or RBOB imported by each importer. The refiner, importer or oxygenate blender shall include notification to EPA of per-gallon versus average election with the first quarterly reports submitted each year.

* * * * *

(2) * * *

(vi) For any importer, the PADD in which the import facility is located;

(vii) For any oxygenate blender, the oxygen content;

(viii) In the case of any imported GTAB, identification of the gasoline as such; and

(ix) In the case of any previously certified gasoline used in a refinery operation under the terms of § 80.65(i), the following information relative to the previously certified gasoline when received at the refinery:

(A) Identification of the previously certified gasoline as such;

(B) The batch number assigned by the receiving refinery;

(C) The date of receipt; and

(D) The volume, properties and designations of the batch.

(3)(i) The following formula shall be used to convert weight percent oxygen from an oxygenate to volume percent oxygenate:

$$V_o = \frac{W_g * d_g}{W_o * d_o}$$

Where:

V_o=volume percent oxygenate

W_o=weight percent oxygen in blend from oxygenate

W_g=weight percent gasoline in blend from gasoline

d_o=density of oxygenate (g/ml)

d_g=density of gasoline (g/ml)

(ii) The following densities and weight fractions of oxygen should be used for these calculations:

Oxygenate	Density at 60 °F (gm/ml)	Weight fraction oxygen
ethanol	0.7939	0.3473
ethyl t-butyl ether (ETBE)	0.7452	0.1566
ethyl t-amyl ether (ETAE)	0.7452	0.1566
methanol	0.7963	0.4993
methyl t-butyl ether (MTBE)	0.7460	0.1815
t-amyl methyl ether (TAME)	0.7758	0.1566
diisopropyl ether (DIPE)	0.7282	0.1566
t-butyl alcohol	0.7922	0.2158
n-propanol	0.8080	0.2662

* * * * *

(n) *Reports by independent laboratories.* The refiner or importer shall have any laboratory serving as an independent laboratory under § 80.72 submit to EPA the following reports:

(1) A report for the period January through March shall be submitted by May 31; a report for the period April through June shall be submitted by August 31; a report for the period July through September shall be submitted by November 30; and a report for the

period October through December shall be submitted by February 28;

(2) Each report shall include, for each sample of reformulated gasoline that was analyzed during a period, the analysis results for the sample and the information specified in §§ 80.72 (c) (1) through (7).

(o) *Report submission.* The reports required by this section shall be:

(1) Submitted on forms and following procedures specified by the Administrator; and

(2) Signed and certified as correct by the owner or a responsible corporate officer of the refiner, importer, oxygenate blender, or independent laboratory.

23. Section 80.77 is amended by revising the introductory text and paragraphs (c), (f), (g)(3) and (j), to read as follows:

§ 80.77 Product transfer documentation.

On each occasion when any person transfers custody or title to any reformulated gasoline or RBOB, other than when gasoline is sold or dispensed for use by ultimate consumers at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee documents which include the information specified in this section. These documents shall be transferred no later than the time of the physical transfer of the gasoline in the case of custody transfers, and within 30 days following the transfer in the case of title transfers.

* * * * *

(c) The volume of gasoline or RBOB which is being transferred;

* * * * *

(f) The proper identification of the product as reformulated gasoline or RBOB;

(g) * * *

(3) In the case of VOC-controlled reformulated gasoline that contains ethanol, identification or the gasoline as containing ethanol.

* * * * *

(j) With the exception of custody transfers to truck carriers, retail outlets and wholesale purchaser-consumer facilities, the information required in paragraphs (f), (g) and (i) of this section may be in the form of product codes, provided that:

(1) The codes are standardized for the distribution system in which they are used; and

(2) The transferee is given the information to interpret the codes.

24. Section 80.78 is amended by:

(a) Revising the introductory text of paragraph (a)(1);

(b) Revising paragraph (a)(1)(v)(C) and adding paragraph (a)(1)(vi) ;

(c) Revising paragraph (a)(2);

(d) Removing and reserving paragraph (a)(3);

(e) Revising paragraphs (a) (4) through (7);

(f) Revising paragraph (a)(10);

(g) Adding paragraphs (a)(11), (a)(12), and (a)(13), to read as follows:

§ 80.78 Controls and prohibitions on reformulated gasoline.

(a) *Prohibited activities.* (1) No person may produce, import, sell, distribute, offer for sale or distribution, dispense, supply, offer for supply, store or transport any gasoline for use by ultimate consumers in a reformulated gasoline covered area unless the gasoline meets the definition of reformulated gasoline, and

* * * * *

(v) * * *

(C) Unless each gallon of such gasoline that is subject to complex model standards has a VOC and NO_X emissions reduction percentage which is greater than or equal to the applicable minimum specified in § 80.41; and

(vi) Unless each gallon of such gasoline that is subject to complex model standards has property values that are within the acceptable range limits for the complex model specified under § 80.45(f)(1)(i).

* * * * *

(2) No person may produce, import, sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, or transport any gasoline represented as reformulated gasoline or RBOB:

* * * * *

(3) [Reserved]

(4) Gasoline shall be presumed to be for use by ultimate consumers in a reformulated gasoline covered area unless the product transfer documentation accompanying such gasoline clearly indicates, as specified in § 80.106, that the gasoline is intended for sale and use only outside any covered area.

(5) No person may combine any reformulated gasoline with any conventional gasoline or blendstock, except a refiner who does so at a refinery under the requirements specified in § 80.65(i).

(6) No person may add any oxygenate to reformulated gasoline, except oxygenate of the type that was used to produce the reformulated gasoline and in an amount such that the reformulated gasoline meets the oxygen maximum standard in § 80.41(g) after the oxygenate has been added.

(7) No person may combine any RBOB with any other gasoline, blendstock, or oxygenate, except:

(i) Oxygenate of the type specified for the RBOB, and in an amount that is equal to or greater than the minimum amount specified for the RBOB and is equal to or less than the amount allowed by the oxygen maximum standard in § 80.41(g);

(ii) Other RBOB for which the same oxygenate type is specified, in which case the minimum oxygenate volume specification for the blended RBOB will be the largest minimum volume specification for any of the RBOB's that are combined; or

(iii) Under the terms of paragraph (a)(5) of this section.

* * * * *

(10) No person may cause another person to commit the actions prohibited under this paragraph (a).

(11) Exemptions.

(i) The prohibited activities specified in paragraphs (a)(1) of this section do not apply in the case of gasoline that is used for research, development, or testing purposes, provided that:

(A) The research, development, or testing program:

(*1*) Has a purpose that constitutes an appropriate basis for exemption;

(*2*) Necessitates the exemption;

(*3*) Is reasonable in scope; and

(*4*) Has a degree of control consistent with the purpose of the program; and

(B) The product transfer documentation associated with such gasoline shall identify the gasoline as conventional gasoline for use in research, development, or testing, as applicable, and shall state that it is to be used only for research, development, or testing purposes;

(C) The gasoline shall not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a gasoline retail outlet in a covered area specified in § 80.70. The gasoline also shall not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, or transported to or from, or stored by a wholesale purchaser-consumer facility in a covered area specified in § 80.70, unless such facility is associated with the research, development or testing program that uses the gasoline;

(D) Prior to the initial use of the product, and subsequently at least on an annual basis, the party using the gasoline for research, development, or testing purposes shall submit to EPA the following information:

(*1*) A description of the research, development, or testing program and the purpose of the program, including the range of noncomplying properties of the fuel expected to be used in the program;

(*2*) The expected dates on which the program will begin and end, and the mileage duration of the program;

(*3*) The identification of any vehicles or engines in which the gasoline is to be used;

(*4*) The location where the gasoline will be stored, and the location where the gasoline will be used;

(*5*) The volume of the product to be used;

(*6*) The identification of the source (e.g., the gasoline distributor) of the gasoline; and

(*7*) An explanation of why reformulated gasoline cannot be used in the program.

(*8*) An explanation of why the program cannot be conducted in an area that is not a covered area specified in § 80.70.

(E) The party using the gasoline for the research, development or testing program shall submit to EPA the program results upon completion of the program.

(F) The submissions required under paragraphs (a)(11)(i) (D) and (E) of this section shall be:

(*1*) Certified as being accurate by the owner or president of the company or business performing the research, development, or testing; and

(*2*) Submitted to the following EPA addresses:

Director (6406J) Fuels and Energy Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460
and
Director (2242A), Air Enforcement Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

(G) The exemption in this paragraph (a)(11) shall be null and void upon written notification by EPA.

(ii)(A) The prohibited activities specified in paragraphs (a)(1) of this section do not apply in the case of gasoline that is used to fuel aircraft, or racing motor vehicles or racing boats that are used only in sanctioned racing events, provided that product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as conventional gasoline that is restricted for use in aircraft, or as conventional gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events.

(B) A vehicle shall be considered to be a racing vehicle only if the vehicle:

(*1*) Is operated only in conjunction with sanctioned racing events;

(*2*) Exhibits racing features and modifications such that it is incapable of safe and practical street or highway use;

(*3*) Is not licensed, and is not licensable, by any state for operation on public streets or highways;

(*4*) Is not currently, and previously has not been, operated on public streets or highways; and

(*5*) Could not be converted to public street or highway use at a cost that is reasonable compared to the value of the vehicle.

(12) The prohibitions against combining certain categories of gasoline under paragraphs (a)(1)(iii), (a)(5), (a)(7), (a)(8), and (a)(10) of this section do not apply in the case of a party who is changing the type of gasoline stored in a gasoline storage tank or the type of gasoline transported through a gasoline pipe or manifold within a single facility (a gasoline storage tank, pipe, or manifold change of service), or in the case of a change of service that involves mixing gasoline with blendstock, provided that:

(i) The change of service is for a legitimate operational reason and is not for the purpose of combining the categories of gasoline or of combining gasoline with blendstock;

(ii) Prior to adding product of the new category the volume of product of the old category in the tank, pipe or manifold is made as low as possible through normal pumping operations;

(iii) The volume of product of the new category that is added to the tank, pipe or manifold is as large as possible taking into account the availability of product of the new category; and

(iv) In any case where the new category of product is reformulated gasoline, subsequent to adding the gasoline of the new category a representative sample from the tank, pipe or manifold is collected and analyzed, and such analysis shows compliance with each standard under § 80.41 that is relevant to the new gasoline category. The analysis for each standard must be conducted using the method specified under § 80.46, or using another method that is approved by the American Society of Testing and Materials provided that the other method is correlated with the method specified under § 80.46.

(13) The prohibition against combining reformulated gasoline with RBOB under paragraph (a)(8)of this section does not apply in the case of a party who is changing the type of product stored in a tank from which trucks are loaded, from reformulated gasoline to RBOB, or vice versa, provided that:

(i) The change of service requirements described in paragraph (a)(12) of this section can not be met without taking the storage tank out of service;

(ii) Prior to adding product of the new category the volume of product of the old category in the tank is drawn down to the lowest point which allows trucks to be loaded during the transition;

(iii) The volume of product of the new category that is added to the tank is as large as possible taking into account the availability of product of the new category;

(iv) When transitioning from RBOB to reformulated gasoline:

(A) If the reformulated gasoline in the storage tank has a oxygen content of less than 1.5 wt%, oxygenate must be blended into the RFG at the loading rack such that the RFG has a minimum oxygen content of 1.5 wt%;

(B) Subsequent to any oxygenate blending, the reformulated gasoline must meet all applicable standards that apply at the terminal; and

(C) Prior to the date the VOC-control standards apply to the terminal the reformulated gasoline in the storage tank must have an oxygen content of not less than 1.5 wt%;

(v) When transitioning from reformulated gasoline to RBOB:

(A) The oxygen content of the reformulated gasoline produced using the RBOB must be not less than the minimum oxygen amount specified in the RBOB product transfer documents;

(B) Subsequent to any oxygenate blending, the reformulated gasoline must meet all applicable standards; and

(C) The transition from reformulated gasoline to RBOB may not begin until the date the VOC-control standards no longer apply to the terminal; and

(vi) The party must demonstrate compliance with the requirements specified in paragraphs (a)(13)(iv) and (v) of this section through testing of samples collected from the terminal storage tank and from trucks loaded at the terminal subsequent to each receipt of new product until the transition is complete. The analyses must be conducted using the test method specified under § 80.46, or using another test method that is approved by the American Society of Testing and Materials provided that the other method is correlated with the method specified under § 80.46.

25. Section 80.79 is amended by revising paragraphs (b)(2) and adding paragraphs (b)(3) and (c)(3) to read as follows:

§ 80.79 Liability for violations of the prohibited activities.

* * * * *

(b) * * *

(2) Where a violation is found at a facility which is operating under the corporate, trade or brand name of a refiner or importer, that refiner or importer must show, in addition to the defense elements required by paragraph (b)(1) of this section, that the violation was caused by:

(i) An act in violation of law (other than the Act or this part), or an act of sabotage or vandalism; or

(ii) The action of any retailer or wholesale purchaser-consumer supplied by the refiner or importer in violation of a contractual undertaking imposed by the refiner or importer designed to prevent such action, and despite periodic sampling and testing by the refiner or importer to ensure compliance with such contractual obligation; or

(iii) The action of any reseller, distributor, oxygenate blender, carrier, or a retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the refiner or importer designed to prevent such action, and despite periodic sampling and testing by the refiner or importer to ensure compliance with such contractual obligation; or

(iv) The action of any carrier or other distributor not subject to a contract with the refiner or importer but engaged by the refiner or importer for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner or importer which are reasonably calculated to prevent such action.

(3) In this paragraph (b), to show that the violation ''was caused'' by any of the specified actions the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(c) * * *

(3) An oversight program conducted by a carrier under paragraph (c)(1) of this section need not include periodic sampling and testing of gasoline in a tank truck operated by a common carrier, but in lieu of such tank truck sampling and testing the common carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of § 80.78 relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records normally received in the ordinary course of business concerning gasoline quality and delivery.

* * * * *

26. Section 80.83 is revised to read as follows:

§ 80.83 Gasoline treated as blendstock.

An importer may treat imported gasoline as blendstock (Gasoline Treated as Blendstock, or GTAB) and exclude the GTAB from its importer compliance calculations under § 80.65(c) for reformulated gasoline or § 80.101(d) for conventional gasoline provided the importer meets the requirements specified in this section.

(a) GTAB must be included in the compliance calculations for gasoline produced at a refinery operated by the same person that is the importer (the ''GTAB importer-refiner'').

(b) The GTAB importer-refiner may not transfer title to GTAB to another person until the GTAB has been used to produce gasoline and all refinery standards and requirements have been met for the gasoline produced.

(c) The refinery at which GTAB is used to produce gasoline must be physically located at the same terminal at which the GTAB is first discharged upon arrival in the United States (the import facility), or at a facility to which the GTAB is directly transported from the import facility.

(d) GTAB must be completely segregated from any other gasoline, whether conventional or RFG, and including any gasoline tank bottoms, prior to the point of blending, and sampling and testing, in the refinery operation, except that:

(1) GTAB may be placed in a storage tank that contains other GTAB imported by that importer; or

(2) GTAB may be placed in a storage tank that contains gasoline provided that:

(i) The gasoline has the same designations under § 80.65(d) as the gasoline which will be produced using the GTAB;

(ii) The blending is performed in that storage tank; and

(iii) The properties and volume the gasoline produced using GTAB is determined in a manner that excludes the volume and properties of the gasoline.

(e) Each year that GTAB is used to produce gasoline, the GTAB importer-refiner must determine an adjusted baseline for the refinery where the GTAB is used to produce gasoline that would apply in the case of conventional gasoline standards under § 80.101(b) and reformulated gasoline standards under § 80.41(h)(2)(i) for all gasoline produced at that refinery for that year. The following formulas must be used to calculate the adjusted refinery baseline where GTAB is used to produce conventional gasoline:

$$AB_i = \frac{(V_{1990} * RB_i) + (V_{CGTAB} * IB_i) + ((V_a - V_{1990} - V_{CGTAB}) * SB_i)}{V_a}$$

$$AB_i = \frac{((V_{Conv} - V_{CGTAB}) * RB_i) + (V_{CGTAB} * IB_i)}{V_{Conv}}$$

And the following formula must be used to calculate the adjusted refinery baseline where GTAB is used to produce RFG:

$$AB_i = \frac{(V_{RGTAB} * IB_i) + ((V_{RFG} - V_{RGTAB}) * RB_i)}{V_{RFG}}$$

Where:

AB_i = Adjusted baseline for parameter or emissions performance i.

V_{1990} = 1990 baseline volume for the refinery.

V_a = Volume of RFG, conventional gasoline and RBOB produced at the refinery during the year (averaging period) in question.

V_{RFG} = Volume of RFG and RBOB produced at the refinery during the year in question.

V_{Conv} = Volume of conventional gasoline produced at the refinery during the year in question.

V_{RGTAB} = Volume of GATB used to produce conventional gasoline at the refinery during the year in question.

V_{CGtab} = Volume of GTAB used to produce conventional gasoline at the refinery during the year in question.

RB_i = 1990 refinery baseline for parameter or emissions performance i.

IB_i = Baseline for parameter or emissions performance i that applies to the GTAB importer-refiner in its importer capacity.

SB_i = Statutory baseline for parameter or emissions performance i.

(f)(1) The GTAB importer-refiner must complete all requirements for the GTAB at the time it is imported as if the GTAB were imported gasoline, including sampling and testing, independent sampling and testing for GTAB used to produce reformulated gasoline, record keeping and reporting.

(2) The volume and properties of GTAB that has been combined with other GTAB may be determined by subtracting the volume and properties of the GTAB in the tank prior to receipt of the new product, from the volume and properties of the GTAB in the tank subsequent to receipt of the new product.

(3) Any GTAB batch that is used in whole or in part to produce reformulated gasoline must be treated as imported reformulated gasoline for purposes of sampling and testing, and reporting, under paragraph (f)(1) of this section; except that the sampling and testing may be based on vessel composite samples without regard to whether the gasoline in individual ship compartments separately meets the reformulated gasoline downstream standards.

(4) Any reports to EPA for imported GTAB must identify the GTAB as such.

(5) Any GTAB that ultimately is not used to produce gasoline must be treated as newly imported gasoline, for which all required sampling and testing, record keeping and reporting must be accomplished, and the gasoline must be included in the GTAB importer-refiner's importer compliance calculations for the averaging period that includes the date this sampling and testing occurs.

27. Section 80.84 is added to subpart D to read as follows:

§ 80.84 Treatment of interface and transmix.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Interface:* A quantity of petroleum product in a pipeline between two surrounding batches of petroleum product that consists of a mixture of the two surrounding batches.

(2) *Transmix:* An interface that consists of a mixture of gasoline and distillate fuel oil.

(b) *Classification of interface.* Interface shall be classified in the following manner:

(1) Interface mixtures of RFG or RBOB, and conventional gasoline shall be classified as conventional gasoline;

(2) Interface mixtures of VOC-controlled RFG and non-VOC-controlled RFG shall be classified as non-VOC-controlled RFG;

(3) Interface mixtures of VOC-controlled RFG for Region 1 and VOC-controlled RFG for Region 2 shall be classified as VOC-controlled RFG for Region 2 or as non-VOC-controlled RFG;

(4) Interface mixtures of RBOB and RFG shall be classified as RBOB; and

(5) Interface mixtures of gasoline and blendstock shall be classified as blendstock.

(c) *Transmix processing.* (1) Any person who separates transmix where the gasoline portion is classified as conventional gasoline shall exclude from compliance calculations under section 101 any gasoline or gasoline blendstock produced from the transmix.

(2) Any person who separates transmix where the gasoline portion is classified as reformulated gasoline shall meet all requirements and standards that apply to a refinery under 40 CFR subparts D and F with regard to the transmix operation, and shall include the transmix gasoline portion in compliance calculations for the refinery.

(d) *Transmix Blending.* (1) Any person may blend transmix into conventional gasoline only if:

(i) The transmix results from normal pipeline operations;

(ii) (A) The transmix cannot be transported by pipeline or water to a transmix processing facility; or

(B) Transmix was blended at the terminal before 1995; and

(iii) The transmix is blended at a rate that does not exceed the greater of:

(A) The demonstrated blending rate at that terminal during 1994; or

(B) 0.25 percent by volume.

(2) Any person may blend transmix into reformulated gasoline only if:

(i) The transmix results from normal pipeline operations;

(ii) The transmix cannot be transported by pipeline or water to a transmix processing facility;

(iii) The transmix cannot be blended into conventional gasoline under paragraph (d)(1) of this section;

(iv) The transmix is blended at a rate that does not exceed 0.25 percent by volume; and

(v) After blending the reformulated gasoline is shown through sampling and testing to meet all applicable reformulated gasoline standards that apply at the terminal. This sampling and testing shall be at one of the following rates:

(A) In the case of transmix that is blended in a storage tank, following each occasion transmix is blended; or

(B) In the case of transmix that is blended in-line, at least twice each calendar month during which transmix is blended.

28. Section 80.91 is amended by:

a. Revising paragraph (d)(3) and adding paragraph (d)(5)(iii);

b. Adding paragraph (e)(1)(iii);

c. Revising paragraph (f)(2)(ii) introductory text;

d. Revising paragraphs (f)(2)(ii)(D), (f)(2)(ii)(E), and (f)(2)(ii)(F);

e. Revising paragraph (f)(2)(ii)(G) introductory text;

f. Removing paragraphs (f)(2)(ii)(G)(*1*) and (f)(2)(ii)(G)(*2*);

g. Revising paragraph (f)(2)(ii)(H) introductory text;

h. Revising paragraphs (f)(2)(ii)(H)(*1*) and (f)(2)(ii)(H)(*2*):

i. Removing paragraph (f)(2)(ii)(H)(*3*);

j. Adding paragraph (f)(2)(ii)(I).

The revisions, additions, and removals are set out to read as follows:

§ 80.91 Individual baseline determination.

* * * * *

(d) * * *

(3) *Negligible quantity sampling.* Post-1990 testing of a blendstock stream for a fuel parameter listed in this paragraph (d)(3) is not required if the refiner can show, through engineering judgement or past experience, that the fuel parameter exists in the stream at less than or equal to the amount, on average, shown in this paragraph (d)(3) for that fuel parameter. Any fuel parameter shown to exist in a refinery stream in negligible amounts shall be assigned a value of 0.0 or the negligible amount shown below at the refiner's discretion:

Aromatics, volume percent—1.0
Benzene, volume percent—0.15
Olefins, volume percent—1.0
Oxygen, weight percent—0.2
Sulfur, ppm—30.0

* * * * *

(5) * * *

(iii) If a refiner measures a blendstock stream for aromatics, benzene, olefins,

oxygen, or sulfur content and discovers that the measured component level of that stream is below the applicable range for the test method used, the low end of the applicable range may be substituted for the actual measured value in the baseline determination. This paragraph (d)(5)(iii) is not applicable to blendstock streams that have not been explicitly measured.

* * * * *

(e) * * *

(1) * * *

(iii) For facilities determined to be closely integrated gasoline producing facilities and for which EPA has granted a single set of baseline fuel parameter values per this paragraph (e)(1):

(A) All reformulated gasoline and anti-dumping standards shall be met by such closely integrated facilities on an aggregate basis;

(B) A combined facility registration shall be submitted under §§ 80.76 and 80.103; and

(C) Record keeping requirements under §§ 80.74 and 80.104 and reporting requirements under §§ 80.75 and 80.105 shall be met for such closely integrated facilities on an aggregate basis.

* * * * *

(f) * * *

(2) * * *

(ii) If the baseline fuel value for aromatics, olefins, benzene, and/or sulfur (determined per paragraph (e) of this section) is higher than the high end of the valid range limits specified in § 80.42(c)(1) if compliance is being determined under the Simple Model, or in § 80.45(f)(1)(ii) if compliance is being determined under the Complex Model, then the valid range limits may be extended for conventional gasoline in the following manner:

* * * * *

(D) The new high end of the valid range for sulfur is determined from the following equation:

NSULLIM=SULBASE+50 ppm

Where:

NSULLIM=The new high end of the valid range limit for sulfur, in parts per million

SULBASE=The seasonal baseline fuel value for sulfur, in parts per million

(E) The extension of the valid range is limited to the applicable summer or winter season in which the baseline fuel values for aromatics, olefins, benzene, and/or sulfur exceed the high end of the valid range as described in paragraph (f)(2)(ii) of this section. Also, the extension of the valid range is limited to use by the refiner whose baseline value for aromatics, olefins, benzene, and/or sulfur was higher than the valid range limits as described in paragraph (f)(2)(ii) of this section.

(F) Any extension of the Simple Model valid range limits is applicable only to the Simple Model. Likewise any extension of the Complex Model valid range limits is applicable only to the Complex Model.

(G) The valid range extensions calculated in paragraphs (f)(2)(ii) (A), (B), (C), and (D) of this section are applicable to both the baseline fuel and target fuel for the purposes of determining the compliance status of conventional gasolines. The extended valid range limit represents the maximum value for that parameter above which fuels cannot be evaluated with the applicable compliance model.

(H) Under the Simple Model, baseline and compliance calculations shall subscribe to the following limitations:

(1) If the aromatics valid range has been extended per paragraph (f)(2)(ii)(A) of this section, an aromatics value equal to the high end of the valid range specified in § 80.42(c)(1) shall be used for the purposes of calculating the exhaust benzene fraction.

(2) If the fuel benzene valid range has been extended per paragraph (f)(2)(ii)(C) of this section, a benzene value equal to the high end of the valid range specified in § 80.42(c)(1) shall be used for the purposes of calculating the exhaust benzene fraction.

(I) Under the Complex Model, baseline and compliance calculations shall subscribe to the following limitations:

(1) If the aromatics valid range has been extended per paragraph (f)(2)(ii)(A) of this section, an aromatics value equal to the high end of the valid range specified in § 80.45(f)(1)(ii) shall be used for the purposes of calculating emissions performances.

(2) If the olefins valid range has been extended per paragraph (f)(2)(ii)(B) of this section, an olefins value equal to the high end of the valid range specified in § 80.45(f)(1)(ii) shall be used for the target fuel for the purposes of calculating emissions performances.

(3) If the benzene valid range has been extended per paragraph (f)(2)(ii)(C) of this section, a benzene value equal to the high end of the valid range specified in § 80.45(f)(1)(ii) shall be used for the target fuel for the purposes of calculating emissions performances.

(4) If the sulfur valid range has been extended per paragraph (f)(2)(ii)(D) of this section, a sulfur value equal to the high end of the valid range specified in § 80.45(f)(1)(ii) shall be used for the target fuel for the purposes of calculating emissions performances.

* * * * *

29. Section 80.101 is amended by:

(a) Revising paragraphs (b)(2) and (b)(3);

(b) Adding paragraph (d)(4)(iii);

(c) Revising paragraph (f);

(d) Revising paragraph (g);

(e) Revising paragraphs (h)(1)(ii) and (i)(2);

(f) Adding paragraphs (h)(4), (i)(1)(i)(C), (i)(1)(iii), (i)(3), and (i)(4);

(g) Adding paragraph (j) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(b) * * *

(2) *Optional complex model standards.* Annual average levels of exhaust benzene emissions, weighted by volume weighted for each batch and calculated using the applicable complex model under § 80.45, shall not exceed the refiner's or importer's compliance baseline for exhaust benzene emissions.

(3) *Complex model standards.* (i) Annual average levels of exhaust toxics emissions and NO_x emissions, weighted by volume for each batch and calculated using the applicable complex model under § 80.45, shall not exceed the refiner's or importer's compliance baseline for exhaust toxics emissions and NO_x emissions, respectively.

(ii) On a per-gallon basis,

(A) No conventional gasoline may have properties that are outside the complex model acceptable range limits specified at § 80.45(f)(1)(ii); except that

(B) For a refinery with a baseline parameter value that is outside the acceptable range limits, the value of this parameter for gasoline produced at this refinery shall not exceed the value determined in § 80.91(f)(2) .

* * * * *

(d) * * *

(4) * * *

(iii) Where oxygenate is included in a refinery's or importer's compliance calculations, only the oxygenate volume, excluding denaturant, water and impurities, shall be included in the compliance calculations.

* * * * *

(f) *Compliance baseline determination.* The compliance baseline for any refinery or importer, for each parameter or emissions performance, and for each averaging period, shall be calculated as follows.

(1) Calculate the refinery's or importer's averaging period volume (V_a) as the total volume of the following products produced, imported or blended during the averaging period:

(i) Conventional gasoline;

(ii) Oxygenates blended with conventional gasoline downstream if

allowed under paragraph (d)(4)(ii) of this section;

(iii) Reformulated gasoline;

(iv) RBOB;

(v) Oxygenates added to RBOB as determined under § 80.65(e)(1)(ii); and

(vi) California gasoline as defined in § 80.81(a)(2).

(2) Calculate the baseline to averaging period volume ratio (VR) using the following equation:

$$VR_a = \frac{V_{1990}}{V_a}$$

where:

VR_a=baseline to averaging period volume ratio for averaging period a

V_{1990}=the refinery's or importer's 1990 baseline volume as determined in § 80.91(f)(1)

V_a=the averaging period volume as calculated in paragraph (f)(1) of this section

(3) If VR_a is equal to or greater than 1, the refinery's or importer's compliance baseline shall be the baseline as determined in § 80.91(f)(1).

(4) If VR_a is less than 1, the refinery's or importer's compliance baseline shall be calculated using the following equation:

$$CB_i=(B_i \times VR_a)+(DB_i \times (1 - VR_a))$$

Where:

CB_i=compliance baseline for parameter or emissions performance i

B_i=the refinery's or importer's baseline for parameter or emissions performance i

DB_i=the statutory baseline for parameter or emissions performance i in §§ 80.91(c)(5) (iii) and (iv)

(g) *Compliance calculations.*—(1) *Determination of batch parameter and emissions performance values.* (i) In the case of each batch subject to the simple model standards, determine the values for sulfur, T–90, olefins, benzene, and aromatics as specified in paragraph (i) of this section.

(ii) In the case of each batch subject to the early complex or complex model standards:

(A) Determine the values for each parameter required under the complex model as specified in paragraph (i) of this section;

(B) In the case of each batch subject to the early complex model standards, calculate the exhaust benzene emissions using the complex model in § 80.45; and

(C) In the case of each batch subject to the complex model standards, calculate the exhaust toxics and NO_X emissions using the complex model in § 80.45.

(2) *Compliance determinations*—(i) *Refineries and importers with an individual baseline.* In the case of any refinery or importer subject to an individual baseline, for each parameter or emissions performance subject to a standard under paragraph (b) of this section:

(A) Except exhaust benzene emissions under the simple model, calculate the annual average parameter value, or annual average emissions performance in mg/mi, using the following formula:

$$P_a = \left(\frac{\sum_{i=1}^{n} (V_i \times P_i)}{\sum_{i=1}^{n} V_i} \right)$$

Where:

P_a = annual average value for parameter or emissions performance

V_i = volume of batch i

P_i = parameter or emissions performance for batch i

i = each batch of gasoline or blendstock included in a refinery's or importer's compliance calculations under paragraph (d) of this section

(B) In the case of exhaust benzene emissions under the simple model calculate the annual average value using the following formula:

$$EXHBEN = 1.884 + (0.949 \times BZ) + (0.113 \times (AR - BZ))$$

Where:

EXHBEN = annual average simple model exhaust benzene emissions

BZ = annual average benzene content, calculated under paragraph (g)(2)(i)(A) of this section

AR = annual average aromatics content, calculated under paragraph (g)(2)(i)(A) of this section

(C) In order to achieve compliance the annual average value shall be equal to or less than the refinery's or importer's standard under paragraph (b) of this section.

(ii) *Refineries and importers with the statutory baseline.* In the case of any refinery or importer subject to the statutory baseline, for each parameter or emissions performance subject to a standard under paragraph (b) of this section:

(A) Calculate the compliance total based on the standard under paragraph (b) of this section for each parameter, or emissions performance in mg/mi, using the formula in § 80.67(g)(1)(i).

(B) Calculate the actual total for each parameter, or emissions performance in mg/mi, for the gasoline and blendstocks under paragraph (d) of this section, using the formula in § 80.67(g)(1)(ii).

(C) In order to achieve compliance the actual total shall be equal to or less than the compliance total.

(3) *Additional compliance requirements.* (i) Any calculations involving sulfur content or wt% oxygen shall be adjusted for specific gravity.

(ii) The emissions performance of gasoline that is intended for use in an area subject to an RVP standard in § 80.27 during the period such standard applies and that meets this RVP standard shall be determined using the ''summer'' complex model. The emissions performance of all other gasoline shall be determined using the ''winter'' complex model.

(4) *Oxygen election for NO_X.* (i) For the 1998 and 1999 averaging periods, any refiner for a refinery, or any importer, may elect to determine compliance with the NO_X emissions performance standard:

(A) With oxygenates added downstream from the refinery under § 80.91(e)(4) included in the compliance calculations, and a baseline NO_X emissions performance that includes oxygenate; or

(B) With such oxygenates excluded from compliance calculations, and a baseline NO_X emissions performance that excludes oxygenate.

(ii) The election under paragraph (g)(4)(i) of this section for 1999 shall apply for all subsequent averaging periods.

(5) *Exclusion of previously certified gasoline and blendstock.* (i) Any refiner who uses previously certified reformulated or conventional gasoline, or blendstock that previously has been included in compliance calculations under § 80.102(e)(2), to produce gasoline at a refinery, shall exclude the previously certified gasoline and blendstock for purposes of demonstrating compliance with the standards under § 80.101(b).

(ii) In order to accomplish the exclusion required in paragraph (g)(5)(i) of this section, the refiner shall either:

(A) Determine the volume and properties of blendstock used at the refinery, and use the compliance calculation procedures in paragraph (g)(5)(iii) of this section; or

(B) Determine the volume and properties of the previously certified gasoline and the previously certified blendstock used at the refinery, and the volume and properties of gasoline produced at the refinery, and use the compliance calculation procedures in paragraph (g)(5)(iv) of this section.

(iii) (A) Determine the volume and properties of each batch of blendstock used at the refinery, and of oxygenate blended with a refinery's gasoline under paragraph (d)(4)(ii) of this section, with the exception of previously certified

blendstock, using the procedures in paragraph (i) of this section.

(B) Determine the blendstock volume fraction (F) based on the volume of blendstock, and the volume of gasoline with which the blendstock is blended, using the following equation:

$$F = \frac{V_b}{V_b + V_g}$$

Where:

F = blendstock volume fraction

V_b = volume of blendstock

V_g = volume of gasoline with which the blendstock is blended.

(C) For each parameter required by the complex model, calculate the parameter value that would result by combining, at the blendstock volume fraction (F), the blendstock with a gasoline having properties equal to the refinery's or importer's baseline, using the following formula:

$$CP_j = \frac{(BAP_j \times V_g) + (BLP_j \times V_b)}{V_g + V_b}$$

Where:

CP_j = calculated value for parameter j

BAP_j = baseline value for parameter j

BLP_j = value of parameter j for the blendstock

j = each parameter required by the complex model

(*1*) The baseline value shall be the refinery's ''summer'' or ''winter'' baseline, based on the ''summer'' or ''winter'' classification of the gasoline produced as determined under paragraph (g)(3)(iii) of this section. In the case of a refinery that is aggregated under paragraph (h) of this section, the refinery baseline shall be used, and not the aggregate baseline.

(*2*) The sulfur content and oxygen wt% adjustment required under paragraph (g)(3)(i) of this section shall use a gasoline specific gravity of 0.749 for ''summer'' gasoline and of 0.738 for ''winter'' gasoline.

(*3*) In the case of ''summer'' gasoline, where the blendstock is ethanol and the volume fraction calculated under paragraph (g)(5)(iii)(B) of this section is equal to or greater than 0.015, the value for RVP shall be 1.0 psi greater than the RVP calculated using the equation in this paragraph (g)(5)(iii)(C).

(D) Using the summer or winter complex model, as appropriate, calculate the exhaust toxics and NO_X emissions performance, in mg/mi, of:

(*1*) A hypothetical gasoline having properties equal to those calculated in paragraph (g)(5)(iii)(C) of this section (HEP); and

(*2*) A gasoline having properties equal to the refinery's or importer's baseline (BEP).

(E) Calculate the exhaust toxics and NO_X equivalent emissions performance (EEP) of the blendstock, in mg/mi, using the following equation:

$$EEP_j = \frac{BEP_j - (HEP_j * (1 - F))}{F}$$

Where:

EEP_J = equivalent emissions performance of the blendstock for emissions performance j

BEP_J = emissions performance j of a gasoline having the properties of the refinery's baseline.

HEP_J = emissions performance j of a hypothetical blendstock/gasoline blend

F = blendstock volume fraction

J = exhaust toxics or NO_X emissions performance

(F) For each blendstock batch, the volume, and exhaust toxics and NO_X equivalent emissions performance (EEP), shall be included in the refinery's compliance calculations.

(G)(*1*) The portions of a blendstock batch used to produce ''summer'' and ''winter'' gasoline, as determined in paragraph (g)(3)(iii) of this section, shall be treated as separate batches for purposes of this paragraph (g)(5)(iii).

(*2*) In the case of oxygenates or butane blended with a refinery's gasoline under paragraph (d)(4)(ii) of this section, the oxygenate or butane volume blended during a maximum of one month may be treated as a single batch for purposes of this paragraph (g)(5)(iii).

(iv)(A) For each batch of previously certified gasoline or blendstock received that is used to produce conventional gasoline:

(*1*) Determine the volume and properties using the procedures in paragraph (i) of this section;

(*2*) In the case of previously certified gasoline, determine the exhaust toxics and NO_X emissions performance using the summer or winter complex model, as appropriate.

(*3*) In the case of previously certified blendstock, determine the exhaust toxics and NO_X equivalent emissions performance using the procedures in paragraph (g)(5)(iii) of this section.

(*4*) Include the volume and emissions performance, as a negative volume and a negative emissions performance, in the refinery's compliance calculations for exhaust toxics and NO_X.

(B) Determine the volume and properties, and exhaust toxics and NO_X emissions performance, for each batch of conventional gasoline produced at the refinery using previously certified gasoline or blendstock, and include each batch in the refinery's compliance calculations for exhaust toxics and NO_X without regard to the presence of previously certified gasoline or blendstock in the batch.

(h) *Refinery grouping for determining compliance*. (1) * * *

(ii) Elect to achieve compliance on an aggregate basis for a group, or for groups, of one or more refineries, provided that:

(A) Compliance is achieved for each refinery separately or as part of a group;

(B) The data for any refinery is included in only one compliance calculation;

and

(C) Where more than one person meets the definition of refiner for a refinery, the refinery may not be aggregated with any other refinery unless the same persons meet the definition of refiner for . each refinery in the aggregation.

* * * * *

(4) Where any refinery that has been included in an aggregation is transferred to another refiner, or is shut down:

(i) The aggregation requirements and baselines calculated under § 80.91(f)(4) shall apply;

(ii) The aggregated baseline for the refiner who transfers or shuts down the refinery shall be calculated for the averaging period during which the refinery is transferred or is shut down using an adjusted baseline volume for the refinery calculated using the following equation:

$$ABV = BV * \frac{Days}{365}$$

Where:

ABV = adjusted baseline volume

BV = baseline volume for the transferred or shut down refinery

Days = number of days during the averaging period the party was the refiner of the refinery or that the refinery was in operation

(iii) In the case of a transferred refinery:

(A) The new refiner's aggregation election shall be made for the averaging period during which the refinery is transferred, and shall apply for all subsequent averaging periods;

(B) If the new refiner elects to aggregate the refinery, the aggregated baseline for the new refiner shall be calculated for the averaging period during which the refinery is transferred using an adjusted baseline volume for the transferred refinery calculated using the equation in paragraph (h)(4)(ii) of this section; and

(C) Each refiner of a transferred refinery shall demonstrate compliance for the gasoline produced during the period it was the refiner of the refinery.

(i) *Sampling and testing.* (1) * * *

(i) * * *

(C) Sampling under this paragraph (i)(1)(i) shall follow the requirements of § 80.47.

* * * * *

(iii) Retain a minimum of 330 ml of every sample analyzed under paragraph (i)(1)(i)(A) of this section for not less than 30 days from the date of production or import, and provide this remaining sample to the Administrator's authorized representative upon request.

(2) In the case of oxygenate that is included in a refinery's compliance calculations under paragraph (d)(4) of this section the refiner may use the properties of the pure oxygenate instead of sampling and testing each oxygenate batch, provided that the refiner obtains documents from the oxygenate supplier that state the purity of any oxygenate used.

(3) An importer who imports conventional gasoline into the United States by truck may meet the sampling and testing requirements under paragraph (i)(1) of this section as follows.

(i) The imported conventional gasoline must meet the applicable conventional gasoline standards, specified under paragraph (b) of this section, on an every-gallon basis.

(ii) The optional complex model standards and the complex model standards, under paragraphs (b)(2) and (3) of this section:

(A) May be met separately for ''summer'' gasoline and for ''winter'' gasoline, as defined in paragraphs (g)(5) and (6) of this section, based on the baselines applicable to the importer for these two periods; or

(B) May be met for all gasoline during a calendar year on the basis of the annual baseline applicable to the importer.

(iii)(A) The importer must demonstrate that every gallon of imported gasoline meets the applicable conventional gasoline standards, through test results of samples of the gasoline contained in the storage tank from which the trucks used to transport gasoline into the United States are loaded.

(B) The frequency of this sampling and testing must be subsequent to each receipt of gasoline into the storage tank, or immediately prior to each transfer of gasoline to the importer's truck.

(C) The testing must be for each applicable parameter specified under § 80.65(e)(2)(i), using the test methods specified under § 80.46.

(D) The importer must obtain a copy of the terminal test results that reflects the quality of each truck load of gasoline that is imported into the United States.

(iv)(A) The importer must conduct separate programs of periodic quality assurance sampling and testing of the gasoline obtained from each truck-loading terminal, to ensure the accuracy of the terminal test results.

(B) The quality assurance samples must be obtained from the truck-loading terminal by the importer, and terminal operator may not know in advance when samples are to be collected.

(C) The importer must test each sample (or use a laboratory that is independent under § 80.65(f)(2)(iii) to test the sample) for the parameters specified under § 80.65(e)(2)(i) using the test methods specified under § 80.46, and the results must correlate with the terminal's test results within the ranges specified under § 80.65(e)(2)(i).

(D) The frequency of quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(v) The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers under § 80.101(i), record keeping under § 80.104, and reporting under § 80.105.

(vi) EPA inspectors or auditors, and auditors conducting attest engagements under subpart F, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(vii) In the event the requirements specified in paragraphs (i)(3)(i) through (vi) of this section are not met, in whole or in part, the importer shall immediately lose the option of importing gasoline under the terms of this paragraph (i)(3).

(4) A refiner who produces gasoline by blending butane into conventional gasoline may meet sampling and testing requirements of paragraph (i)(1) of this section as follows:

(i) Commercial grade butane is defined as butane for which test results demonstrate the butane is 95% pure and has the following properties:

olefins ≤ 1.0 vol%

aromatics ≤ 2.0 vol%

benzene ≤ 0.03 vol%
sulfur ≤ 140 ppm

(ii) Non-commercial grade butane is defined as butane for which test results demonstrate the butane has the following properties:

olefins ≤ 10.0 vol%
aromatics ≤ 2.0 vol%
benzene ≤ 0.03 vol%
sulfur ≤ 140 ppm

(iii) Any refiner who blends butane for which the refiner has documents from the butane supplier which demonstrate the butane is commercial grade shall include the butane in compliance calculations based on the properties specified in paragraph (i)(4)(i) of this section;

(iv) Any refiner who blends butane for which the refiner has documents from the butane supplier which demonstrate the butane is non-commercial grade shall include the butane in compliance calculations based on the properties specified in paragraph (i)(4)(ii) of this section, provided the refiner:

(A) Conducts a quality assurance program of sampling and testing the butane obtained from each separate butane supplier that demonstrate the butane has the properties specified under paragraph (i)(4)(ii) of this section; and

(B) The frequency of butane sampling and testing for the butane received from each butane supplier must be one sample for every 50,000 gallons of butane received, or one sample every three months, whichever is more frequent; and

(v) When butane is blended under this paragraph (i)(4) during the period May 1 through September 15 the refiner shall demonstrate through sampling and testing that any gasoline blended with butane meets the volatility standards specified under 40 CFR 80.27.

(vi) Butane that is blended during a period of up to one month may be included in a single batch for purposes of reporting to EPA, however, commercial grade butane and non-commercial grade butane shall be reported as separate batches.

(j) *Evasion of standards through exporting and importing gasoline.* Notwithstanding the requirements of this section, no refiner or importer shall export gasoline and import the same or other gasoline for the purpose of evading a more stringent baseline requirement.

30. Section 80.102 is amended by:

(a) Adding introductory text;

(b) Revising the introductory text of paragraph (a) and revising paragraphs (a)(1)(viii) and (a)(2), and adding paragraph (a)(3);

(c) Revising the first sentence of paragraphs (b)(1) and (c);

(d) Revising the introductory text of paragraphs (d)(1) and (d)(2); revising the ''V_g'' portion of the formula in paragraphs (d)(1)(i) and (d)(2)(i); revising paragraph (d)(3)(iv) and (d)(3)(v); and adding paragraphs (d)(3)(vi) and(d)(3)(vii);

(e) Revising the introductory text of paragraphs (e)(1) and (e)(2) and revising paragraphs (e)(2)(i) and (e)(3);

(f) Revising the introductory text of paragraph (f)(1) and revising paragraph (f)(1)(i);

(g) Revising paragraph (g), to read as follows:

§ 80.102 Controls applicable to blendstocks

The requirements of this section shall be met separately for each refinery by the refiner, and by each importer.

(a) For the purposes of this subpart E the following classifications apply.

(1) * * *

(viii) Dimate; except that

(2) No petroleum product shall be considered ''applicable blendstocks'' if it has an initial boiling point that is less than 75 ° F or a boiling end point that is greater than 450 ° F; and

(3) Any gasoline blendstock with properties such that, if oxygenate only is added to the blendstock the resulting blend meets the definition of gasoline under § 80.2(c), shall be considered gasoline.

(b) (1) Determine the baseline blendstock-to-gasoline ratio for each calendar year 1990 through 1993 using the following formula:* * *

* * * * *

(c) Determine the cumulative blendstock-to-gasoline ratio using the following formula:* * *

* * * * *

(d)(1) For each averaging period:

(i) * * *

V_g = Volume of conventional gasoline, oxygenates blended downstream under § 80.101(d)(4)(ii), reformulated gasoline and RBOB, including oxygenates added to RBOB as determined under § 80.65(e)(1)(ii), produced or imported during the averaging period, excluding California gasoline as defined in § 80.81(a)(2).

* * * * *

(2) Beginning on January 1, 1998, for each averaging period:

(i) * * *

$V_{g,i}$ = Volume of conventional gasoline, oxygenates blended downstream under § 80.101(d)(4)(ii), reformulated gasoline and RBOB, including oxygenates added to RBOB as determined under § 80.65(e)(1)(ii), produced or imported during averaging i, excluding California gasoline as defined in § 80.81(a)(2).

* * * * *

(3) * * *

(iv) Transferred between refineries that have been aggregated under § 80.101(h);

(v) Used to produce California gasoline as defined in § 80.81(a)(2);

(vi) Sold at a price that is not less than 100% greater than the average price of the refinery's regular grade conventional gasoline when sold in bulk during the same month; or

(vii) Tendered in a volume not exceeding 1,000 gallons.

(e)(1) The blendstock-to-gasoline ratio percentage change threshold shall have been exceeded if:

* * * * *

(2) Any refiner for a refinery, or any importer, that exceeds the blendstock-to-gasoline ratio percentage change threshold shall, without further notification:

(i) Include all blendstocks, except blendstocks that meet the criteria for exclusion under paragraph (d)(3) of this section, produced or imported and transferred to others in its compliance calculations under § 80.101 for two averaging periods beginning on January 1 of the averaging period subsequent to the averaging period when the exceedance occurs;

* * * * *

(3) Any refiner for a refinery, or any importer, that has previously exceeded the blendstock-to-gasoline ratio percentage change threshold, and subsequently exceeds the threshold for an averaging period and is not granted a waiver pursuant to paragraph (f)(2)(i) of this section, shall, without further notification, meet the requirements specified in paragraphs (e)(2)(i) through (iii) of this section for four averaging periods, beginning on January 1 of the averaging period following the averaging period when the subsequent accedence occurs.

(f)(1) The refinery or importer blendstock accounting requirements specified under paragraph (e) of this section shall not apply in the case of any refinery or importer:

(i) Whose 1990 baseline value for each regulated fuel property and emissions performance as determined in accordance with §§ 80.91 and 80.92, is equal to or less stringent than the anti-dumping statutory baseline value for that parameter or emissions performance;

* * * * *

(g) Notwithstanding the requirements of paragraphs (a) through (f) of this section, any refiner for a refinery, or any importer, who transfers applicable blendstocks to another refinery or importer with a less stringent baseline, either directly or indirectly, for the purpose of evading a more stringent baseline requirement, shall include such blendstock(s) in determining compliance with the applicable requirements of this subpart.

31. Section 80.104 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(2)(i), (a)(2)(iv), (a)(2)(ix) and (a)(2)(x), and adding paragraphs (a)(2)(xi) and (a)(2)(xii) to read as follows:

§ 80.104 Record keeping requirements.

* * * * *

(a) * * *

(1) * * *

(i) Each batch of conventional gasoline produced; and

(ii) Each batch of blendstock that is included in compliance calculations.

(2)(i)(A) The result of tests performed in accordance with § 80.101(i) as originally printed by the testing apparatus, or where no printed result is generated by the testing apparatus, the results as originally recorded by the person who performed the tests; and

(B) Any record that contains results for the tests that are not identical to the results recorded in paragraph (a)(2)(i)(A) of this section; and

* * * * *

(iv) The date of production, importation, blending or receipt;

* * * * *

(ix) In the case of any refinery-produced or imported products listed in § 80.102(a) that are excluded under § 80.102(d)(3), documents that demonstrate the basis for exclusion;

(x) In the case of oxygenate that is added by a person other than the refiner or importer under § 80.101(d)(4)(ii)(B), documents that support the volume of oxygenate claimed by the refiner or importer, including the contract with the oxygenate blender and records relating to the audits, sampling and testing, and inspections of the oxygenate blender operation; and

(xi) In the case of any imported GTAB, documents that reflect the physical movement of the GTAB from the point of importation to the point of blending to produce gasoline.

(xii) In the case of refiners who blend butane into conventional gasoline, documents reflecting the volume and purity of butane blended.

* * * * *

32. Section 80.105 is amended by revising (a)(5)(iv), removing paragraph (a)(5)(v), and revising paragraph (c) to read as follows:

§ 80.105 Reporting requirements.

(a) * * *

(5) * * *

(iv) The properties, except for oxygenates blended downstream of the refinery or import facility, pursuant to § 80.101(i); and

* * * * *

(c) For each averaging period, each refiner and importer shall cause to be submitted to the Administrator of EPA, by May 31 of each year, a report in accordance with the requirements for Attest Engagements of §§ 80.125 through 80.131 for each refinery and for each importer.

* * * * *

33. Section 80.106 is amended by revising the introductory text of paragraph (a)(1), revising paragraph (a)(1)(vi), removing paragraph (a)(1)(vii), and adding paragraph (a)(3) to read as follows:

§ 80.106 Product transfer documents.

(a)(1) On each occasion when any person transfers custody or title to any conventional gasoline, other than when gasoline is transferred to a retail outlet or wholesale purchaser-consumer facility located outside any covered area, or is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee documents that include the following information:

* * * * *

(vi)(A) The following statement: ''This product does not meet the requirements for reformulated gasoline, and may not be used in any reformulated gasoline covered area.''

(B) With the exception of custody transfers to truck carriers, retail outlets and wholesale purchaser-consumer facilities, the statement required in paragraph (a)(vi) of this section may be in the form of product codes, provided that:

(*1*) The codes are standardized for the distribution system in which they are used; and

(*2*) The transferee is given the information necessary to interpret the codes.

* * * * *

(3) The information required in this paragraph (a) shall be transferred:

(i) No later than the time of the transfer in the case of transfers of custody; and

(ii) Within thirty days following the transfer in the case of transfers of title.

* * * * *

34. Section 80.125 is amended by adding paragraphs (a)(1) through (a)(4) to read as follows:

§ 80.125 Attest engagements.

(a) * * *

(1) In the case of any refiner or importer of reformulated or conventional gasoline, the attest procedures in § 80.133 shall be completed, or, prior to the 1998 reporting period, the attest procedures in § 80.128 may be completed as an alternative to the attest procedures in § 80.133.

(2) In the case of any oxygenate blender who meets the oxygen standard on average, the attest procedures in § 80.134 shall be completed, or, prior to the 1998 reporting period, the attest procedures in § 80.129 may be completed as an alternative to the § 80.134 attest procedures.

(3) In the case of any importer who imports any gasoline classified as GTAB under § 80.83, the attest procedures in § 80.131 shall be completed.

(4) In the case of any refiner who produces reformulated gasoline under an in-line blending waiver from independent sampling and testing under § 80.65(f), the attest procedures in § 80.132 shall be completed.

* * * * *

35. Section 80.126 is amended by adding paragraphs (h), (i), (j), (k), (l), (m), (n), and (o) to read as follows:

§ 80.126 Definitions.

* * * * *

(h) *Attestor* means the CPA or CIA performing the agreed-upon procedures engagement under this subpart.

(i) *Foot (or crossfoot)* means to add a series of numbers, generally in columns (or rows), to a total amount. When applying the attestation procedures in this subpart F, the attestor may foot to subtotals on a sample basis in those instances where subtotals (e.g., page totals) exist. In such instances, the total should be footed from the subtotals and the subtotals should be footed on a test basis using no less than 25% of the subtotals.

(j) *Gasoline Treated as Blendstock, or GTAB,* means imported gasoline that is excluded from the import facility's compliance calculations, but is treated as blendstock in a related refinery that includes the GTAB in its refinery compliance calculations.

(k) *Laboratory Analysis* means the original test result for each analysis that was used to determine a product's properties. Original test result means the document in which a test result is first recorded, and not a transcribed version of the test result. For

laboratories using test methods that must be correlated to the standard test method, the correlation factors and results shall be included as part of the laboratory analysis. For refineries or importers that produce reformulated gasoline or RBOB and use the 100% independent lab testing, the laboratory analysis shall consist of the results reported to the refinery or importer by the independent lab. Where assumed properties are used (e.g., for butane) the assumed properties may serve as the test results. In the case of attest engagements for in-line blending operations under § 80.132, the term laboratory analysis shall include both the ''primary analysis'' results under § 80.132(c) and the ''confirmatory analysis'' results under § 80.132(d).

(l) *Non-finished-gasoline petroleum products* means liquid petroleum products that have boiling ranges greater than 75 degrees Fahrenheit, but less than 450 degrees Fahrenheit, as per ASTM D86 or equivalent.

(m) *Product transfer documents* means copies of documents represented by the refiner/importer/oxygenate blender as having been provided to the transferee, and that reflect the transfer of ownership or physical custody of gasoline or blendstock (e.g., invoices, receipts, bills of lading, manifests, and/or pipeline tickets).

(n) *Reporting period* means the time period relating to the reports filed with EPA by the refiner, importer, or oxygenate blender, and generally is the calendar year.

(o) *Tender* means the transfer of ownership or physical custody of a volume of gasoline or other petroleum product all of which has the same identification (reformulated gasoline, conventional gasoline, RBOB, and other non-finished-gasoline petroleum products), and characteristics (time and place of use restrictions for reformulated gasoline and RBOB).

36. Section 80.127 is amended by revising paragraph (a) to read as follows:

§ 80.127 Sample size guidelines

* * * * *

(a) Sample items shall be selected in such a way as to comprise a simple random sample of each relevant population

(1) The relevant population may be treated as the entire population included in the annual averaging period, or

(2) The relevant population may be treated as the aggregation of portions of the population stratified on a quarterly basis; and

* * * * *

37. Section 80.128 is amended by revising the heading and introductory text; revising paragraphs (d)(2), (e)(2), (e)(4) and (e)(5); and removing (e)(6) and (f) to read as follows:

§ 80.128 Alternative agreed upon procedures for refiners and importers.

Prior to the attest report for the 1998 reporting period, the following minimum attest procedures may be carried out for a refinery or importer, in lieu of the attest procedures specified in § 80.132.

* * * * *

(d) * * *

(2) Compare the product transfer documents' designation for consistency with the time and place, and compliance model designations for the tender (VOC-controlled or non-VOC-controlled, VOC region for VOC-controlled, OPRG versus non-OPRG, summer or winter gasoline, and simple or complex model certified; and

* * * * *

(e) * * *

(2) Determine that the requisite contract was in place with the downstream blender designating the required blending procedures, or that the refiner or importer accounted for the RBOB using the assumptions in § 80.69(a)(2);

* * * * *

(4) Trace back to the batch or batches in which the RBOB was produced or imported. Obtain the refiner's or importer's internal lab analysis for each batch and agree the consistency of the type and volume of oxygenate required to be added to the RBOB with that indicated in the applicable tender's product transfer documents; and

(5) Agree the sampling and testing frequency of the refiner's or importer's downstream oxygenated blender quality assurance program with the sampling and testing rates as required in § 80.69(a)(7).

* * * * *

38. Section 80.129 is amended by:

(a) Revising the heading and introductory text;

(b) Revising paragraph (a);

(c) Revising paragraphs (d)(3)(iii) and (d)(3)(iv), and removing paragraph (d)(3)(v); and

(d) Adding paragraph (f), to read as follows:

§ 80.129 Alternative agreed upon procedures for oxygenate blenders.

Prior to the attest report for the 1998 reporting period, the following minimum attest procedures may be carried out for an oxygenate blending facility that is subject to the requirements of this subpart F, in lieu of the attest procedures specified in § 80.134.

(a) Read the oxygenate blender's reports filed with EPA for the previous year as required by § 80.75.

* * * * *

(d) * * *

(3) * * *

(iii) Recalculate the actual oxygen content based on the volumes blended and agree to the report to EPA on oxygen; and

(iv) Review the time and place designations in the product transfer documents prepared for the batch by the blender, for consistency with the time and place designations in the product transfer documents for the RBOB (e.g., VOC controlled or non-VOC controlled).

* * * * *

(f) In the case of any oxygenate blender who meets the oxygen standard on average without separately sampling and testing each batch, under the terms of § 80.69(b)(5), the following procedures also shall be carried out.

(1) Obtain a listing of the oxygen compliance calculations, test the mathematical accuracy of the listing, and agree the volumetric calculations to the material balance analysis.

(2) Select a representative sample of the oxygen compliance calculations using the guidelines in § 80.127, and for each calculation selected:

(i) Confirm that the calculation represented gasoline production for a period no longer than one month;

(ii) Confirm that the oxygenate blender properly performed the calculation required in § 80.69(b)(5), including that the oxygenate blender used the proper values for specific gravities, mole fraction, and denaturant content; and

(iii) Agree the calculated oxygen value to the corresponding batch report to EPA.

(3) Obtain records of the oxygenate blender's quality assurance program of sampling and testing, as required in § 80.69(b)(5), select a representative sample of the quality assurance samples using the guidelines in § 80.127, and for each quality assurance sample selected, confirm the sample was collected within the required frequency.

39. Section 80.130 is revised to read as follows:

§ 80.130 Agreed upon procedures record keeping and reporting.

(a) *Reports.* (1) The CPA or CIA shall issue to the refiner, importer, or blender a report summarizing the procedures performed and the findings in accordance with the attest engagement or internal audit performed in

compliance with this subpart. This report shall include the information specified below, or an explanation of why the information does not apply to the subject of the attest engagement.

(2) The name and registration number of the refiner, importer or oxygenate blender who is the subject of the attest engagement, and in the case of refineries and oxygenate blending facilities, the name and registration number.

(3) The name, address and telephone number of each CPA or CIA who participated in the conduct of the attest engagement, and the name of the CPA's firm if any.

(4)(i) The information required in this paragraph (a)(4) shall be reported separately for the following product types:

(A) Reformulated gasoline;

(B) Conventional gasoline;

(C) Non-finished-gasoline petroleum products, in the following categories:

(*1*) Applicable blendstock included in a party's blendstock tracking calculations pursuant to §§ 80.102(b) through (d);

(*2*) Applicable blendstock not included in a party's blendstock tracking calculations; and

(*3*) All other non-finished-gasoline petroleum products;

(D) RBOB designated for ''any-oxygenate'' and 2.0 weight percent oxygen;

(E) RBOB designated for ''ether-only'' and 2.0 weight percent oxygen;

(F) All other RBOB;

(G) Gasoline treated as blendstock;

(H) In the case of oxygenate blenders, oxygenate; and

(I) In the case of refiners with in-line blending waivers from independent sampling and testing, the gasoline produced using such an in-line blending operation, segregated into the categories specified in paragraphs (a)(4)(i) (A), (D), (E) and (F) of this section.

(ii) The volumes from:

(A) The inventory reconciliation analysis;

(B) The listing of tenders; and

(C) The listing of batches.

(iii) The number of tenders; and

(iv) The number of batches; and

(5) For each attest procedure specified in the relevant regulatory section:

(A) Identify the section number, and a statement that the procedure was performed or an explanation of why the procedure was not performed;

(B) On each occasion when a sample is selected in accordance with the guidelines in § 80.127, report the option under § 80.127 that was used to select the sample, the size of the population, the size of the sample, and the method used to ensure the sample was a simple random sample of the relevant population;

(C) Any information the attest procedure identifies to report, or to report as a finding; and

(D) The nature of each discrepancy found.

(b) *Submission of reports to EPA.* The refiner, importer, or blender shall provide a copy of the auditor's report to EPA within the times specified in §§ 80.65(f)(2)(ii)(C), 80.75(m) and 80.105(c).

(c) *Document retention.* (1) The CPA or CIA shall retain all documents pertaining to the performance of each agreed upon procedure and pertaining to the creation to the agreed upon procedures report, or copies of such documents, including, but not limited to, the following documents:

(i) Documents that are reviewed as part of the attest engagement, including:

(A) Inventory reconciliation records;

(B) Product transfer documents; and

(C) Laboratory reports;

(ii) Documents that are prepared by the CPA or CIA as part of the attest engagement or in preparation of the attest engagement report, commonly called ''work papers;''

(iii) Computer data and the results of computer programs that are used by the auditor to assist in the conduct of the attest engagement; and

(iv) Correspondence between the CPA or CIA and the refiner, importer or oxygenate blender on the subject of the attest engagement.

(2) The term document includes computer records where the information specified in paragraph (c)(1) of this section is in the form of computer records.

(3) The documents specified in paragraph (c)(1) of this section shall be retained by the CPA or CIA for a period of five years from the date the attest engagement report is submitted to EPA, and shall deliver such documents to the Administrator's authorized representative upon request.

40. Section 80.131 is added to subpart F to read as follows:

§ 80.131 Agreed upon procedures for GTAB, certain conventional gasoline imported by truck, previously certified gasoline used to produce gasoline, and butane blenders.

(a) *Attest procedures for GTAB.* The following are the attest procedures to be carried out in the case of an importer who imports gasoline classified as blendstock (or ''GTAB'') under the terms of § 80.83:

(1) Obtain a listing of all GTAB volumes imported for the reporting period. Agree the total volume of GTAB from the listing to the inventory reconciliation analysis under § 80.132.

(2) Obtain a listing of all GTAB batches reported to EPA by the importer. Agree the total volume of GTAB from the listing to the GTAB volumes reported to EPA. Note that the EPA report includes a notation that the batch is not included in the compliance calculations because the imported product is GTAB. Also, agree these volumes to the Import Summary received from the U.S. Customs Service.

(3) Select a sample, in accordance with the guidelines in § 80.127, from the listing of GTAB batches obtained in paragraph (a)(2) of this section, and for each GTAB batch selected perform the following:

(i) Trace the GTAB batch to the tank activity records. From the tank activity records, determine the volumes of conventional gasoline and of RFG produced. Agree the volumes from the tank activity records to the batch volume reported to the EPA as reformulated or conventional gasoline.

(ii) Agree the location of the refinery represented by the tank activity records obtained in paragraph (a)(3)(i) of this section for the gasoline produced from GTAB, to the location that the GTAB arrived in the U.S. or at a facility to which GTAB is directly transported from the import facility using records representing location (e.g., US Customs Service entry records). Using product transfer records, trace volumes transported from the import facility directly to the refinery as applicable.

(iii) Obtain tank activity records for all batches of GTAB received and blended. Using the tank activity records, determine whether the GTAB was received into an empty tank, or into a tank containing other GTAB imported by that importer or finished gasoline of the same category as the gasoline that will be produced using the GTAB.

(iv) Using the tank activity records obtained under paragraph (a)(3)(iii) of this section, determine the volume of any tank bottom (beginning tank inventory) that is previously certified gasoline before GTAB is added to the tank. Using lab reports, batch reports, or product transfer documents, determine the properties of the tank bottom.

(v) Determine whether the properties and volume of gasoline produced using GTAB were determined in a manner that excludes the volume and properties of any gasoline that previously has been included in any refiners or importers compliance calculations, as follows:

(A) Note documented tank mixing procedures.

(B) Determine the volume and properties of the gasoline contained in

the storage tank after blending is complete. Mathematically subtract the volume and properties of the previously certified gasoline to determine the volume and properties of the GTAB plus blendstock added. Agree the volume and properties of the GTAB plus blendstock added to the volume reported to EPA as a batch of gasoline produced; or

(C) In the alternative, using the tank activity records, note that only GTAB and blending components were combined, and that no gasoline was added to the tank. Agree the volumes and properties of the shipments from the tank after the GTAB and blendstock are added, blended, and sampled and tested, to the volumes and properties reported to the EPA by the refiner.

(vi) Obtain the importer's laboratory analysis for each batch of GTAB selected, and agree the properties listed in the corresponding batch report submitted to the EPA, to the laboratory analysis.

(b) *Attest procedures for certain truck imports.* The following procedures are to be carried out in the case of an importer who imports conventional gasoline into the United States by truck using the sampling and testing option in § 80.101(i)(3) (''§ 101(i)(3) truck imports'').

(1) Obtain a listing of all volumes of § 101(i)(3) truck imports for the reporting period. Agree the total volume of § 101(i)(3) truck imports from the listing to the inventory reconciliation analysis under § 80.132.

(2) Obtain a listing of all § 101(i)(3) truck import batches reported to EPA by the importer. Agree the total volume of § 101(i)(3) truck imports from the listing to the volume of § 101(i)(3) truck imports reported to EPA. Also, agree these totals to the Import Summary received from the U.S. Customs Service.

(3) Select a sample, in accordance with the guidelines in § 80.127, from the listing obtained in paragraph (b)(2) of this section, and for each § 101(i)(3) truck import batch selected perform the following:

(i) Obtain the copy of the terminal test results for the batch, under § 80.101(i)(3)(iii)(A), and determine that the sample was analyzed using the test methods specified in § 80.46, and agree the terminal test results to the batch properties reported to EPA; and

(ii) Obtain tank activity records for the terminal storage tank showing receipts, discharges, and sampling, and determine that the sample under paragraph (b)(3)(i) of this section was collected subsequent to the most recent receipt into the storage tank.

(4) Obtain listings for each terminal where § 101(i)(3) truck import gasoline was loaded, of all quality assurance samples collected by the importer, and for each terminal select a sample in accordance with the guidelines in § 80.127 from the listing. For each quality assurance sample selected perform the following:

(i) Determine that the sample was analyzed by the importer or by an independent laboratory, and that the analysis was performed using the test methods specified in § 80.46;

(ii) Obtain the terminal's test results that correspond in time to the time the quality assurance sample was collected, and agree the terminal's test results with the quality assurance test results; and

(iii) Determine that the quality assurance sample was collected within the frequency specified in § 80.101(i)(3)(iv)(D).

(c) *Attest procedures for previously certified gasoline.* The following procedures are to be carried out in the case of a refiner who uses previously certified gasoline (PCG) under the requirements of § 80.65(i).

(1) Obtain a listing of all batches of PCG received at the refinery during the reporting period. Agree the total volume of PCG from the listing to the inventory reconciliation analysis under § 80.132.

(2) Obtain a listing of all PCG batches reported to EPA by the refiner. Agree the total volume of PCG from the listing of PCG received to the volume of PCG reported to EPA.

(3) Select a sample, in accordance with the guidelines in § 80.127, from the listing obtained in paragraph (c)(2) of this section, and for each PCG batch selected perform the following:

(i) Trace the PCG batch to the tank activity records. Confirm that the PCG was included in a batch of reformulated or conventional gasoline produced at the refinery.

(ii) Obtain the refiner's laboratory analysis and volume measurement for the PCG when received and agree the properties and volume listed in the corresponding batch report submitted to the EPA, to the laboratory analysis and volume measurements.

(iii) Obtain the product transfer documents for the PCG when received and agree the designations from the product transfer documents to designations in the corresponding batch report submitted to EPA (reformulated gasoline, RBOB or conventional gasoline, and designations regarding VOC control and OPRG).

(d) *Attest procedures for butane blenders.* The following procedures shall be carried out by a refiner who blends butane under § 80.101(i)(4).

(1) Obtain a listing of all butane batches received at the refinery during the reporting period.

(2) Obtain a listing of all butane batches reported to EPA by the refiner for the reporting period. Agree the total volume of butane from the receipt listing to the volume of butane reported to EPA.

(3) Select a sample, in accordance with the guidelines in § 80.127, from the listing of butane batches reported to EPA, and for each butane batch selected perform the following:

(i) Trace the butane included in the batch to the documents provided to the refiner by the butane supplier for the butane. Determine, and report as a finding, whether these documents establish the butane was commercial grade, non-commercial grade, or neither commercial nor non-commercial grade as defined in § 80.101(i)(4).

(ii) In the case of non-commercial grade butane, obtain the refiner's sampling and testing results for butane, and confirm that the frequency of the sampling and testing was consistent with the requirements in § 80.101(i)(4).

41. Section 80.132 is added to subpart F to read as follows:

§ 80.132 Agreed upon procedures for refiners with in-line blending waivers from independent sampling and testing.

The following are the procedures to be carried out at each refinery where reformulated gasoline or RBOB is produced under an exemption from independent sampling and testing obtained under § 80.65(f)(2) (an ''in-line blending exemption'').

(a) *Review waiver requirements.* (1) Review the refiner's petition submitted under § 80.65(f)(2), and of EPA's approval of this petition.

(2) Note, and report as a finding, for each parameter specified in § 80.65(e)(2)(i), and for each form of sampling and/or testing to be carried out under the terms of in-line blending exemption petition and/or under EPA's petition approval:

(i) The location where the sample is to be collected;

(ii) The manner in which the sample is to be collected;

(iii) The number of samples to be collected during each separate blend;

(iv) How the refiner is to determine the time when each sample is collected;

(v) Who is to collect the sample;

(vi) The type of analysis to be performed;

(vii) Where the analysis is to be performed;

(viii) Who is to perform the analysis; and

(ix) The manner in which the analysis results are to be recorded and reported.

(b) *Batch listings.* (1) Obtain a listing of all batches of reformulated gasoline and RBOB produced during the prior year under an in-line blending exemption, and test the mathematical accuracy of the volumetric calculations contained in the listing.

(2) Select a representative sample of the reformulated gasoline and RBOB batches produced under an in-line blending exemption using the guidelines specified under § 80.127, and for each batch selected obtain the laboratory analysis results for the batch, as identified in paragraph (a)(2) of this section.

(3) The procedures specified in paragraphs (c) and (d) of this section shall be carried out for each batch identified in paragraph (b)(2) of this section, and for each parameter that is subject to, or that is used to calculate an emissions performance that is subject to, a standard specified in § 80.41 for the batch.

(c) *Primary analysis results.* (1) Identify the laboratory analysis that formed the basis for the refiner's report to EPA for the parameter (the ''primary analysis'') and report this result as a finding;

(2) Agree the primary analysis to the refiner's report to EPA; and

(3) Confirm that the sample was collected, analyzed, and reported as specified under paragraph (a)(2) of this section.

(d) *Confirmatory analysis.* Identify the laboratory analysis results that, under the terms of the in-line blending exemption petition, are to be used to confirm the accuracy of the primary analysis (the ''confirmatory analysis''), and for each parameter complete the procedures specified in this paragraph (d).

(1) Where the confirmatory analysis results are from an analyzer that operates continually or with great frequency as part of the in-line blending operation (''on-line'' analysis results), identify twelve confirmatory analysis results as follows:

(i) Separate the blend into twelve equal time segments;

(ii) For each time segment, identify the mid-point of the time segment; and

(iii) Identify the on-line analysis result that reflects the quality of gasoline being produced most close to the mid-point of the time segment.

(2) Where the confirmatory analysis results are from samples that are collected during the blending operation and analyzed at a separate laboratory (''off-line'' analysis results), select a representative sample of the off-line confirmatory analysis results using the guidelines specified in § 80.127 as confirmatory analysis results.

(3) Where the confirmatory analysis results are from samples of blendstocks used in the in-line blending operation:

(i) Identify the analysis result that reflects the properties, and proportions, of each blendstock being used at the times identified in paragraph (d)(1) of this section; and

(ii) Calculate the expected parameter value for the gasoline or RBOB based on the blendstock proportions and property values at each time as twelve confirmatory analysis results.

(4) For any confirmatory analysis result identified under paragraphs (d)(1) through (3) of this section:

(i) Agree the confirmatory analysis result with:

(A) The primary analysis result; and

(B) The applicable per-gallon standard for the parameter;

(ii) Confirm that the confirmatory sample was collected, analyzed, and reported as specified under paragraph (a)(2) of this section; and

(iii) Report the confirmatory analysis result as a finding.

(e) *Expansion of sample.* If for any batch selected under paragraph (b)(2) of this section the difference between any primary analysis result and the corresponding confirmatory analysis result under paragraph (d) of this section is greater than the value for that parameter specified in § 80.65(e)(2)(i), the following procedure shall be followed:

(1) Select an additional sample from the listing of batches under paragraph (b)(1) of this section using the guidelines specified under § 80.127 based on the total number of batches, but in a manner that randomly selects only from batches that were not selected under paragraph (b)(2) of this section; and

(2) Complete the procedures specified in paragraphs (c) and (d) of this section for each batch selected, and for each parameter that is subject to, or that is used to calculate an emissions performance that is subject to, a standard specified in § 80.41 for the batch.

42. Section 80.133 is added to subpart F to read as follows:

§ 80.133 Agreed-upon procedures for refiners and importers.

The following are the minimum attest procedures that shall be carried out for each refinery and importer. Agreed upon procedures may vary from the procedures stated in this section due to the nature of the refiner's or importer's business or records, provided that any refiner or importer desiring to use modified procedures obtains prior approval from EPA.

(a) *EPA Reports.* (1) Obtain and read a copy of the refinery's or importer's reports (except for batch reports) filed with the EPA as required by §§ 80.75 and 80.105 for the reporting period.

(2) In the case of a refiner's report to EPA that represents aggregate calculations for more than one refinery, obtain the refinery-specific volume and property information that was used by the refiner to prepare the aggregate report. Foot and crossfoot the refinery-specific totals and agree to the values in the aggregate report. The procedures in paragraphs (b) through (m) of this section then are performed separately for each refinery.

(3) Obtain a written representation from a company representative that the report copies are complete and accurate copies of the reports filed with the EPA.

(4) Identify, and report as a finding, the name of the commercial computer program used by the refiner or importer to track the data required by these regulations, if any.

(b) *Inventory reconciliation analysis.* Obtain an inventory reconciliation analysis for the refinery or importer for the reporting period by product type (i.e., reformulated gasoline, RBOB, conventional gasoline, and non-finished-gasoline petroleum products), and perform the following:

(1) Foot and crossfoot the volume totals reflected in the analysis; and

(2) Agree the beginning and ending inventory amounts in the analysis to the refinery's or importer's inventory records. If the analysis shows no production of conventional gasoline or if the refinery or importer represents under paragraph (l) of this section that it has a baseline less stringent or equal to the statutory baseline, the analysis may exclude non-finished-gasoline petroleum products.

(3) Report as a finding the volume totals for each product type.

(c) *Listing of tenders.* For each product type other than non-finished gasoline petroleum products (i.e., reformulated gasoline, RBOB, conventional gasoline), obtain a separate listing of all tenders from the refinery or importer for the reporting period. Each listing should provide for each tender the volume shipped and other information as needed to distinguish tenders. Perform the following:

(1) Foot to the volume totals per the listings; and

(2) For each product type listed in the inventory reconciliation analysis obtained in paragraph (b) of this section, agree the volume total on the listing to

the tender volume total in the inventory reconciliation analysis.

(d) *Listing of batches.* For each product type other than non-finished gasoline petroleum products (i.e., reformulated gasoline, RBOB, and conventional gasoline), obtain separate listings of all batches reported to the EPA and perform the following:

(1) Foot to the volume totals per the listings; and

(2) Agree the total volumes in the listings to the production volume in the inventory reconciliation analysis obtained in paragraph (b) of this section.

(e) *Reformulated gasoline tenders.* Select a sample, in accordance with the guidelines in § 80.127, from the listing of reformulated gasoline tenders obtained in paragraph (c) of this section, and for each tender selected perform the following:

(1) Obtain product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the Product transfer documents; and

(2) Note whether the product transfer documents evidencing the date and location of the tender and the compliance model designations for the tender (VOC-controlled for Region 1 or 2, non VOC-controlled, and simple or complex model certified).

(f) *Reformulated gasoline batches.* Select a sample, in accordance with the guidelines in § 80.127, from the listing of reformulated gasoline batches obtained in paragraph (d) of this section, and for each batch selected perform the following:

(1) Agree the volume shown on the listing, to the volume listed in the corresponding batch report submitted to EPA; and

(2) Obtain the refinery's or importer's laboratory analysis and agree the properties listed in the corresponding batch report submitted to EPA, to the properties listed in the laboratory analysis.

(g) *RBOB tenders.* Select a sample, in accordance with the guidelines § 80.127, from the listing of RBOB tenders obtained in paragraph (c) of this section, and for each tender selected perform the following:

(1) Obtain product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the product transfer documents; and

(2) Inspect the product transfer documents evidencing the type and amount of oxygenate to be added to the RBOB.

(h) *RBOB batches.* Select a sample, in accordance with the guidelines in § 80.127, from the listing of RBOB batches obtained in paragraph (d) of this section, and for each batch selected perform the following:

(1) Obtain from the refiner or importer the oxygenate type and volume, and oxygen volume required to be hand blended with the RBOB, in accordance with §§ 80.69(a)(2) and (8);

(2) Agree the volume shown on the listing, as adjusted to reflect the oxygenate volume determined under paragraph (h)(1) of this section, to the volume listed in the corresponding batch report submitted to EPA; and

(3) Obtain the refinery's or importer's laboratory analysis of the RBOB hand blend and agree:

(i) The oxygenate type and oxygen amount determined under paragraph (h)(1) of this section, to the tested oxygenate type and oxygen amount listed in the laboratory analysis; and

(ii) The properties listed in the corresponding batch report submitted to EPA to the properties listed in the laboratory analysis.

(4)(i) Categorize the RBOB batch reports into two groups:

(A) RBOB Batch reports showing:

(*1*) ''RBOB-any oxygenate'' with ethanol as oxygenate and an oxygen content of 2.0 weight percent; and

(*2*) ''RBOB-ethers only'' with only MTBE as oxygenate and an oxygen content of 2.0 weight percent; and

(B) All other RBOB batch reports.

(ii) Perform the following procedures for each batch report included in paragraph (h)(4)(i)(B) of this section:

(A) Obtain and inspect a copy of the executed contract with the downstream oxygenate blender (or with an intermediate owner), and confirm that the contract:

(*1*) Was in effect at the time of the corresponding RBOB transfer; and

(*2*) Allowed the company to sample and test the reformulated gasoline made by the blender.

(B) Obtain a listing of RBOB blended by downstream oxygenate blenders and the refinery's or importer's oversight test results, and select a representative sample, in accordance with the guidelines in § 80.127, from the listing of test results and for each test selected perform the following:

(*1*) Obtain the laboratory analysis for the batch, and agree the type of oxygenate used and the oxygen content appearing in the laboratory analysis to the instructions stated on the product transfer documents corresponding to a RBOB receipt immediately preceding the laboratory analysis and used in producing the reformulated gasoline batch selected;

(*2*) Calculate the frequency of sampling and testing or the volume blended between the test selected and the next test; and

(*3*) Agree the frequency of sampling and testing or the volume blended between the test selected and the next test to the sampling and testing frequency rates stated in § 80.69(a)(7).

(i) *Conventional gasoline and conventional gasoline blendstock tenders.* Select a sample, in accordance with the guidelines in § 80.127, from the listing of the tenders of conventional gasoline and conventional gasoline blendstock that becomes gasoline through the addition of oxygenate only, and for each tender selected perform the following:

(1) Obtain product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the product transfer documents; and

(2) Inspect the product transfer documents evidencing that the information required in § 80.106(a)(1)(vii) is included.

(j) *Conventional gasoline batches.* Select a sample, in accordance with the guidelines in § 80.127, from the conventional gasoline batch listing obtained in paragraph (d) of this section, and for each batch selected perform the following:

(1) Agree the volume shown on the listing, to the volume listed in the corresponding batch report submitted to EPA; and

(2) Obtain the refinery's or importer's laboratory analysis and agree the properties listed in the corresponding batch report submitted to EPA, to the properties listed in the laboratory analysis.

(k) *Conventional gasoline oxygenate blending.* Obtain a listing of each downstream oxygenate blending facility and its blender, as represented by the refiner/importer, as adding oxygenate used in the compliance calculations for the refinery or importer, or a written representation from the refiner for the refinery or importer that it has not used any downstream oxygenate blending in its conventional gasoline compliance calculations.

(1) For each downstream oxygenate blender facility, obtain a listing from the refiner or importer of the batches of oxygenate included in its compliance calculations added by the downstream oxygenate blender and foot to the total volume of batches per the listing;

(2) Obtain a listing from the downstream oxygenate blender of the oxygenate blended with conventional gasoline or sub-octane blendstock that was produced or imported by the refinery or importer and perform the following:

(i) Foot to the total volume of the oxygenate batches per the listing; and

(ii) Agree the total volumes in the listing obtained from the downstream oxygenate blender, to the listing obtained from the refiner or importer in paragraph (k)(1) of this section.

(3) Where the downstream oxygenate blender is a person other than the refiner or importer, as represented by management of the refinery or importer, perform the following:

(i) Obtain the contract from the refiner or importer with the downstream blender and inspect the contract evidencing that it covered the period when oxygenate was blended;

(ii) Obtain company documents evidencing that the refiner or importer has records reflecting that it conducted physical inspections of the downstream blending operation during the period oxygenate was blended;

(iii) Obtain company documents reflecting the refiner or importer audit over the downstream oxygenate blending operation and note whether these records evidencing the audit included a review of the overall volumes and type of oxygenate purchased and used by the oxygenate blender to be consistent with the oxygenate claimed by the refiner or importer, and that this oxygenate was blended with the refinery's or importer's gasoline or blending stock; and

(iv) Obtain a listing of test results for the sampling and testing conducted by the refiner or importer over the downstream oxygenate blending operation, and select a sample, in accordance with the guidelines in § 80.127, from this listing. For each test selected, agree the tested oxygenate volume with the oxygenate volume in the listing obtained from the oxygenate blender in paragraph (k)(2) of this section for this gasoline.

(l) *Blendstock tracking.*

(1) Either:

(i) Obtain a written representation from management of the refinery or importer that it has a baseline for each property that is less stringent or equal to the statutory baseline and as a result is exempt from blendstock tracking under § 80.102(f)(1)(i); or

(ii) Perform the following procedures.

(2) Obtain listings for those tenders of non-finished-gasoline petroleum products classified by the refiner or importer as:

(i) Applicable blendstock that is included in the refinery's or importer's blendstock tracking calculations pursuant to §§ 80.102 (b) through (d);

(ii) Applicable blendstock that is exempt pursuant to § 80.102(d)(3) from inclusion in the refinery's or importer's blendstock tracking calculations pursuant to §§ 80.102 (b) through (d); and

(iii) All other non-finished-gasoline petroleum products;

(3) Foot to the totals of the tender volumes contained in the listings obtained from the refinery or importer in paragraph (l)(2) of this section;

(4) Agree the total volume of tenders per the listings to the total tender volume of non-finished-gasoline products on the gasoline inventory reconciliation analysis obtained in paragraph (b) of this section; and

(5) Compute and report as a finding the refinery's or importer's ratio of all non-finished petroleum products to total gasoline production. Total gasoline production is the volume total of the batches from paragraph (d) of this section for reformulated gasoline, RBOB, and conventional gasoline, exclusive of California gasoline.

(6) No procedures must be performed under paragraph (l)(7) through (18) of this section if:

(i) The ratio in paragraph (l)(5) of this section is less than or equal to 3%; and

(ii) The refiner represents in writing that blendstock accounting is not required under § 80.102(g).

(7) Select a sample, in accordance with the guidelines in § 80.127, from the tender listing obtained in paragraph (l)(2)(ii) of this section, and for each tender selected perform the following:

(i) Obtain the refinery's or importer's company documents that evidence the transfer of the product to another party and agree the volumes contained in these records to the listing of tenders; and

(ii) Obtain documents from the refinery or importer that support the exclusion of the applicable blendstock from the blendstock-to-gasoline ratio, and agree that the documented purpose is one of those specified at § 80.102(d)(3);

(8) Agree the total tender volume obtained in paragraph (l)(2)(ii) of this section to the ''total volume of applicable blendstock produced or imported, transferred to others and excluded from blendstock ratio calculations' reported to EPA, or to the refinery-specific volume under paragraph (a)(2) of this section used to prepare an aggregate report submitted to EPA.

(9) Compute and report as a finding the refinery's ratio of applicable blendstocks included in the tracking calculation under paragraph (l)(2)(i) of this section plus all other non-finished-gasoline petroleum products under paragraph (l)(2)(iii) of this section, to total gasoline production. Total gasoline production is the volume total of the batches from paragraph (d) of this section for reformulated gasoline, RBOB, oxygenates blended downstream of the refinery or import facility, and conventional gasoline, exclusive of California gasoline.

(10) No procedures must be performed under paragraphs (l) (11) through (18) of this section if :

(i) The ratio in paragraph (l)(9) of this section is less than or equal to 3%;

(ii) No exceptions were noted in paragraph (l)(7) of this section; and

(iii) The refiner represents in writing that blendstock accounting is not required under § 80.102(g).

(11) Select a sample, in accordance with the guidelines in § 80.127, from the listing obtained in paragraph (l)(2)(iii) of this section, and for each tender selected perform the following:

(i) Obtain the records that evidence the transfer of the product to another party and agree the volume contained in these records to the volume on the listing of tenders; and

(ii) Inspect the product type assigned by the refiner or importer on the transfer document (i.e., alkylate, raffinate, etc.) and agree that this product type is not included in the applicable blendstock list at § 80.102(a).

(12) Agree the total tender volume obtained in paragraph (l)(2)(i) of this section to the ''total volume of applicable blendstock produced or imported, transferred to others and included in blendstock ratio calculations' reported to EPA, or to the refinery-specific volume under paragraph (a)(2) of this section used to prepare an aggregate report submitted to EPA.

(13) Compute and report as a finding the refinery's ratio of applicable blendstocks included in the tracking calculation under paragraph (l)(1)(i) of this section to total gasoline production. Total gasoline production is the volume total of the batches from paragraph (d) of this section for reformulated gasoline, RBOB, oxygenate blended downstream of the refinery or import facility, and conventional gasoline, exclusive of California gasoline.

(14) No procedures must be performed under paragraphs (l) (15) through (18) of this section if:

(i) The ratio in paragraph (l)(13) of this section is less than or equal to 3%; and

(ii) The refiner represents in writing that blendstock accounting is not required under § 80.102(g).

(15) Obtain the refinery's or importer's blendstock-to-gasoline ratios for calendar years 1990 through 1993.

(16)(i) In the case of averaging periods prior to 1998, compute and report as a finding the peak year blendstock-to-gasoline ratio percentage change as required under § 80.102(d)(1)(ii); or

(ii) In the case of averaging periods beginning in 1998, compute and report as a finding the running cumulative compliance period blendstock-to-gasoline ratio as required under § 80.102(d)(2)(i), and the cumulative blendstock-to-gasoline ratio percentage change as required under § 80.102(d)(2)(ii).

(17) Obtain from the refiner or importer the prior year's peak year blendstock-to-gasoline ratio percentage change if the prior year was prior to 1998, or running cumulative compliance period blendstock-to-gasoline ratio if the prior year was 1998 or later.

(18) No procedures must be performed under paragraph (m) of this section if:

(i) For the prior year the peak year blendstock-to-gasoline ratio percentage change (for 1995 through 1997), or the cumulative blendstock-to-gasoline ratio percentage change (for 1998 and after), is less than ten; and

(ii) The refiner represents in writing that blendstock accounting is not required under § 80.102(g).

(m) *Blendstock accounting.* (1) Obtain listings for those tenders of non-finished-gasoline petroleum products tenders classified by the refinery or importer as:

(i) Blendstock that is included in the compliance calculations for the refinery or importer under § 80.102(e)(2)(i); and

(ii) All other non-finished-gasoline petroleum products;

(2) Foot the total volume of tenders per the listings;

(3) Agree the total volume of tenders per the listings to the gasoline inventory reconciliation analysis obtained in paragraph (b) of this section;

(4) Select a sample, in accordance with the guidelines in § 80.127, from the listing of blendstock tenders that are included in the compliance calculations for the refinery or importer, and for each tender selected perform the following:

(i) Agree the volumes to company documents evidencing the transfer of the tender to another party;

(ii) Note the product transfer documents includes the statement indicating the blendstock has been accounted-for, and may not be included in another party's compliance calculations; and

(5) Agree the total tender volume obtained in paragraph (m)(1)(i) of this section to the ''total volume of blendstocks included in compliance calculations'' reported to EPA, or to the refinery-specific volume under paragraph (a)(2) of this section used to prepare an aggregate report submitted to EPA.

(6) Select a sample, in accordance with the guidelines in § 80.127, from the listing of tenders of non-finished-gasoline petroleum products that are excluded from the refinery's or importer's compliance calculations, and for each tender selected confirm that company documents demonstrate that the petroleum products were used for a purpose other than the production of gasoline within the United States.

43. Section 80.134 is added to subpart F to read as follows:

§ 80.134 Agreed-upon procedures for downstream oxygenate blenders.

The following are the minimum attest procedures that shall be carried out for each oxygenate blending facility that is subject to the requirements of this subpart F. Agreed upon procedures may vary from the procedures stated in this section due to the nature of the oxygenate blender's business or records, provided that any oxygenate blender desiring to use modified procedures obtains prior approval from EPA.

(a) *EPA Blender Reports.* Obtain and read a copy of the blender's reports filed with the EPA as required by § 80.75 for the reporting period. Obtain a written representation from a company representative that the copies are complete and accurate copies of the reports filed with the EPA.

(b) *Inventory reconciliation analysis.* (1) Obtain from the blender an inventory reconciliation analysis for the reporting period that summarizes:

(i) Receipts of RBOB, reformulated gasoline, and oxygenate;

(ii) Beginning and ending inventories of RBOB , reformulated gasoline, and oxygenate;

(iii) Production of reformulated gasoline; and

(iv) Tenders of RBOB and reformulated gasoline.

(2) Foot and the crossfoot volume totals reflected in the analysis.

(3) Agree the beginning and ending inventory amounts in the analysis to the blender's inventory records.

(c) *RBOB receipts.* Obtain a listing of all RBOB receipts for the reporting period, and perform the following:

(1) Foot to the total volume of RBOB receipts per the listing;

(2) Agree the total RBOB receipts volume reflected on the listing to the RBOB receipts volume on the inventory reconciliation analysis;

(3) Select a sample, in accordance with the guidelines in § 80.127, of RBOB receipts from the listing. For each selected RBOB receipt, obtain product transfer documents specifying the type and volume of oxygenate to be added to the RBOB.

(d) *Oxygenate receipts.* Obtain a listing of all oxygenate receipts for the reporting period, and perform the following:

(1) Foot to the total volume of oxygenate receipts per the listing;

(2) Agree the total oxygenate receipts volume reflected on the listing to the oxygenate receipts volume on the inventory reconciliation analysis.

(e) *Reformulated gasoline tenders.* Obtain a listing of all reformulated gasoline tenders for the reporting period, and perform the following:

(1) Foot to the total reformulated gasoline tenders per the listing;

(2) Agree the total reformulated gasoline tenders volume reflected on the listing to the reformulated gasoline tenders volume on the inventory reconciliation analysis;

(3) Select a sample, in accordance with the guidelines in § 80.127, of reformulated gasoline tenders from the listing, and for each tender selected perform the following:

(i) Obtain the product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the product transfer documents.

(ii) Inspect the product transfer documents evidencing the date and location of the tender and the compliance model designations for the tender (VOC-controlled for Region 1 or 2, non VOC-controlled, and simple or complex model certified).

(f) *RBOB tenders.* Obtain a listing of all RBOB tenders during the reporting period, and perform the following:

(1) Foot to the total volume of RBOB per the listing;

(2) Agree the total RBOB tenders volume reflected on the listing to the RBOB tenders volume on the inventory reconciliation analysis.

(g) *Reformulated gasoline batches.* Obtain a listing of all reformulated gasoline batches produced during the reporting period, and perform the following:

(1) Foot to the total volume of reformulated gasoline batches produced per the listing;

(2) Agree the total reformulated gasoline batch volume reflected on the listing to the reformulated gasoline batch volume on the inventory reconciliation analysis.

(h) *Blender sampling and testing.* (1) For blenders who meet the oxygenate blending requirements by sampling and testing each batch of reformulated

gasoline, select a sample, in accordance with the guidelines in § 80.127, of reformulated gasoline batches from the listing obtained in paragraph (g) of this section, and for each batch selected perform the following:

(i) Obtain the internal laboratory analysis for the batch, and agree the type of oxygenate used and the oxygen content appearing in the laboratory analysis to the instructions stated on the product transfer documents corresponding to a RBOB receipt immediately preceding the laboratory analysis and used in producing the reformulated gasoline batch selected.

(ii) Agree the oxygen content results of the laboratory analysis to the corresponding batch information reported to EPA.

(2) For blenders who meet the oxygen content standard on average without separately sampling and testing each batch, under the terms of § 80.69(b)(5), the following procedures shall be carried out:

(i) Obtain a listing of the oxygen compliance calculations, test the mathematic accuracy of the listing, and agree the volumetric calculations to the material balance analysis.

(ii) Select a representative sample of the oxygen compliance calculations using the guidelines in § 80.127, and for each calculation selected:

(A) Confirm that the calculation represented gasoline production for a period no longer than one month;

(B) Confirm that the oxygenate blender properly performed the calculation required in § 80.69(b)(5), including that the oxygenate blender used the proper values for specific gravities, mole fraction, and denaturant content; and

(C)Agree the calculated oxygen value to the corresponding batch report to EPA.

(iii) Obtain records of the oxygenate blender's quality assurance program of sampling and testing as required in § 80.69(b)(5), select a representative sample of the quality assurance sample selected using the guidelines in § 80.127, and for each quality assurance sample selected confirm the sample was collected within the required frequency.

44. Appendices A through G to Part 80 [Removed]

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Part III

Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 1997; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96–186; FCC 97–215]

Assessment and Collection of Regulatory Fees for Fiscal Year 1997

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has revised its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1997. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1997 sections 9(b)(2) and (3) provide for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

EFFECTIVE DATE: September 15, 1997.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

Adopted: June 16, 1997; Released: June 26 , 1997

By the Commission:

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Rule Changes

Attachments to Preamble:
- Attachment A—Final Regulatory Flexibility Analysis
- Attachment B—Sources of Payment Unit Estimates for FY 1997
- Attachment C—Calculation of Revenue Requirements
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- Attachment I—Description of FCC Activities
- Attachment J—FCC Cost Accounting Activity and Project Codes
- Attachment K—AM/FM Fees
- Attachment L—Parties Filing Comments and Reply Comments

I. Introduction

1. By this Report and Order, the Commission concludes its rulemaking proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. See 47 U.S.C. 159(a).

2. Congress has required that we collect $152,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1997. Public Law 104–208 and 47 U.S.C. 159(a)(2). This amount is $26,123,000 or nearly 21% more than the amount that Congress designated for recovery through regulatory fees for FY 1996. See

Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96–295, released July 5, 1996, 61 FR 36629 (July 12, 1996). Thus, we are revising our fees in order to collect the increased amount that Congress has required that we collect. Additionally, we are amending the Schedule in order to assess regulatory fees upon licensees and/or regulatees of services not previously subject to payment of a fee, to simplify and streamline the Fee Schedule, and to clarify and/or revise certain payment procedures. 47 U.S.C. 159(b)(3).

3. In revising our fees, we have adjusted the payment units and revenue requirement for each service subject to a fee, consistent with Sections 159(b) (2) and (3). In addition, we have made changes to the fees pursuant to public interest considerations including the establishment of a procedure to limit the maximum increase in a fee for any individual fee category. The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules. 47 CFR 1.1152 through 1.1156. See rule changes and Attachment F for our revised fee schedule for FY 1997.

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities. *See* 47 U.S.C. 159(a). See Attachment I for definitions of these and other activities of the Commission. In our FY 1994 Fee Report and Order, 59 FR 30984 (June 16, 1994), we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress. 47 U.S.C. 159 (b), (f)(1). Subsequently, in our FY 1995 and FY 1996 Fee Reports and Orders, 60 FR 34004 (June 29, 1995) and 61 FR 36629 (July 12, 1996), we modified the Schedule to increase by approximately 93 percent and 9 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect in FY 1995 and FY 1996. Also, in both our FY 1995 and FY 1996 fee decisions, we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years. See 47 CFR 1.1151 *et seq.*

5. For fiscal years after FY 1994, Sections 9(b) (2) and (3), respectively, provide for ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. 47 U.S.C. 159 (b)(2), (b)(3). Section 9(b)(2), entitled ''Mandatory Adjustments,'' requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees. 47 U.S.C. 159(b)(2). Section 9(b)(3), entitled ''Permitted Amendments,'' requires that we determine annually whether adjustments to the fees are warranted based upon the requirements of this subsection and that, whenever we make such adjustments, we take into account factors that are reasonably related to the benefits provided to the payer of the fee and factors that are in the public interest. In making these amendments, we are to ''add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services.'' 47 U.S.C. 159(b)(3).

6. Section 9(i) requires that we develop accounting systems necessary to adjust our fees when making permitted amendments to the Fee Schedule and for other purposes and that we provide interested persons with an opportunity to comment concerning the allocation of our regulatory costs. 47 U.S.C. 9(i). Finally, Section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect. 47 U.S.C. 159(b)(4)(B).

III. Discussion

A. Summary of FY 1997 Fee Methodology

7. As noted above, Congress has required that we recover $152,523,000 for FY 1997 through the collection of regulatory fees, reflecting its determination of the costs of our enforcement, policy and rulemaking, international, and user information activities.[1] 47 U.S.C. 159(a).

8. In our FY 1997 NPRM we developed our proposed FY 1997 fee schedule by first estimating payment units[2] for FY 1997 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1996 fees. Next, we compared this revenue amount to the $152,523,000 that Congress has required us to collect in FY 1997 and pro-rated the shortfall of $15,188,635 among all the existing fee categories. We then adjusted the projected revenue requirements of each category of service so that it equaled the actual cost of each service, using data accumulated by our cost accounting system to ensure that revenues from each category of service approximated, to the extent possible, our regulatory costs for each fee category.

9. We next examined the impact on each class of regulatees of using actual costs to establish regulatory fees in order to determine whether any regulatees would experience an unduly large fee increase. Our review disclosed that cost-based fees would result in fee payments dramatically higher for regulatees in many service categories in FY 1997 compared with their fees in FY 1996. Therefore, rather than proposing fully cost-based fees for FY 1997, we proposed to phase in full reliance on cost-based fees and, for FY 1997, to establish a revenue ceiling in each service no higher than 25 percent above the revenue that payers within a fee category would have paid if FY 1997 fees had remained at FY 1996 levels adjusted only for changes in payment unit volumes and the overall increase required by Congress.

10. Once we established our tentative FY 1997 fees, we evaluated various proposals made by Commission staff concerning other adjustments to the Fee Schedule and to our collection procedures. We discussed these proposals in Paragraphs 20–40 of the NPRM and factored them into our proposed FY 1997 Schedule of Regulatory Fees, set forth in Attachment F of the NPRM.

11. Finally, we incorporated, as Attachment H of the NPRM, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1997.

B. Cost-Based Fee Methodology

12. In our NPRM, we announced that we had implemented our new cost accounting system and that we would rely on the cost accounting system to

[1] The impact of regulatory fees on the FCC's appropriation is substantial. For example, without regulatory fees to offset the Commission's costs, the FCC would require a Congressional appropriation of $189 million for FY 1997. When offsetting regulatory fees are taken into consideration, only $37 million must be appropriated from tax receipts to fund the Commission. Thus, taxpayers are spared the expense of funding almost 80% of the Commission's annual budget. Funds collected as application or filing fees pursuant to Section 8 of the Act are deposited into the General Fund of the U.S. Treasury as reimbursement to the United States but, unlike Section 9 regulatory fees, do not offset funds appropriated to the Commission. 47 U.S.C. 158(a)

[2] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

assist us in determining our costs of regulation of those services subject to a fee for FY 1997. In response, several interested parties, including the Personal Communications Industry Association (PCIA), Century Cellunet, Inc. (Century), and PanAmSat Corporation (PanAmSat), contend that we failed to explain the accounting system sufficiently to permit interested parties to determine how the system distributes costs among our various services. Comsat argues that we merely disclosed the results of the cost accounting system and, therefore, interested parties cannot evaluate our cost accounting system or suggest improvements. In addition, PCIA, Arch Communications Group, Inc. (Arch) and Columbia Communications Corporation (Columbia), among others, argue that without more data concerning our assignment of costs, they cannot determine whether the costs attributed to their services are reasonable estimates of our actual costs of regulating their services.

13. We are satisfied that our NPRM provided sufficient information describing the accounting system to afford interested parties the opportunity to comment. Our NPRM made it clear that our cost accounting system relied upon information derived from our personnel/payroll system and our fiscal accounting system as the basis for recording direct and indirect costs, separately and combined, for every major category of service subject to a fee. Also, we stated that the cost accounting system was designed to generate useful data for identifying the actual costs of our regulation by category of service and that this information, combined with other information,[3] would yield fees more closely reflecting our cost of service. We stated that the system was integrated with our personnel/payroll system and collected both personnel and payroll information by category of service to insure accurate and timely production of cost of service information. In sum, the system we developed for distributing costs is a derivative of our payroll and accounting systems with the added feature that it collects cost of service information on an employee-by-employee basis.

14. Moreover, we are confident that our NPRM provided sufficient detail concerning not only our manner of distributing costs of personnel directly assigned to regulatory activities, but other costs included in our determination of regulatory costs. We stated that the system separately identifies direct costs, including salary and expenses for staff directly assigned to our operating Bureaus, and other costs, such as rent, utilities and contracts, directly attributable to such personnel. Also, we stated that we included as indirect costs those costs attributable to personnel assigned to overhead functions, including such functions as field and laboratory staff, on a proportional basis; i.e., spread among all categories of service subject to a fee according to their share of direct costs. Finally, in Attachment D of the NPRM, we provided a precise calculation of the regulatory costs, including separate discussions of the cost accounting system's accumulation of the direct, indirect and total actual costs for each major category of service. Thus, we are satisfied that our NPRM, consistent with Section 9(i) of the Act, sufficiently described our cost accounting system, including how it distributes actual costs among the various categories of service, affording parties an understanding of the system sufficient for them to submit comments on how the system allocated costs among those services subject to a regulatory fee. 47 U.S.C. 159(i).

15. Nevertheless, in consideration of the increased amount that Congress has required that we recover through regulatory fees in FY 1997, we believe that we should describe our cost accounting system in further detail so that interested parties may be reassured about the integrity of the system and its unbiased distribution of costs.

16. Our cost accounting system was developed under contract by American Management Systems, Inc (AMS) in FY 1995. From its inception, the system has been integrated with the Commission's bi-weekly payroll and fiscal accounting systems and, as such, its procedures conform to generally accepted cost accounting principles and standards as mandated by the General Accounting Office (GAO) and by the U.S. Treasury Department. The cost accounting system contains built-in safeguards and internal controls designed to ensure data integrity. For example, employees are required to certify the accuracy of the service category codes they designate on their time and attendance reports, timekeepers must enter data according to procedures established in system guidelines, and supervisors are required to review and attest by their signature that coding appears to be appropriate. Additionally, standards are in place which prevent employees from altering their own cost accounting data in the automated payroll system. Standardized system follow-up reports are also periodically provided to Bureau/Office administrative and management officials for their review to ensure that staff are following system guidelines.

17. Additionally, as official financial records, employee cost accounting code sheets are associated with formal time and attendance records and maintained in accordance with prescribed GAO standards. As with all financial systems, criminal and/or administrative penalties apply should any fraudulent or coercive actions associated with either the payroll or cost accounting system be discovered. To date, no known deficiencies of this nature have been identified or alleged.

18. As we have noted, the actual accumulation of cost of service information is derived from our automated personnel/payroll system. In order to collect cost of service information, the cost accounting system requires that each Commission employee select or designate a particular cost code or multiple codes when completing bi-weekly payroll sheets.[4] Cost codes consist of a two digit code designating the proper ''Activity'' (e.g., Authorization of Service, Policy & Rulemaking, Enforcement, Public Information) together with a three digit code designating the ''program'' or fee category.[5] The Commission has utilized its basic ''activity'' definitions for Office of Management and Budget (OMB) and Congressional Budget purposes and for fiscal accounting reporting requirements for many years, with agency employees generally well acquainted with the distinction between feeable (i.e., Policy & Rulemaking, Enforcement, Public Information, International) and non-feeable (i.e., Authorization of Service) activities. The selection of ''program codes'' used for accumulating regulatory fee costs by service category, on the other hand, were newly established for the cost accounting system.[6] [7] To ensure

[3] Specifically, information pertaining to payment units and total amounts required to be collected.

[4] Some employees who routinely work on the same activities each pay period may use default codes which reduce the need to enter new codes each pay period. These employees have the option of changing codes as dictated by the work they perform.

[5] Although the Commission collects cost data for Authorization of Service activities and for reimbursable activities, these costs are not used in developing annual regulatory fees.

[6] See Attachment J for a list of all cost accounting codes.

[7] The Commission's cost accounting system was designed to provide the flexibility to add or delete cost codes not only at the beginning (or end) of a fiscal year, but during the course of the fiscal year as well. This increases the accuracy of cost allocation by allowing the agency to quickly begin accumulating costs when required for operational or fee development purposes without waiting weeks or months to do so. In June 1996, two new codes were added to the cost code structure in place at the beginning of FY 1996. One of the codes was for

smooth implementation, extensive training was provided to timekeepers and each Commission employee was provided with detailed instructions pertaining to use of the cost accounting system prior to system implementation.

19. As noted, the program cost codes that we designated for regulatory fee development correspond to the major fee categories contained in the Commission's Schedule of Fees. Every pay period, each employee completes a time and attendance form and verifies with his or her initials the accuracy of the distribution of worktime among the various Commission programs, including those programs covered by regulatory fees.[8] In turn, the employee's supervisor is required to review and to certify the accuracy of the employee's entries before the details of the employee's work statement are key-entered into our automated payroll system (operated by the Department of Agriculture's National Finance Center) along with all other bi-weekly payroll data by time and attendance clerks. Built-in system checks and detailed follow-up reports are distributed to all Bureaus/Offices to insure that data entry is completed in an accurate manner and that resulting reports are accurate.[9] During FY 1996, senior administrative staff were assigned to carefully monitor the new cost accounting system to insure system integrity. Although the government-wide furlough in early FY 1996 hindered the resolution of minor problems pertaining to integration of the new program codes at the onset of system implementation, these problems were subsequently corrected and cost accounting data for FY 1996 used in the formulation of FY 1997 fees do not contain any known omissions or erroneous data.

20. In addition to personnel costs, which make up about 80% of the Commission's overall costs, the agency's cost accounting system also accumulates non-personnel costs. These are the costs of office rental, equipment, travel, information technology, supplies, contracts and telecommunications services. Non-personnel costs are generally accrued on an actual basis at the time the Commission obligates itself to pay for these materials and services. Some costs, such as annual and sick leave costs, and other obligations such as rental of space and telecommunications, are not logically chargeable to a specific fee category at the time they are incurred. In these situations, they are allocated at month-end to all fee categories based on how direct costs were incurred during the reporting period. For example, costs for annual and sick leave are allocated on a pro-rated basis to fee categories incurring direct costs during the accounting period. In an effort to report costs as accurately as possible, the allocation is limited to the organizations where the leave was taken, rather than across all organizations. Costs for office space rental and telecommunications, on the other hand, are allocated to each fee category—FCC-wide—that incurred direct costs during the month. At the end of each accounting period, the cost accounting system combines the non-personnel costs with the Commission's salary and benefits (payroll) costs and then distributes various overhead costs to specific fee categories based on pre-determined allocation formulas.[10] [11]

C. Relationship of Cost of Service to Revenue Requirements

21. PCIA and other commenters contend that there is no basis for or relationship between the revenue that the Commission is proposing to collect from a particular fee group and the amount of regulatory work or oversight associated with that fee group. As discussed in Paragraph 2, the Commission, by statute, must collect annually from its licensees and regulatees the amount specified by Congress. Further, in Paragraph 14, we stated that the direct costs of our regulatory oversight comprise only a portion of the overall costs we are required to recover through regulatory fees. Direct costs include salary and expenses for (a) Staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. Indirect costs include costs of support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. Support costs, for both direct and indirect staff, also must be recovered. These costs include rent, utilities, equipment and

accumulating costs relative to LEOs and the other was for accumulating costs associated with Signatory activities. Prior to establishment of these new codes, International Bureau staff were only able to allocate their work time to existing fee categories (i.e., space stations, earth stations, international public fixed radio, international HF radio stations and international bearer circuits). To obtain an approximation of full-year costs in these situations, the standard mathematical procedure would normally be to ''annualize'' the partial year costs. Annualization is a simple predictive process which estimates what accumulated costs would be for a full year based on partial year data. It assumes that costs for similar periods during the fiscal year would mirror the costs accumulated in the partial year period. For example, if $500 in costs were accumulated for three months of a fiscal year, the annualized cost accumulation would total $2000 ($500/3 months times 12 months). Unfortunately, due to administrative oversight, many employees actually working on activities related to LEOs and signatory activities were not made aware of the new cost codes and, therefore, the time allotted by employees to these two activities was inadvertently less than the time actually spent by employees on these two activities. To correct this imbalance, the International Bureau reviewed its actual FY 1996 FTE usage to identify by Activity and fee category where it had actually been spending its finite staff resources during FY 1996. This breakout of staff time was then used to allocate actual International Bureau costs to its several fee categories as shown on Attachment D.

[8] As noted in the NPRM, it is impractical to require employees to allocate their time into very small increments. However, most employees do allocate their time in increments of one hour.

[9] The Commission's cost accounting system also accumulates detailed FTE data. Prior to implementation of the cost accounting system, FTEs used in budget and fee development were estimated by agency program managers.

[10] Overhead costs include a number of components: (a) The time of employees whose functional activities cannot logically be designated or allocated to a single or even several fee categories (e.g., Commissioners and their immediate staffs, staff supporting all Commission organizations); and (b) subsidized activities specifically excluded from fee assessment (e.g., amateur radio, public safety and government licensee oversight, non-commercial radio and TV licensees, CB, ship and aircraft radio users and non-profit organizations). Together these costs are estimated to total nearly 40% of the Commission activity costs covered by regulatory fees. As noted elsewhere in this Report and Order, additional allocations are made proportionally to all the fee categories in order to bring total accumulated costs up to the total amount Congress requires us to collect. Additionally, actual costs at any point in time, including the end of a fiscal year, will not exactly equal the amount Congress requires us to collect because Congress' estimate of costs to be recovered through regulatory fees is generally determined at least twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs will not equal exactly the amount Congress designates for collection in a particular fiscal year.

[11] Leave costs, indirect costs related to centralized services and bureau-specific support costs are distributed among the various fee categories that a particular organization supports. The costs are distributed on a pro-rata basis to only those fee categories that incurred direct costs during the accounting period. As a final step, executive direction and related support costs are distributed FCC-wide to all fee categories incurring direct costs during the accounting period.

contractual costs attributable to regulatory oversight.

22. Our fees also recover costs attributable to regulatees that Congress, in Section 9(h) of the Act, has exempted from payment of a fee and those regulatees that obtain a waiver or reduction of their fee payment pursuant to Section 9(d) of the Act. 47 U.S.C. 159 (d), (h). Fee payers must also offset other costs attributable to regulatees whose fees have been eliminated or reduced through permitted amendments in accordance with Section 9(b)(3) of the Act. For example, Citizen's Band Radio and most recreational ship and aircraft radio station operators, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement, with no direct measurable benefit accruing to such fee payers. We recover our costs of regulation for exempt entities by allocating our regulatory costs attributable to them on a proportional basis across all fee categories so as to not unduly impact any particular category of fee payers.

23. Thus, in direct response to PCIA, our fees are designed to recover the amount that Congress has required us to collect and, although based upon the cost of service of each category of regulatee, include costs that are not directly related to those entities subject to a fee. Therefore, a particular fee and resulting revenue collection will invariably exceed the service's direct regulatory costs because the revenue requirement for any of our services, and thus the fees assessed upon fee payers in those services, will be higher than their actual cost of service, notwithstanding that actions by Congress and the Commission to deregulate would appear to warrant a lower fee.

24. Several commenters also allude to our proposal to use actual FY 1996 regulatory costs as the basis for determining FY 1997 costs and question whether FY 1997 costs will approximate FY 1996 costs. For example, PCIA contends that we have not demonstrated that our FY 1996 costs are sufficiently related to our FY 1997 costs to rely our FY 1996 costs to establish our fees for FY 1997.

25. Clearly, the Commission cannot determine actual FY 1997 costs until well after the close of FY 1997, several weeks after the collection of FY 1997 fees must be completed. Moreover, even though we could have estimated our FY 1997 costs per service in our NPRM, that estimate would have been based on only three months of FY 1997 data. Also, any method for estimating future FY 1997 costs would become a point of controversy and contention because it is difficult, if not impossible, to predict with any certainty the regulatory costs per service in view of today's dynamic telecommunications regulatory environment. Under our proposal to base our fees on the previous year's actual costs of regulation, we eliminated the need to rely on estimated costs. Because we foresee no lessening in the dynamic pace of technological development and innovation in the communications regulatory environment, we are reluctant to continue to rely on estimated future costs when actual costs for a prior year are available. Therefore, we shall not rely on estimates of future costs, and, henceforth, will develop our fees based on historic cost data. We note that even if FY 1997 costs were ultimately to differ from those based on FY 1996 data, our proposed methodology would effectively adjust FY 1998 fees to take into account actual FY 1997 costs.

26. Several of the parties contend that their fees bear little or no relationship to their costs of regulation or to the benefits they receive from our regulation. These parties contend that our fees should be calculated to recover an amount reflecting the cost of the services performed and the value conferred on the payor pursuant to Section 9(b)(1)(A) of the Act. 47 U.S.C. 159(b)(1)(A).

27. We again reject the arguments that our proposed fees are inconsistent with the statute or otherwise unlawful because they are not completely cost-based or do not reflect the benefits received by entities subject to a fee payment. Section 9(a) requires that we recover our costs ''in the total amounts required in Appropriations Acts.'' 47 U.S.C. 159(a). Section 9(a) does not require that we base our fees solely on benefits to regulatees or that the fees recover from an entity only its particular cost of regulation. In our FY 1995 Report and Order, we stated that we are not limited to setting regulatory fees only in the amount that reflects services received by regulated entities. 10 FCC Rcd at 13521, citing *Skinner* v. *Mid-America Pipe Line Co.,* 490 U.S. 212, 224 (1989). Rather, once Congress, as in Section 9, has made a proper delegation of authority to raise funds, ''so long as the fees in question are within the scope of Congress' lawful delegation of authority in Section 9, they are constitutional.'' *Id.* Thus, as we noted in our FY 1995 Report and Order, we ''can collect fees from regulatees for their use of frequencies and for the potential benefits of [our] regulatory activities, even if they do not utilize these activities.'' See 60 FR 34008 (June 29, 1995), citing *United States* v. *Sperry Corp.,* 493 U.S. 52, 63. Moreover, no requirement exists that the fees we establish be designed to recover only the costs of those benefits directly received by an entity.

28. Arch and PCIA point out that our NPRM did not provide actual FY 1996 fee collection data, including the number of actual payment units and the actual amount of fees collected in certain fee categories. These commenters contend that such information is essential to its evaluation of Commission fee proposals for FY 1997. We recognize that we did not provide a detailed listing of actual FY 1996 collections data in the NPRM. However, Attachment B of the NPRM contained a service-by-service explanation of the basis for our estimated FY 1997 payment units. Several of these are based on actual FY 1996 payments. Others are based on estimates obtained from Commission program experts or from regulated industries. In any case, as we noted in the NPRM, we consider as one factor in estimating payment units the actual number of payment units recorded in our fees collection system for FY 1996. These payment unit estimates use ''as of'' dates corresponding to the beginning of the current fiscal year or, for some fee categories, at the end of the previous calendar year. We believe that this reliance upon actual ''historical'' or retrospective FY 1996 data provides us a much greater confidence level than would an estimate of payment units made prospectively. Finally, from the inception of the regulatory fee collection program, actual historical payment units and collection amounts for the various categories of services have been routinely available for inspection to interested persons upon request. In sum, we cannot find that there is a basis for concluding that these commenters could not fairly evaluate our proposed fees for FY 1997 given the information pertaining to payment units contained in the NPRM and detailed collections data readily available from the Commission. Additionally, we note that no interested party proposed alternative payment units for any category of service for FY 1997.

29. Finally, PCIA, Century, Columbia and other interested parties are concerned about the amount of our proposed increase in their revenue requirements and in their fee amounts for FY 1997 compared with those established for FY 1996. They question how estimates of actual costs for FY

1996 and FY 1997 could differ so significantly from one year to the next in certain fee categories. The most obvious reason for major differences, as we have noted elsewhere, is that Congress has increased the total amount we are to collect by more than 20% in FY 1997 compared to FY 1996. Also, we must recover our indirect and overhead costs as well as direct costs of regulating services and also must recover our regulatory costs generated by regulatees not subject to a regulatory fee. Our fees for FY 1996 were developed using existing FY 1995 fee amounts adjusted for changes in payment units. These fees were developed without the benefit of actual cost data and were essentially based on (a) the Congressionally established relationships between fees contained in Section (g) of the Act, and (b) subsequent adjustments based on estimated changes in FTE levels and payment units. By contrast, for FY 1997, we proposed to rely upon actual cost accounting data as the basis for determining revenue requirements and fee amounts. Thus, there are few, if any, grounds for comparison between FY 1996 fees and revenue requirements and corresponding fees and revenue requirements for FY 1997. Accordingly, the amount that FY 1997 fees rise or fall relative to FY 1996 fees is essentially unrelated to any change in actual costs, but instead to the application of different methodologies and an increasing revenue requirement mandated by the Congress.

30. After taking into consideration the comments received in this proceeding concerning our regulatory costs and our cost accounting system, we have decided to adopt the overall cost-based methodology proposed in the NPRM for developing FY 1997 fees. As discussed in the preceding paragraphs, we believe adoption of this methodology will best insure the fairest allocation of costs and resultant fees among the Commission's regulatees in FY 1997.

D. Application of Cost-Based Methodology To Determine Fee Amounts

1. Adjustment of Payment Units

31. As the first step in calculating individual service regulatory fees for FY 1997, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1996 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates.[12] Attachment B provides a summary of how payment units were estimated for each fee category.

2. Calculation of Revenue Requirements

32. We next multiplied the revised payment units for each service by our FY 1996 fee amounts in each fee category to determine how much revenue we would collect in FY 1997 without any change to the existing Schedule of Regulatory Fees. The amount of revenue we would collect is approximately $137.3 million.[13] This amount is approximately $15.2 million less than the amount the Commission is required to collect in FY 1997. We therefore adjusted the revenue requirements for each fee category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of revenue requirements for each fee category necessary to collect the $152,523,000 amount required by Congress for FY 1997. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

3. Calculation of Regulatory Costs

33. On October 1, 1995, the Commission implemented, in accordance with 47 U.S.C. 159(i), a cost accounting system designed, in part, to provide us with useful data, in combination with other information, to help ensure that fees closely reflected our actual costs of regulation.

34. In order to utilize actual costs derived from our cost accounting system for fee development purposes, indirect support costs contained in the cost accounting system have to be added to direct costs[14] and the results adjusted further to approximate the amount of revenue that Congress requires us to collect in FY 1997 ($152,523,000).[15] Thus, we proportionally adjusted the actual cost data related to regulatory fee activities recorded for the period October 1, 1995 through September 30, 1996 among the fee categories so that total costs approximated $152,523,000. The results of these calculations are shown in detail in Attachment D and represent our best estimate of actual total attributable costs relative to each fee category and sub-category for FY 1997. For fee categories differentiated by class or market (e.g., VHF and UHF Commercial Television), we distributed the costs to the class or market group by maintaining the relationships between class or market revenue requirements shown on Attachment C.[16] [17]

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[12] Certain payment unit estimates have been revised since release of the NPRM due to additional or updated information obtained by the Commission. This may result in changed fee amounts from those proposed in the NPRM. It is also important to note that Congress' required revenue increase in regulatory fee payments of approximately 21 percent in FY 1997 will not fall equally on all fee payers due to differences in payment unit estimates between FY 1996 and FY 1997.

[13] This revenue amount has changed since release of the NPRM due to changed estimates of payment units.

[14] One feature of the cost accounting system is that it separately identifies direct and indirect costs. Direct costs include salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. These costs include rent, utilities and contractual costs attributable to such personnel. Indirect costs include support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. The combining of direct and indirect costs is accomplished on a proportional basis among all fee categories as shown on Attachment D.

[15] Congress' estimate of costs to be recovered through regulatory fees is generally determined at least twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs will not equal exactly the amount Congress designates for collection in a particular fiscal year.

[16] While some might argue that the Commission's cost accounting system should further distinguish our work activities to the television market or radio class level, it would not be practical to record employee work time in such small incremental breakouts.

[17] In the NPRM we erroneously distributed these costs by maintaining the relationship between *fees* contained in the FY 1996 Fee Schedule. As commenters pointed out, we should have made these distributions by maintaining the relationship between FY 1996 revenue requirements for these fee categories. The following example illustrates the allocation process:

Under the FM Radio fee classification, the actual costs attributable to FM radio are $8,465,118. This amount is allocated to FM Classes C,C1,C2,B; Classes A,B1,C3; and FM Construction Permits (CP) as follows:

(1) First we determine the relationships between the three categories (see Attachment C) by dividing the smallest of the pro-rated FY 1997 FM revenue requirements into the sum of the pro-rated FY 1997 FM revenue requirements to determine the appropriate ratios for allocation of the revenue requirement.

(a) Pro-rated FY 1997 FM CP revenue requirement = $235,258

Pro-rated FY 1997 FM Classes A, B1, and C3 revenue requirement = $2,546,006

Pro-rated FY 1997 FM Classes C, C1, C2, and B revenue requirement = $3,621,944

Sum = $6,403,208

(b) FM CP percentage is $235,258 divided by $6,403,208 = 0.0367

FM Classes A, B1, and C3 percentage is $2,546,006 divided by $6,403,208 = 0.3976

FM Classes C, C1, C2, and B percentage is $3,621,944 divided by $6,403,208 = 0.5656

(2) Finally, we determine the new revenue requirement for each of the three by multiplying the cost-based revenue requirement for all of FM by each of the percentages calculated in (1)(b).

FM CP revenue requirement = 0.0367 times $8,465,118 = $310,670

Continued

4. Establishment of 25 Percent Revenue Ceiling

35. Our next step was to determine whether reliance on actual costs to develop FY 1997 regulatory fees would result in fees which were too disparate from corresponding FY 1996 fees. As a result of this analysis, we proposed establishing a ceiling of 25 percent on the increase in the revenue requirement of any service over and above the Congressionally mandated overall increase in the revenue requirement and after taking into consideration changes in payment unit counts.[18]

36. Because Congress has increased our overall fee collection requirement, we are already required to collect substantially more than we collected in FY 1996. Nevertheless, capping each service's revenue requirement at no more than a 25 percent increase would enable us to begin the process of realigning fees to account for differences in regulatory costs. As we noted in the NPRM, we are not suggesting that FY 1997 fee increases be limited to a 25 percent increase over FY 1996 fees. The 25 percent increase would be over and above the revenue which would be required after adjusting for the projected FY 1997 payment units and the proportional share of the 21 percent increase in the amount that Congress requires us to collect. Thus, FY 1997 *fees* could increase by more than 25 percent over FY 1996 *fees.* Under this methodology, fees could actually increase by as much as 40% or more.

37. An important consideration in establishing a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect $152,523,000 in FY 1997 regulatory fees, the additional revenue that would have been collected from classes of licensees subject to a revenue ceiling, instead needs to be collected from licensees not subject to the ceiling. This results in a certain amount of subsidization between fee payer classes.[19] We believe, however, that the public interest would best be served by adopting a revenue ceiling because, otherwise, several entities would be subjected to unexpected, substantial increases which could severely impact the economic well being of these licensees.[20]

38. SBC Communications Inc. and Ameritech submit that the subsidization resulting from application of the 25% revenue ceiling is unfair and that the phased-in methodology proposed by the Commission has the effect of moving revenues further from actual costs than they would be without the ceiling, contrary to the goal of eventually having revenue requirements approximate actual costs. Both suggest that the Commission abandon the revenue ceiling concept, with SBC proposing that the Commission merely apply a uniform 21% increase to all regulatees' fees.

39. Regulation of interstate telephone service providers accounts for approximately 36% of all Commission costs. Therefore, any methodology which employs a subsidization feature, such as our proposed revenue ceiling, will impact these regulatees to a greater extent than others, at least in the short term. As other fee payers' fees approach amounts that bring their revenues closer to actual costs, as our phased-in revenue ceiling technique would do, the amount of subsidization required of fee payers below their revenue ceilings (such as those common carriers providing interstate telephone service) will steadily decrease. Thus, in the long term, subsidization will decrease and revenue requirements for all services will approach actual costs (assuming other factors, such as the total amount that Congress requires us to collect, remain constant).

40. Additionally, although SBC and Ameritech are correct that the revenue requirement proposed for FY 1997 for telephone companies providing interstate toll services is higher than the total costs attributable to these companies, revenues are only up 6.5% from what they would be if FY 1996 fees remained in place. Further, proposed revenues from these carriers would increase 23% over the applicable FY 1996 revenue requirement for these entities, comparing well with the overall 21% increase in fee collections ordered by the Congress for FY 1997. Additionally, SBC's proposal to set fees at amounts 21% over FY 1996 fee amounts is not mathematically sound. As we note elsewhere in this item, changes to payment units from FY 1996 to FY 1997 must be taken into consideration when determining the amount of revenue that would be collected from one year to the next. Overall increases to payment unit estimates from one year to the next, even without changes to previous year fee amounts, provides additional revenue, offsetting to some extent, any required increase to overall collections. On the other hand, any reduction in payment units requires higher fees to offset the resultant loss of revenue. The application of a percentage increase to either prior year fee amounts or prior year revenue requirements, as proposed by SBC, would therefore not provide any benefit and is rejected as non-workable in concept.

41. For the reasons discussed above, we will adopt the 25% revenue ceiling proposed in the NPRM. Attachment E contains a description of the step-by-step process we used to calculate adjusted revenue requirements for each fee category for FY 1997, including the reallocation of revenue requirements resulting from the application of our revenue ceiling.[21]

5. Calculation of Fees

42. Once we determined the amount of fee revenue needed to be collected from each class of licensee, we divided the individual revenue requirements by the number of associated payment units (and by the license term, if applicable,

FM Classes A, B1, and C3 revenue requirement = 0.3976 times $8,465,118 = $3,365,731

FM Classes C, C1, C2, and B revenue requirement = 0.5656 times $8,465,118 = $4,787,871

(3) The revenue requirements calculated in (2) are inserted in Attachment D for the three FM categories.

[18] For example, the regulatory cost associated with the Aviation (Aircraft) service is $934,905. If no change were made to this service's FY 1996 regulatory fee ($3 per year), the total revenue collected from licensees in this service would be only $70,634 in FY 1997, a shortfall of $864,271. Application of the proposed 25 percent revenue ceiling to this service results in a capped revenue ceiling of $88,293 ($70,634 × 125%).

[19] Revenues from current fee payers already offset significant costs attributable to regulatees exempt from payment of a fee or otherwise not subject to a fee pursuant to Section 9(h) of the Act or the Commission's rules. For example, CB and ship radio station users, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement.

[20] For example, the following illustrate the annual fees that would be in effect if fees were cost-based without application of a revenue ceiling:

LEOS—$2,412,025

International Public Fixed Radio Stations—$6,750

MDS/MMDS—$1,025

International Bearer Circuits—$25

Marine Coast & Ship Stations—$30 (Total upfront payment=$300)

Aircraft—$45 (Total upfront payment=$450)

[21] Application of the 25% ceiling was accomplished by choosing a ''target'' fee revenue requirement for each individual fee category. This ''target'' was either the actual calculated revenue requirement (for those categories at or below the 25% ceiling) or, in cases where the calculated revenue exceeded the ceiling, an amount equal to the ceiling. The shortfall created by reducing the revenue requirement of those whose revenue requirement exceeded the revenue ceiling was proportionately spread among those fee categories whose revenue requirements were below the ceiling. This computation required more than one round of adjustment because the allocation of this revenue, in a few instances, caused the new revenue requirement amount to exceed the 25% ceiling. After two iterations (rounds), all the revenue requirements were at or below the revenue ceiling. See Attachment E.

for ''small'' fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with Section 9(b)(3) of the Act. See Attachment E.

E. Other Changes

43. In our NPRM, we proposed several adjustments to our fees and/or changes to payment procedures based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). Additionally, we received several comments and suggestions unrelated to our specific proposals contained in the NPRM.

1. Consolidation of Private Microwave and Domestic Public Fixed Fee Categories

44. In our prior fee schedules, we required Private Microwave licensees to pay ''small'' regulatory fees, in advance, for an entire license term at the time of filing an initial, renewal or reinstatement application. Congress established this requirement in its statutory fee schedule. 47 U.S.C 159(g). In contrast, our fee schedules and the statutory fee schedule have required licensees in the Domestic Public Fixed Service category to file an annual ''standard'' regulatory fee. Private Microwave licensees include systems authorized under Part 101 of the Commission's rules to provide point-to-point telecommunications services to private parties. The Domestic Public Fixed Service comprises several commercial microwave services, including microwave multiple address, microwave common carrier fixed, microwave digital electronic message, and microwave local TV transmission.[22]

45. In our NPRM at Paragraph 23, we stated that many microwave licensees had expressed confusion concerning whether to submit a small fee or a standard fee. We noted that the operational and technical characteristics of private microwave and commercial microwave systems are similar. Thus, we proposed to consolidate these fee categories into a single Microwave category for FY 1997. Only one interested party, IXC Carrier, Inc. (IXC), commented on our proposal. IXC supports our proposal, stating that not only are these services similar in their operational and technological characteristics, but that our regulatory oversight of these services is identical.

46. Accordingly, we are adopting our proposal to establish in our fee schedule a single fee category covering licensees in both the Domestic Public Fixed Service and the Private Microwave Service. As we have noted, these services are operationally and technologically similar, and we agree with IXC that our regulation is essentially the same for these services. Thus, these payers would be subject to payment of a single ''small'' fee, payable in advance for the entire term of their license when filing an initial, renewal, or reinstatement application. Those licensees that paid the standard ''annual'' regulatory fee per station in FY 1996 are not subject to a fee payment for FY 1997 unless they file a new, renewal or reinstatement application. The regulatory fee for Microwave licensees for FY 1997 will be $10 per license.

This new fee is calculated as follows:

(a) From Attachments C and E:
  (1) 5,350 private microwave stations (units) (Revenue requirement = $535,000)
  (2) 18,845 commercial microwave/public fixed stations (units) (Revenue requirement = $94,225)
(b) Converting from annual payment (''standard fee'') to license term payment (''small fee''):
  (1) 18,845 commercial microwave units divided by 10 year license term = 1,885 commercial microwave units to be licensed each year.
(c) Calculation of new microwave fee: The sum of the two revenue requirements divided by the sum of the units to be licensed and divided by the license term as follows:
  (1) (($535,000 + $94,225) divided by (5,350 + 1,885)) divided by 10 years = $8.70.
(d) Round fee to the nearest five dollars = $10 (47 U.S.C 159(b)(2)).

2. Commercial AM/FM Radio

47. In our NPRM to establish regulatory fees for FY 1996, we stated that we ''were particularly interested in a proposal which would associate population density and service area contours with license data'' and we requested interested parties to propose alternatives for assessment of AM and FM fees. Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96–153, at Paragraphs 20–21 (April 9, 1996), 61 FR 16432 (April 15, 1996). In response, the Montana Broadcaster's Association (Montana) filed comments proposing an AM and FM fee structure based on class of station and relative market size. However, we decided not to take any action on Montana's proposal until we had an opportunity to more extensively evaluate its impact on AM and FM licensees. Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96–295, at Paragraphs 23–29, July 5, 1996, 61 FR 36629 (July 12, 1996).

48. We issued a Notice of Inquiry (NOI) to determine if it would be feasible to utilize both market size and class of station to assess annual regulatory fees on commercial AM and FM broadcast radio stations. See Amendment of Part 1 of the Commission's Rules Pertaining to the Schedule of Annual Regulatory Fees for Mass Media Services, FCC 96–422, released November 6, 1996, 61 FR 59397 (November 22, 1996). In response to the NOI, Montana filed a proposal which would group radio markets by Arbitron market size, with the fee for each market group predicated on the ratios that Congress initially established in Section 9(g) of the Act (47 U.S.C. 159(g)) for assessing fees for licensees of television stations serving different sized markets. The National Association of Broadcasters (''NAB'') also submitted a proposal under which stations would pay a fee determined not only by class, but by population served, irrespective of the market in which they are located. However, we identified several problems with each proposal that needed to be resolved, and our FY 1997 NPRM invited interested parties to comment on the NAB and Montana proposals, as well as on any alternative method for assessing radio station fees. All relevant comments received by the Commission in response to the NPRM support the NAB or Montana proposal or some variation thereof. As discussed below, the fee mechanism we are adopting utilizes the best features of the NAB proposal, while correcting its defects.

49. Neither the Montana nor the NAB proposal provide an ideal method of assessing radio station fees. For example, the Arbitron rankings, relied on by Montana, are incomplete for several markets. Markets are only ranked if a sufficient number of stations located within the market subscribe to the Arbitron service, and a station may be placed in a market if it competes with market stations even though it may not be physically located in a major metropolitan area within the market, or it may be placed in a market based on data collected during a promotional programming period which is not reflective of normal operations. Similarly, NAB's proposal is flawed because the database on which NAB's fee schedule is based contains more than 800 errors, ommissions, erroneous

[22] Although the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS) were originally grouped with Domestic Public Fixed services, we have, since FY 1995, listed them separately in our Fee Schedule.

station classes, duplicate records, non-profit or non-commercial stations (which are exempt from payment of regulatory fees), incorrect call letters, ''silent'' stations, and Canadian stations.

50. Nevertheless, we fully agree that using population to assess radio station fees is an improvement over the current method for assessment of AM and FM fees, assuming a systematic schedule can be developed using accurate population class of station data. The NAB proposal to use population within a station's area of coverage offers greater specificity and flexibility than our current method of assessing these fees.[23] To obtain an accurate data base to implement such an improved fee methodology, we corrected NAB's database, using the Commission's own records, including official station files. The resulting compilation of stations, based on official Commission records and the population coverage data provided to the Commission by NAB, provided an accurate starting point for developing the improved AM/FM fee schedule.

51. We next calculated the individual revenue requirements and resultant fees for each class of station (e.g., AM Class A or FM Classes C, C1, C2 & B) under our existing methodology for assessing radio station fees as shown in Attachment E. In order to consider both population and class of station, we then multiplied that fee by the population served to determine the weighted population. The weighted approach also streamlines the schedule by allowing us to combine AM and FM stations into a single ''radio'' category. The following table is a representative illustration of how we determined the weighted population for each station.

Station (a)	Computed FY 1997 fee (from attachment E) (b)	1990 census population coverage (not actual data—for illustration only) (c)	Weighted population (b) times (c) (d)
#1—AM Class A	$1,725	1,000,000	1,725,000,000
#2—AM Class A	1,725	50,000	86,250,000
#3—AM Class B	950	1,000,000	950,000,000
#4—AM Class C	390	50,000	19,500,000
#5—AM Class D	480	100,000	48,000,000
#6—FM Group I	1,725	5,000,000	8,625,000,000
#7—FM Group II	1,150	7,500,000	8,625,000,000
#8—FM Group II	1,150	5,000	5,750,000

52. Our next step was to sort the data by compiling a list of every AM and FM station in descending order by weighted population. The following illustration indicates how the stations represented by each group in the above chart would be ranked by weighted average:

Station (a)	Computed FY 1997 fee (from attachment E) (b)	1990 census population coverage (not actual data—for illustration only) (c)	Sorted weighted population (b) times (c) (d)
#6—FM Group I	$1,725	5,000,000	8,625,000,000
#7—FM Group II	1,150	7,500,000	8,625,000,000
#1—AM Class A	1,725	1,000,000	1,725,000,000
#3—AM Class B	950	1,000,000	950,000,000
#2—AM Class A	1,725	50,000	86,250,000
#5—AM Class D	480	100,000	48,000,000
#4—AM Class C	390	50,000	19,500,000
#8—FM Group II	1,150	5,000	5,750,000

53. Next, we determined actual fees for each station. The simplest method appeared to be one which used a ''per population'' average cost applied to the weighted populations. To test this approach, we divided the sum of all the individual revenue requirements (from Attachment E as applied to each station like the ones in column (b) in the table above) by the sum of all the individual populations. This ''per pop'' cost factor was then multiplied by each weighted population to calculate a unique fee for each station. Unfortunately, this particular methodology resulted in an unwieldy and unacceptable range of fees. On a pure per weighted population basis, fees would range from a high of $34,435 for a Class B FM station in New York, with the highest weighted population, to a low of $0.06 for a Class

[23] DataWorld MediaXpert Service prepared for NAB a calculation of the signal coverage for each station, and overlaid this data onto 1990 decennial census population data to estimate the population contained within each station's signal coverage area. For each AM station, estimated soil conductivity data was retrieved for each of 360 radial azimuths around the transmitter site, the standard horizontal plane radiation pattern was calculated and any pertinent pattern augmentations applied, and the distance to the 1 mV/m field strength contour for each of the 360 radials was calculated using the appropriate propagation curves and the FCC equivalent distance method. For each FM station, terrain averages were calculated from the USGS/DMA 3 arc second terrain database for each of 360 radial azimuths, the HAAT was calculated using the height of the center of radiation AMSL and processed with FM contour calculation software, pertinent directional antenna information was applied, and the distance to the 60 dBuV/m contour was calculated using the appropriate FCC F[50,50] curves. For both AM and FM, the distance to contour data was applied to population counting software using 1990 census data to determine the total population within each station's coverage area.

A FM station in Ludlow, CA, with the lowest weighted population.

54. Therefore, as an alternative to a pure weighted population fee assessment methodology, we designed a schedule, similar to the Montana and NAB proposals, which would place stations in wide bands with different fees for each band. We established the ranges for the schedule by first deciding on minimum and maximum fee amounts. In setting a minimum fee, we decided that it should be no less than the AM Construction Permit fee which we calculated in Attachment E to be $195. Therefore, we set the lowest radio fee at $200. In setting a maximum fee, we compared the maximum radio fee contained in Public Law 103–66 for FY 1994 ($900) and the total revenue requirement for FY 1994 ($60.4 million) to the current FY 1997 revenue requirement ($152.5 million), and calculated that a station which paid $900 in 1994 would now be subject to a fee of $2,272. Because this would represent an unacceptably large increase in fees for many fee payers, we decided to limit the maximum fee to $2,000. At the same time, we decided to expand the number of actual fee classifications from the existing six (four AM and two FM) to ten. This allowed us to establish fee classifications in $200 increments, with each increment containing the same number of stations, resulting in a more equitable fee schedule while keeping the size of the schedule relatively manageable.[24] The resulting schedule of regulatory fees for radio stations (both AM and FM) is:

Classification group	Number of stations	Fee
1	1019	$2,000
2	1019	1,800
3	1019	1,600
4	1019	1,400
5	1019	1,200
6	1019	1,000
7	1019	800
8	1019	600
9	1019	400
10	1018	200

55. This schedule, which we adopt today, results in: (1) Same class stations in different size cities generally having different fees, (2) different class stations in the same city generally having different fees, and (3) same class stations in the same city generally having the same fee. In addition, it is generally true that in using this methodology: (1) Larger stations and those located in larger metropolitan areas tend to be assessed higher fees and (2) small stations and those located in rural areas tend to be assessed lower fees. This fee schedule we have adopted thus achieves the objectives of both the NAB and Montana proposals by assessing fees based on class of station and populations served, thereby providing a fair and equitable means of distinguishing between stations located in metropolitan areas and those located in rural areas. Moreover, if a licensee believes that it has been improperly placed in a particular fee classification group or that it will suffer undue financial hardship from the fee assessment, our rules provide for waiver, reduction or deferral of a fee as described in § 1.1166 of our rules. 47 U.S.C 1.1166.

56. This methodology also requires that the Commission inform radio station licensees as to their exact fee obligation. A Public Notice listing each station's call letters, location, population, and the required fee will be mailed to each licensee. The same information will also be available at our internet web site (http://www.fcc.gov). Interested parties may also obtain their applicable fee amount for FY 1997 by calling the FCC's National Call Center at 1–888–225–5322. We have also provided detailed payment information for each radio station as Attachment K to this Report and Order and will publish this list in the **Federal Register** upon completion of this rulemaking.

3. Personal Communications Service (PCS)

57. Our FY 1996 Report and Order deferred assessing a regulatory fee upon licensees in the Personal Communications Service (''PCS'') because PCS was in a very early start-up phase of operations. See FY 1996 Report and Order at Appendix F, Paragraph 15. However, in our NPRM, at Paragraph 38, we proposed to initiate the PCS fee since sufficient PCS systems are now in operation to justify inclusion of PCS licensees among those licensees assessed a Commercial Mobile Radio Services (CMRS) fee for FY 1997. We received no comments specifically addressing whether or not PCS licensees should be subject to a regulatory fee for FY 1997. Since PCS systems now are in operation, we have decided to require PCS licensees to submit regulatory fees in FY 1997, as described below.

4. Commercial Mobile Radio Services (CMRS)

58. In our FY 1996 Report and Order, we discussed a proposal submitted by Destineer, Inc., a PCS licensee, that we establish a CMRS Messaging Service fee category to replace our CMRS One-Way Paging fee category. See FY 1996 Report and Order at Paragraph 22. Destineer stated that, with the exception of two-way paging services, our CMRS Mobile Services fee category includes only broadband services which provide two-way interactive voice communications. Destineer recommended establishing a CMRS Messaging Service to include all narrowband services, including two-way paging services. We invited interested parties to file comments on Destineer's proposal or to propose alternative methods to assess CMRS fees for FY 1997. We were particularly interested in the number of estimated payment units associated with any alternative proposal and the impact the proposed change would have on projected revenues. See FY 1997 NPRM at Paragraph 39.

59. In its comments, RAM Mobile Data USA Limited Partnership (RMD) supports establishing a new CMRS Messaging Service fee category and urges that the distinction between our CMRS fee categories rest on whether the licensee provides voice services or non-voice services. Paging Network, Inc. (PageNet) also supports establishing a CMRS Messaging Service, recommending that narrowband PCS services be included in the new fee category along with paging and similar services. The Personal Communications Industry Association (PCIA), supported by Arch Communications Group, Inc. (Arch), requests that two-way paging and other services similar to paging services be assessed the same regulatory fee as one-way paging. No party submitted estimates of the number of payment units subject to a CMRS fee.

60. We are persuaded from the comments that a revision of our CMRS fee categories to distinguish broadband mobile services from narrowband services would serve the public interest. Therefore, we will amend our fee schedule to replace our CMRS One-Way Paging fee category with a new CMRS Messaging Services fee category. The distinguishing characteristic between the CMRS Mobile Services fee category and the CMRS Messaging Services fee category will be the amount of bandwidth that we have authorized. Our bandwidth distinction is consistent with the fee schedule enacted by Congress and by our own prior fee schedules that assess fees based upon the quality of the channels provided to licensees. See 47 U.S.C. 159(g).

61. Specifically, Congress in its statutory fee schedule distinguished between licensees that we authorized to provide exclusive use services and those we authorized to provide only shared

[24] The number of stations is not exactly divisible by 10, leaving group 10 with one less station than the other groups.

use services. Section (g) assesses a higher fee upon licensees of exclusive use spectrum than upon licensees of less valuable shared use spectrum. Similarly, the statutory fee schedule established fees for broadcast licensees that consider the type of service and class of service authorized. Moreover, since we established the fee program, our fee schedules have adhered to Congress' principle that our fee categories are to be based on the authorization provided to a licensee rather than the use a particular licensee makes of its authorized spectrum. As such, our fee schedule for CMRS will not consider the particular use made of a licensee's spectrum and will consider the nature of services offered only to the extent that services offered on broadband spectrum and services offered on narrowband spectrum will be subject to different categories of fee payment. Thus, licenses authorizing operations on broadband spectrum will be subject to the CMRS Mobile Services fee, regardless of the services offered on that spectrum by the licensee. Further, licenses authorizing the provision of services on narrowband spectrum will be subject to the CMRS Messaging Services fee, regardless of the services offered on that spectrum. It should also be noted that our NPRM inadvertantly placed CMRS licensees operating in the 220–222 MHz and interconnected Business Radio Services in the CMRS Mobile Services fee category. Both should be included in the CMRS Messaging Services fee category. See Attachment H, paragraph 15.

62. In implementing this revision, we must recompute the revenue requirements and fees attributable to the two CMRS categories. Revenue required from narrowband services (PCS and two-way paging) must be subtracted from the CMRS Mobile Services category and added to the one-way paging category (to be renamed the CMRS Messaging Services category). The required calculations to achieve this result are shown below:

(1) Determination of revised payment unit estimates
  (a) CMRS Mobile Services payment units (from Attachment C) = 47,300,000
  Subtract: Reclassified Narrowband PCS/Two-way Paging payment units = 150,000[25]
  Equals: Revised CMRS Mobile Services payment units = 47,150,000
  (b) CMRS One-Way Paging payment units (from Attachment C) = 40,850,000
  Add: Reclassified Narrowband PCS/Two-way Paging payment units = 150,000
  Equals: Revised CMRS Messaging Services payment units = 41,000,000
(2) Determination of revised revenue requirements
  (a) CMRS Mobile Services revenue requirement (from Attachment E) = $11,352,000
  Subtract: Reclassified Narrowband PCS/Two-way Paging revenue requirement (150,000 payment units×$ .24) = $36,000
  Equals: Revised CMRS Mobile Services revenue requirement = $11,316,000
  (b) CMRS One-way Paging revenue requirement (from Attachment E) = $1,225,500
  Add: Reclassified Narrowband PCS/Two-way Paging revenue requirement (from 2(a) above) = $36,000
  Equals: Revised CMRS Messaging Services revenue requirement = $1,261,500
(3) Determination of revised fee amount
  (a) CMRS Mobile Services fee = revised revenue requirement/revised payment units (i.e., $11,316,000/47,150,000 units) = $ .24/unit (no change in fee)
  (b) CMRS Messaging Service fee = revised revenue requirement/revised payment units (i.e., $1,261,500/41,000,000 units) = $ .03/unit (no change in fee)

63. Finally, RMD, Pagenet and PCIA contend that CMRS licensees that have converted from private to commercial service should not be required to pay regulatory fees twice for the same time period, once as a PMRS licensee and again as a CMRS licensee. The parties note that our NPRM did not address the issue of refunds and ask for clarification in order to avoid double payments by certain CMRS licensees.

64. In our FY 1996 Report and Order at Paragraph 21, we stated that our rules provide that a licensee is entitled to a refund of an advance payment, upon request, whenever we ''adopt new rules that nullify a license or other authorization.'' 47 CFR 1.1159(2)(i). Therefore, any licensee that has converted from PMRS to CMRS and has paid fees in advance for a period of years may file a request for refund, pro-rated for the number of remaining years in the initial PMRS license term. Detailed refund procedures will be issued separately by public notice, by the Managing Director pursuant to delegated authority.

5. Intelsat and Inmarsat Signatories

65. In our NPRM, we proposed to charge a Signatory fee to cover the costs for FY 1997 of Commission regulatory activities associated with Comsat's role as U.S. Signatory to INTELSAT and INMARSAT. On May 30, 1997, the United States Court of Appeals for the District of Columbia vacated our decision to charge Comsat a Signatory fee for FY 1996. *COMSAT Corporation* v. *Federal Communications Commission*, Case No. 96–1325 (May 30, 1997 D.C. Cir.). Accordingly, we will not, at this time, assess a fee to recover the costs of our regulatory activities in connection with Comsat's role as U.S. Signatory.[26]

6. Non-Common Carrier International Bearer Circuits

66. International bearer circuit fees have been assessed upon domestic and international common carriers only. In its comments responding to proposals contained in our FY 1996 NPRM, Comsat contended that payment of international bearer circuit fees should be expanded to non-common carriers providing international bearer circuits directly to end users. In our FY 1996 Report and Order, we declined to expand collection of international bearer circuit fees to these entities because we lacked appropriate data required to calculate a fee applicable to bearer circuits provided directly to end users over non-common carrier domestic and international facilities. We, therefore, proposed in our FY 1997 NPRM to assess the international bearer circuit fee only on domestic and international common carriers in FY 1997. However, we invited interested parties to comment on Comsat's proposal. We were especially interested in information concerning the number of bearer circuits provided directly to end users over non-common carrier domestic and international facilities.

67. We received comments from Comsat, Columbia and PanAmSat concerning Comsat's proposal to extend the bearer circuit fee to all non-common carriers providing international bearer circuits to end users. Comsat argues that the circuits provided by non-common carrier satellites are functionally identical to those provided by common carriers. Comsat further argues that the bearer circuit fee is not intended to recover the costs of benefits received by particular entities, but to recover the costs of the FCC's regulatory activities. As such, the non-common carriers should be required to contribute their

[25] Based on Commission estimates.

[26] Signatory oversight activities represent approximately 7.8% of all international costs.

share to the recovery of such costs. PanAmSat, on the other hand, argues that, whether or not non-common carrier bearer circuits are identical to common carrier circuits as a technical matter, they do not impose equivalent regulatory burdens because they are not subject ''to the full panoply of Title II regulation.'' Similarly, Columbia argues that non-common carriers are not regulated and do not impose administrative costs on the Commission. As a result, Columbia argues that it is ''axiomatic'' that regulatory fees cannot be charged for activities that are not subject to the full range of Title II regulation that applies to common carriers. None of the respondents provided information concerning the number of circuits the non-common carriers provided directly to end users.

68. We agree with Comsat that international bearer circuits provided by non-common carriers are technically identical to bearer circuits provided by common carriers. We also agree with PanAmSat and Columbia that the offerings of non-common carrier satellite providers are not subject to Title II regulation. The same, however, can be said of operators of non-common carrier undersea cable systems, which are also exempted from Title II regulation, and even of non-dominant common carriers that we have exempted from many Title II regulations. Yet non-common carrier undersea cable operators and non-dominant common carriers have been subject to the bearer circuit fee since we established our regulatory fee program. See FY 1994 Report and Order at Paragraph 98. In addition, regulatory fees, such as the international bearer circuit fees, are not intended to recover only the costs of Title II regulation. Those Title II costs are recovered, in part, by separate fees which recover the costs of processing applications to provide common carrier services pursuant to Section 214 of the Act and the costs of our review of tariff filings imposed under Section 8 of the Communications Act.[27] In contrast, Section 9 regulatory fees, of which the bearer circuit fee is an example, recover the costs of our enforcement, policy and rulemaking, user information and international activities.

69. It is necessary for the Commission to maintain these activities as part of its overall mission and, under Section 9 of the Act, it is necessary for the Commission to assess regulatory fees to recover the cost of those activities. For example, the international bearer circuit fee is designed to recover many of the costs of the Commission's International Bureau's enforcement, rulemaking and representation activities. All entities that engage in international telecommunications benefit from the fact that the Commission maintains an enforcement mechanism to protect them from those who violate the Communications Act. Similarly, all entities that engage in international telecommunications benefit from the Commission's rulemaking, public information and international representation activities. And each must help to defray the Commission's costs in maintaining the capability to carry out those activities, even though it is not easy to predict in advance who will specifically benefit from those activities.

70. It is now appropriate to begin to collect the fee from such entities. Although non-common carrier systems have not been subject to Title II regulation, their provision of bearer circuits have imposed, particularly in recent years, far greater regulatory burdens on the Commission. We initially exempted non-common carrier satellite operators from Title II regulation because their proposed service offerings were sufficiently different from those of common carriers that they could, in some sense, be said not to be in direct competition. For example, they proposed not to offer voice services, but only bearer circuits that would not be interconnected with the public switched network and that would be offered only on a sale or long term lease basis. As a result, their initial license prohibited them, or their customers, from connecting circuits provided over non-common carrier satellite systems with the public switched telephone network (PSN).[28] In addition, we narrowly limited their service offerings to the sale or lease of bulk capacity; that is, the right to use capacity for the life of the satellite or leasing them capacity for a term of one year or longer—restrictions not imposed on common carriers.[29] Under such restrictions, we concluded that these carriers would require little Commission regulatory oversight.

71. The operations and offerings of the non-common carrier satellite providers have in recent years changed significantly, however, and we expect that these carriers will propose even further expansions of these types of offerings in the future. For example, we no longer restrict the number of circuits common carriers can use in non-common carrier satellite systems.[30] The non-common carrier satellite providers have requested and obtained approval for the removal of the restriction limiting their provision of capacity on a sale or long-term-lease basis.[31] Finally, we eased the ban on connecting their circuits to the public switched network and, effective January 1, 1997, we eliminated the restriction altogether.[32] The net result of these activities has been a greatly increased demand for these services and operations that increasingly resemble those of the common carriers with whom they compete. Thus, the steady expansion of services offered by the non-common carrier satellite operators has greatly increased the need for our oversight of their commercial activities and imposed a greater burden on our staff and other resources. Thus, although we have not in the past required these providers to pay the international bearer circuit regulatory fees, we conclude that it is now appropriate to impose the fee, due to these satellite providers extensive participation in services once reserved to the common carriers and private undersea cable operators and, in particular, to the important role they now play in the provision of international bearer circuits.

72. We have noted in the past that we do not have information concerning the exact number of non-common carrier bearer circuits offered to the public. Neither Comsat nor the non-common carriers offered us such information. We do, however, have available data concerning circuits offered directly to end users by satellite operators and by Comsat. Based on this information, it appears that there were approximately 100,000 active circuits offered by non-common carriers in 1996. We propose to incorporate these estimates into our payment unit estimates for bearer

[27] 47 U.S.C. 158 (1996).

[28] Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046 (1985)(''Separate Systems Decision''), recon., 61 RR2d 649 (1986), further recon., 1 F.C.C. Rcd 439 (1986).

[29] Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046 (1985)(''Separate Systems Decision''), recon., 61 RR2d 649 (1986), further recon., 1 F.C.C. Rcd 439 (1986), 51 FR 44478 (December 10, 1986).

[30] See, e.g., Streamlining the International Section 214 Authorization Process and Tariff Requirements, 11 FCC Rcd 12884, 12900–1(1996), 61 FR 15724 (April 9, 1996).

[31] See 9 FCC Rcd 1282,1286 (1994).

[32] See, e.g., 7 FCC Rcd 2313 (1992), 57 FR 14798 (April 23, 1992), allowing non-common carrier satellite providers, or their customers, to interconnect up to 100 64 KB circuits per satellite to the public switched network (PSN) for international switched service; see also, 9 FCC Rcd 347 (1994), 59 FR 3100 (January 20, 1994), increasing the number of circuits that may be interconnected to the PSN to 1,250 per satellite; and 11 FCC Rcd 16387 (1996), increasing the number to 8,000 per satellite. The Commission's 1992 Order also established an automatic sunset of any restrictions on interconnection to the PSN on January 1, 1997. See 7 FCC Rcd 2313, 2314 (1992).

circuits and use them to calculate the bearer circuit regulatory fee due from both common carriers and non-common carriers. The applicable calculations are as follows:

Number of Active Circuits

Common Carriers—164,000
Non-common carriers—100,000
Total—264,000

Revenue Requirement

FY 1997 Revenue Requirement (from Attachment E)—$820,000

Fee Computation

Revenue Requirement ($820,000) divided by circuits (264,000) = $3.10
Rounded fee = $5.00

7. Low Earth Orbit Satellite Systems

73. In our NPRM, we proposed that entities authorized to operate Low Earth Orbit Satellite Systems (LEOS) be assessed a regulatory fee for any LEO system with one or more satellites upon certification that it is operating in compliance with the terms and conditions of its authorization pursuant to § 25.120(d) of the Commission's rules. 47 CFR 25.120(d).

74. Loral Qualcom, Inc. (L/Q) argues that we should not assess the full LEO fee on a LEO system licensee until the system is commercially viable, contending that most LEO systems cannot provide commercial services with a single operational satellite. Instead, L/Q requests that we assess only a portion of our regulatory fee on a LEO System until such time that the system initiates actual commercial service. According to L/Q, a LEO system with a substantial number of satellites in its constellation is unlikely to provide actual commercial services prior to launching at least some critical mass of the constellation. L/Q argues that the requirement to pay the fee once a single space station is operating is unfair because some LEO systems will be unable to offset payment of the fee with commercial revenue. In this connection, L/Q states that a LEO system may require launch of several satellites in order to test the reliability of commercial services before providing these services.

75. In response to L/Q's concern, we note that the timing of the commercial viability of a particular LEO system is outside our control. Also, the amount of revenue required for commercial viability will vary from system to system. Since there is no standard time-frame and, as L/Q maintains, no set number of operational satellites necessary for LEO systems to achieve commercial viability, we will not approve L/Q's proposal for partial payments of the LEO regulatory fee. Requiring payment of the LEO fee following commencement of operations of a system's first satellite will assure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Therefore, we will retain our requirement that licensees of LEO systems pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to § 25.120(d). Licensees of LEO systems may obtain a waiver, reduction or deferment of the fee upon a showing of financial hardship pursuant to § 1.1160 of the rules. 47 CFR 1.1166.

8. Broadcast Auxiliary Services

76. NAB, in its comments, suggests that the Commission could improve its fee collection process by more specifically identifying the broadcast auxiliary licenses for which fees are payable. We are aware that certain operators of auxiliary equipment have had difficulty in determining their liability for auxiliary fees. We have, therefore, in Attachment H, incorporated additional clarifying language to better enable licensees of broadcast auxiliary services to determine their fee liability. We will also include this additional information in materials distributed to broadcasters and other licensees of auxiliary equipment.

9. Amateur Vanity Call Signs

77. In late-filed comments, the American Radio Relay League (ARRL) discusses the Commission's implementation of vanity call signs. ARRL notes that we have established several ''gates'' for the filing of vanity call sign applications. The FY 1997 fee for an amateur vanity call sign would result in certain applicants incurring fees, over the life of the license, two-thirds higher than other applicants who filed their applications in ''gates'' currently open before the effective date of the FY 1997 fees. ARRL asks that we suspend implementation of the higher FY 1997 fee until after the remaining gates have been opened and applicants have been afforded an opportunity to file. In response to ARRL's concerns, we expect our remaining vanity call sign ''gates'' to open before the effective date of our FY 1997 regulatory fee payment requirement. Thus, there should be no impact on new applicants for vanity call signs in FY 1997 and no need to delay implementation of the FY 1997 fee. However, applicants are expected to pay the fee applicable at the time they file.

10. Interstate Common Carriers

78. SBC, an interstate telephone company, claims that our proposed interstate revenue-based fees are unfair to local exchange companies because they have no underlying expenses to deduct from gross revenues. It appears that SBC misunderstands the purpose of the deductions. Our regulatory fee rules allow long distance carriers to deduct from gross interstate revenues payments made to underlying carriers where those payments would be included in the underlying carrier's revenue base. For example, suppose that a customer could obtain an interstate service from either SBC or from a reseller for the same price—one dollar. If SBC provides the service to the customer, it would pay a regulatory fee based on the entire dollar. If the reseller provides the service, SBC would pay a regulatory fee only on the portion of the dollar that it charged as the wholesale rate to the reseller. The reseller, in turn, would pay a fee based on the dollar less its payment to SBC. The same total fee would be paid in both circumstances. Thus the fee is fundamentally fair and creates no competitive distortions.

11. New Filing Requirements

79. We will be proposing in a Further Notice of Proposed Rulemaking (FNPRM) a revision to our collection procedures relative to non-profit entities to require these entities to submit or have on file with us their current IRS Determination Letters or other documentation of non-profit status. The Commission has also found that the verification of CMRS fees is very costly and time consuming due to the need to verify the number of cellular telephones, PCS units and pagers associated with individual companies. Therefore, the FNPRM will also propose changes to this process as well as certain additional changes to improve the efficiency and accuracy of the fee collection process.

F. Schedule of Regulatory Fees

80. The Commission's Schedule of Regulatory Fees for FY 1997 is contained in Attachment F of this Report and Order.

G. Effect of Revenue Redistributions on Major Constituencies

81. The chart below illustrates the relative percentages of the revenue requirements borne by major constituencies since inception of regulatory fees in FY 1994.

REVENUE REQUIREMENT PERCENTAGES BY CONSTITUENCIES

	FY 1994 (actual)	FY 1995 (actual)	FY 1996 (actual)	FY 1997 (proposed)
Cable TV Operators (Inc. CARS Licenses)	41.4	24.0	33.4	23.3
Broadcast Licensees	23.8	13.8	14.6	15.2
Satellite Operators (Inc. Earth Stations)	3.3	3.6	4.0	3.9
Common Carriers	25.0	44.5	40.9	45.8
Wireless Licensees	6.5	14.1	7.1	11.8
Total	100.0	100.0	100.0	100.0

H. Procedures for Payment of Regulatory Fees

1. Installment Payments for Large Fees

82. Generally, we are retaining the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit ''payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer.'' *See* 47 U.S.C. 159(f)(1). Consistent with Section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) ''standard'' fees, (2) ''large'' fees, and (3) ''small'' fees.

83. We proposed in the NPRM that regulatees in any category of service with a liability of $12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. However, statutory constraints requiring notification to Congress prior to actual collection of the fees prevents us from allowing installment payments in FY 1997. The payment dates for each regulatory fee category will be announced by public notice and published in the **Federal Register** following termination of this proceeding. However, regulatees otherwise eligible to make installment payments may pay their fees on the last date that fee payments may be submitted, as established in our public notice.

2. Annual Payments of Standard Fees

84. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. As in the past, all standard fees will be payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced by public notice and published in the **Federal Register** following termination of this proceeding.

3. Advance Payment of Small Fees

85. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as ''small'' fees subject to advance payment consistent with the requirements of Section 9(f)(2). Advance payments will be required from licensees of those services that we identified would be subject to advance payments in our FY 1994 Report and Order, and to those additional payers set forth herein.[33] Payers of small fees must submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date of the FY 1997 small fees will be announced by public notice and published in the **Federal Register** following termination of this proceeding.

4. Standard Fee Calculations and Payment Dates

86. As noted, the time for payment of standard fees will be published in the **Federal Register**. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media[34] and Cable Services, fees should be submitted for any authorization held as of October 1, 1996. As in the past, this is the date to be used for establishing liability for payment of these fees since it is the first day of the federal government's fiscal year.

87. In the case of other regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on December 31, 1996, will be used to calculate the fee payment.[35] [36] As in the past, we have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.

5. Minimum Fee Payment Liability

88. Regulatees whose total fee liability amounts to less than $10, including all categories of fees for which payment is due by an entity, are exempted from fee payment in FY 1997.

IV. Ordering Clause

89. Accordingly, it is ordered that the rule changes specified herein are adopted. It is further ordered that the

[33] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS). In addition, applicants for Amateur Radio Vanity Call Signs will be required to submit an advance payment.

[34] Except AM/FM fees.

[35] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on ''a typical day in the last full week'' of December 1996, rather than on a count as of December 31, 1996.

[36] For FY 1997, AM/FM fees are assessed on licensees holding licenses as of December 31, 1996.

rule changes made herein will become effective September 15, 1997, which is 90 days from the date of notification to Congress.

V. Authority and Further Information

90. This action is taken pursuant to Sections 4(i), 4(j), 9 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j) and 9 and 303(r).

91. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418–0192.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount	Address
1. Land Mobile (Above 470 MHz, Base Station and SMRS)(47 CFR Part 90):		
(a) 800 MHz New, Renewal, Reinstatement (FCC 600)	$10.00	FCC, 800 MHz, P.O. Box 358235, Pittsburgh, PA 15251–5235.
(b) 900 MHz New, Renewal, Reinstatement (FCC 600)	10.00	FCC, 900 MHz, P.O. Box 358240, Pittsburgh, PA 15251–5240.
(c) 470–512,800,900, 220 MHz, 220 MHz Nationwide Renewal (FCC 574R, FCC 405A).	10.00	FCC, 470–512, P.O. Box 358245, Pittsburgh, PA 15251–5245
(d) Correspondence Blanket Renewal (470–512,800,900,220 MHz) (Remittance Advice, Correspondence).	10.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(e) 220 MHz New, Renewal, Reinstatement (FCC 600)	10.00	FCC, 220 MHz, P.O. Box 358360, Pittsburgh, PA 15251–5360.
(f) 470–512 MHz New, Renewal, Reinstatement (FCC 600)	10.00	FCC, 470–512, P.O. Box 358810, Pittsburgh, PA 15251–5810.
(g) 220 MHz Nationwide New, Renewal, Reinstatement (FCC 600).	10.00	FCC, Nationwide, P.O. Box 358820, Pittsburgh, PA 15251–5820.
2. Microwave (47 CFR Part 101):		
(a) Microwave New, Renewal, Reinstatement (FCC 415)	10.00	FCC, Microwave, P.O. Box 358250, Pittsburgh, PA 15251–5250.
(b) Microwave Renewal (FCC 402R)	10.00	FCC, Microwave, P.O. Box 358255, Pittsburgh, PA 15251–5255.
(c) Correspondence Blanket Renewal (Microwave) (Remittance Advice, Correspondence).	10.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
3. Shared Use Services:		
(a) Land Transportation (LT) New, Renewal, Reinstatement (FCC 600).	5.00	FCC, Land Trans., P.O. Box 358215, Pittsburgh, PA 15251–5215.
(b) Business (Bus.) New, Renewal, Reinstatement (FCC 600).	5.00	FCC, Business, P.O. Box 358220, Pittsburgh, PA 15251–5220.
(c) Other Industrial (OI) New, Renewal, Reinstatement (FCC 600).	5.00	FCC, Other Indus., P.O. Box 358225, Pittsburgh, PA 15251–5225.
(d) General Mobile Radio Service (GMRS) New, Renewal, Reinstatement (FCC 574).	5.00	FCC, GMRS, P.O. Box 358230, Pittsburgh, PA 15251–5230.
(e) Business, Other Industrial, Land Transportation, GMRS Renewal (FCC 574R, FCC 405A).	5.00	FCC, Bus.,OI,LT,GMRS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(f) Ground New, Renewal, Reinstatement (FCC 406)	5.00	FCC, Ground, P.O. Box 358260, Pittsburgh, PA 15251–5260.
(g) Coast New, Renewal, Reinstatement (FCC 503)	5.00	FCC, Coast, P.O. Box 358265, Pittsburgh, PA 15251–5265.
(h) Ground Renewal (FCC 452R)	5.00	FCC, Ground, P.O. Box 358270, Pittsburgh, PA 15251–5270.
(i) Coast Renewal (FCC 452R)	5.00	FCC, Coast, P.O. Box 358270, Pittsburgh, PA 15251–5270.
(j) Ship New, Renewal, Reinstatement (FCC 506)	5.00	FCC, Ship, P.O. Box 358275, Pittsburgh, PA 15251–5275.
(k) Aircraft New, Renewal, Reinstatement (FCC 404)	5.00	FCC, Aircraft, P.O. Box 358280, Pittsburgh, PA 15251–5280.
(l) Ship Renewal (FCC 405B)	5.00	FCC, Ship, P.O. Box 358290, Pittsburgh, PA 15251–5290.
(m) Aircraft Renewal (FCC 405B)	5.00	FCC, Aircraft, P.O. Box 358290, Pittsburgh, PA 15251–5290.
(n) Correspondence Blanket Renewal (Bus.,OI,LT,GMRS) (Remittance Advice, Correspondence).	5.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(o) Correspondence Blanket Renewal (Ground) (Remittance Advice, Correspondence).	5.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(p) Correspondence Blanket Renewal (Coast) (Remittance Advice, Correspondence).	5.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(q) Correspondence Blanket Renewal (Aircraft) (Remittance Advice, Correspondence).	5.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(r) Correspondence Blanket Renewal (Ship) (Remittance Advice, Correspondence).	5.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
4. Amateur Vanity Call Signs	5.00	FCC, Amateur Vanity, P.O. Box 358924, Pittsburgh, PA 15251–5924.
5. CMRS Mobile Services (per unit)	.24	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA 15251–5835.
6. CMRS Messaging Services (per unit)	.03	FCC, Messaging, P.O. Box 358835, Pittsburgh, PA 15251–5835.

3. Sec. 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
I. Radio [AM and FM] (47 CFR Part 73:		
1. Group 1	$2,000	FCC, Radio, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Group 2	1,800	
3. Group 3	1,600	
4. Group 4	1,400	
5. Group 5	1,200	
6. Group 6	1,000	
7. Group 7	800	
8. Group 8	600	
9. Group 9	400	
10. Group 10	200	
11. AM Construction Permits	195	
12. FM Construction Permits	950	
II. TV (47 CFR Part 73) VHF Commercial:		
1. Markets 1 thru 10	35,025	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25	28,450	
3. Markets 26 thru 50	18,600	
4. Markets 51 thru 100	9,850	
5. Remaining Markets	2,725	
6. Construction Permits	4,800	
III. UHF Commercial:		
1. Markets 1 thru 10	16,850	FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25	13,475	
3. Markets 26 thru 50	8,750	
4. Markets 51 thru 100	4,725	
5. Remaining Markets	1,350	
6. Construction Permits	2,975	
IV. Satellite UHF/VHF Commercial:		
1. All Markets	950	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Construction Permits	345	
V. Low Power TV, TV/FM Translator,& TV/FM Booster (47 CFR Part 74).	220	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
VI. Broadcast Auxiliary	25	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.
VII. Multipoint Distribution	215	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA 15251–5835.

4. Sec. 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
I. Radio Facilities:		
1. Microwave (Domestic Public Fixed)	$10	FCC, Common Carrier, P.O. Box 358680, Pittsburgh, PA 15251–5680.
II. Carriers:		
1. Interstate Telephone Service Providers, (per dollar contributed to TRS Fund).	.000116	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA.

5. Sec. 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Antenna Relay Service	$65	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Cable TV System (per subscriber)	.54	

6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
I. Radio Facilities:		
1. International (HF) Broadcast	$390	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. International Public Fixed	310	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
II. Space Stations (Geosynchronous Orbit)	97,975	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
III. Low Earth Orbit Satellite	135,675	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.

	Fee amount	Address
IV. Earth Stations; Transmit/Receive and Transmit Only (per authorization or registration).	515	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251–5835.
V. Carriers:		
1. International Bearer Circuits (per active 64KB circuit or equivalent).	5.00	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.

Note: Attachments A through L will not appear in the Code of Federal Regulations.

Attachment A—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[37] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 62 FR 10793 (March 10, 1997). The Commission sought written public comments on the proposals in its FY 1997 regulatory fees NPRM, including on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.[38]

I. Need for and Objectives of This Report and Order

2. This rulemaking proceeding was initiated in order to collect regulatory fees in the amount of $152,523,000, the amount that Congress has required the Commission to recover through regulatory fees in Fiscal Year 1997. The Commission seeks to collect the necessary amount through its revised regulatory fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. The American Mobile Telecommunications Association, Inc. (''AMTA'') filed comments in response to the IRFA seeking clarification of the definition of small entity Specialized Mobile Radio (SMR) licensees who are subject to regulatory fee payments.[39] AMTA asserts that the IRFA indicates that the proposed fees in the NPRM apply only to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations.[40]

4. As AMTA points out, this is incorrect. All SMR providers are subject to payment of regulatory fees, unless qualified for special exemption (e.g., Public Safety). Private Mobile Radio Services (PMRS) licensees are subject to ''small'' fees payable in advance for the entire license term at the time of application for new, modification or renewal licenses. Commercial Mobile Radio Services (CMRS) licensees must pay ''standard'' regulatory fees on an annual basis. (See paragraph 50 infra.)

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

5. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [41] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[42] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[43]

6. The RFA also includes nonprofit organizations and small governmental entities within the scope of regulatory flexibility analysis.[44] The definition of a small governmental entity is one with a population of fewer than 50,000.[45] There are approximately 85,006 governmental entities in the nation.[46] This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.[47] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the approximately 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that may be affected by our rules.

Cable Services or Systems

7. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[48] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[49]

8. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[50] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[51] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

9. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [52] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[53] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[54] We do not request nor do we collect information concerning whether cable

[37] 5 U.S.C. 603.

[38] See 5 U.S.C. 604. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act (CWAAA), Public Law 104–121, 110 Stat. 847 (1996). Title II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA).

[39] See comments filed in MD Docket No. 96–186 dated March 25, 1997.

[40] IRFA at paragraph 48.

[41] 5 U.S.C. 601(6).

[42] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[43] Small Business Act, 15 U.S.C. 632.

[44] 5 U.S.C. 601(5).

[45] *Id.*

[46] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[47] *Id.*

[48] 13 CFR 121.201, SIC 4841.

[49] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[50] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

[51] Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

[52] 47 U.S.C. 543(m)(2).

[53] 47 CFR 76.1403(b).

[54] Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[55] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 65,000,000 subscribers, and we have based our fee revenue estimates on that figure.

10. Other Pay Services. Other pay television services are also classified under SIC 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[56] multipoint distribution systems (MDS),[57] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

11. According to the Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet), there are 2,847 interstate carriers. These carriers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

12. The SBA has defined a small business for Radiotelephone Communications (SIC 4812) and Telephone Communications, Except Radiotelephone (4813), to be small entities when they have fewer than 1,500 employees.[58] We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

13. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of ''small entity'' and ''small business concerns.''[59] Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by the SBA as ''small business concerns.''[60]

14. Total Number of Telephone Companies Affected. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[61] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.''[62] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to tentatively conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent local exchange carriers.

15. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[63] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[64] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. We do not have information on the number of carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small telephone communications companies other than radiotelephone companies.

16. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[65] The most reliable source of information regarding the number of LECs nationwide is the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.[66] We do not have information on the number of carriers that are not independently owned and operated, nor what carriers have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs.

17. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[67] The most reliable source of information regarding the number of IXCs nationwide is the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.[68] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs.

18. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[69] The most reliable source of information regarding the number of CAPs nationwide is the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services.[70] We do not have information on the number of carriers that are not independently owned and operated,

[55] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. See 47 CFR 76.1403(d).

[56] Direct Broadcast Services (DBS) are discussed in depth with the international services infra.

[57] Multipoint Distribution Services (MDS) are discussed in depth with the mass media services infra.

[58] 13 CFR 121.201.

[59] See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996), 61 FR 45476 (August 29, 1996), motion for stay of the FCC's rules pending judicial review denied, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order, 11 FCC Rcd 11754 (1996), 61 FR 54099 (October 17, 1996), partial stay granted, Iowa Utilities Board v. FCC, No. 96–3321, 1996 WL 589204 (8th Cir. 1996) at paragraphs 1328–1330 and 1342.

[60] *Id.*

[61] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) (1992 Census).

[62] 15 U.S.C. 632(a)(1).

[63] 1992 Census, *supra,* at Firm Size 1–123.

[64] 13 CFR 121.201, SIC Code 4812.

[65] 13 CFR 121.201, SIC Code 4813.

[66] Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (December 1996) (TRS Worksheet).

[67] 13 CFR 121.201, SIC 4813.

[68] TRS Worksheet.

[69] 13 CFR 121.201, SIC 4813.

[70] TRS Worksheet.

nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 57 small CAPs.

19. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[71] The most reliable source of information regarding the number of operator service providers nationwide is the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 25 companies reported that they were engaged in the provision of operator services.[72] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 25 small operator service providers.

20. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[73] The most reliable source of information regarding the number of pay telephone operators nationwide is the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.[74] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small pay telephone operators.

21. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company except radiotelephone (wireless) companies.[75] However, the most reliable source of information regarding the number of resellers nationwide is the data that the Commission collects annually in connection with the TRS Worksheet. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone service.[76] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under the SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers.

22. 800 Subscribers.[77] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 subscribers. The most reliable source of information regarding the number of 800 subscribers is data we collect on the number of 800 numbers in use.[78] According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. We do not have information on the number of carriers not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of 800 subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers.

International Services

23. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[79] According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million.[80] The Census report does not provide more precise data.

24. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

25. International Public Fixed Radio (Public and Control Stations). There are 15 licensees in this service. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

26. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 4200 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

27. Fixed Satellite Small Transmit/Receive Earth Stations. There are 4200 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations may constitute a small business under the SBA definition.

28. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of VSAT systems that would constitute a small business under the SBA definition.

29. Mobile Satellite Earth Stations. There are two licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

30. Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

31. Space Stations (Geostationary). Commission records reveal that there are 37 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition.

32. Space Stations (Non-Geostationary). There are six Non-Geostationary Space Station licensees, of which only one system is operational. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of non-geostationary space stations that would constitute a small business under the SBA definition.

33. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services (SIC 4841). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[81] As of December 1996,

[71] 13 CFR 121.201, SIC 4813.

[72] Id.

[73] 13 CFR 121.201, SIC 4813.

[74] TRS Worksheet.

[75] 13 CFR 121.201, SIC 4813.

[76] TRS Worksheet.

[77] We include all toll-free number subscribers in this category, including 888 numbers.

[78] Federal Communications Commission, CCB, Industry Analysis Division, FCC Releases, Study on Telephone Trends, Tbl. 20 (May 16, 1996).

[79] 13 CFR 120.121, SIC Code 4899.

[80] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[81] 13 CFR 121.201, SIC 4841.

there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

Mass Media Services

34. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[82] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[83] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[84] Included in this industry are commercial, religious, educational, and other television stations.[85] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[86] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[87] There were 1,509 television stations operating in the nation in 1992.[88] That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.[89] For 1992,[90] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[91] Only commercial stations are subject to regulatory fees.

35. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[92] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[93] Included in this industry are commercial, religious, educational, and other radio stations.[94] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[95] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[96] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[97] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[98] As of August 1996, official Commission records indicate that 12,088 radio stations were operating.[99] Only commercial stations are subject to regulatory fees.

36. Thus, the NPRM adopted today will affect approximately 1,550 full power television stations; approximately 1,194 of those stations are considered small businesses,[100] and 12,088 full power radio stations, approximately 11,605 of which are small businesses.[101] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,954 low power television stations (LPTV).[102] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

37. An alternative way to classify small radio and television stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.[103] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[104] We estimate that the total

[82] We tentatively conclude that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations. However, for purposes of this Policy Statement, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to this Policy Statement and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See Report and Order in MM Docket No. 93–48 (Children's Television Programming), 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (August 27, 1996), citing 5 U.S.C. 601(3). We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our Notice of Inquiry in GN Docket No. 96–113 (Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), FCC 96–216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our Order and Notice of Proposed Rule Making in MM Docket No. 96–16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996), we invited comment as to whether relief should be afforded to stations: (1) Based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

[83] 13 CFR 121.201, SIC 4833.

[84] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[85] Id. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes ''Television Broadcasting Stations'' (SIC Code 4833) as: Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[86] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications And Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[87] Id. SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[88] FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

[89] FCC News Release No. 64958, September 6, 1996.

[90] Census for Communications' establishments are performed every five years ending with a ''2'' or ''7''. See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

[91] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[92] 13 CFR 121.201, SIC 4832.

[93] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[98] FCC News Release No. 31327, January 13, 1993.

[99] FCC News Release No. 64958, September 6, 1996.

[100] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1996 total of 1550 TV stations to arrive at 1,194 stations categorized as small businesses.

[101] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[102] FCC News Release, Broadcast Station Totals as of December 31, 1996, No. 71831, January 21, 1997.

[103] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. 632 (a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, section 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, section 301, 108 Stat. 4187 (1994). However, this definition was adopted after the public notice and the opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

[104] See, e.g., 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); First Report and Order in Docket No.21474 (Amendment of Broadcast Equal Employment

Continued

number of broadcast stations with 4 or fewer employees is approximately 4,239.[105]

Auxiliary, Special Broadcast and Other Program Distribution Services

38. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations (SIC 4832) and television broadcasting stations (SIC 4833).

39. There are currently 2,720 FM translators and boosters, 4,952 TV translators.[106] The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[107]

40. Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[108] In connection with the 1996 MDS auction the Commission defined small businesses as entities who had annual average gross revenues for the three preceding years not in excess of $40 million.[109] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[110] These stations were licensed prior to implementation of Section 309(j) of the Act. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[111] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,145 MDS licensees are subject to regulatory fees and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

41. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The closest applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular services carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS Worksheet.[112] According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services.[113] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular services carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small cellular service carriers.

42. 220 MHz Radio Services. Since the Commission has not yet defined a small business with respect to 220 MHz radio services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity employing less than 1,500 persons.[114] With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees,[115] a firm with average annual gross revenues of not more than $6 million for the preceding three years, and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years.[116] Since this definition has not yet been approved by the SBA, we will utilize the SBA's definition applicable to radiotelephone companies. Given the fact that nearly all radiotelephone companies employ fewer than 1,500 employees,[117] with respect to the approximately 3,800 incumbent licensees in this service, we will consider them as small businesses under the SBA definition.

43. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons.[118] At present, there are approximately 24,000 Private Paging licensees and 74,000 Common Carrier Paging licensees. We estimate that the majority of private and common carrier paging providers would qualify as small businesses under the SBA definition.

44. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS Worksheet. According to the most recent data, 117 companies reported that they were engaged in the provision of mobile

Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96–16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[105] Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[106] FCC News Release, Broadcast Station Totals as of December 31, 1996, No. 71831, January 21, 1997.

[107] 15 U.S.C. 632.

[108] For purposes of this item, MDS also includes single channel Multipoint Distribution Service (MDS) and Multipoint Distribution Service (MMDS) application and authorizations collectively.

[109] See 47 CFR 1.2110 (a)(1).

[110] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 10 FCC Rcd 9589 (1995), 60 FR 36524 (July 17, 1995).

[111] Id. A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36–39.

[112] Federal Communications Commission. CCB Industry Analysis Division, Telecommunication Industry Revenue: TRS Worksheet Data, Tbl. 1 (Average Total Telecommunication Revenue Reported by Class of Carrier) (December 1996) (TRS Worksheet).

[113] *Id.*

[114] 13 CFR 121.201, SIC 4812.

[115] Economic Area (EA) licenses refer to the 60 frequencies in the 172 geographic areas as defined by the Bureau of Economic Analysis, Department of Commerce. See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making, GN Docket 93–252, 10 FCC Rcd 6880 (1995), 60 FR 26861 (May 19, 1995).

[116] *Id.*

[117] See U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Tbl. 5, Employment Size of Firms; 1992, SIC 4812 (issued May 1995).

[118] 13 CFR 121.201, SIC 4812.

services.[119] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers.

45. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[120] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[121] These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[122] However, licenses for blocks C through F have not been awarded fully; therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

46. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Those auctions, however, have not yet been scheduled. Given the facts that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

47. Rural Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in § 22.99 of the Commission's Rules.[123] A significant subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems (the parameters of which are defined in §§ 22.757 and 22.759 of the Commission's Rules). Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA's definition of a small business.[124]

48. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in § 22.99 of the Commission's Rules.[125] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons.[126] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

49. Specialized Mobile Radio Licensees (SMR). Pursuant to 47 CFR 90.814(b)(1), the Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of less than $15 million in each of the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[127] Therefore, the regulatory fees in this item apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We do know that one of these firms has over $15 million in revenues. We assume that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected includes these 60 small entities

50. In addition to those licensees described in paragraph 49 above, the regulatory fees apply to all SMR providers in the Private Mobile Radio Service (PMRS) and the Commercial Mobile Radio Service (CMRS), except for those licensees that are statutorily exempt. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of SMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to SMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

51. Private Land Mobile Radio Licensees (PLMR). These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

52. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs[128] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

53. Amateur Radio Service. We estimate that 10,000 applicants will apply for vanity call signs in FY 1997. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

54. Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB), and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the Small Business Administration

[119] *Id.*

[120] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 CFR 24.720(b).

[121] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (July 1, 1996).

[122] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997).

[123] 47 CFR 22.9.

[124] 13 CFR 121.201, SIC 4812.

[125] *Id.*

[126] *Id.*

[127] See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693–702 (1995), 60 FR 48913 (September 21, 1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, 11 FCC Rcd 1463 (1995), 61 FR 6212 (February 16, 1996).

[128] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 116.

rules applicable to water transportation and transportation by air. This definition provides that a small entity is any entity employing less than 500 persons for water transportation, and 1,500 for transportation by air.[129] The Commission is unable at this time to make a meaningful estimate of the number of potential small businesses.

55. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there may be at least 712,000 potential licensees which are small businesses, as that term is defined by the SBA. We estimate, however, that only 22,250 will be subject to FY 1997 regulatory fees.

56. Microwave Video Services. Microwave services includes common carrier,[130] private operational fixed,[131] and broadcast auxiliary radio services.[132] At present, there are 22,015 common carrier licensees, approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. Inasmuch as the Commission has not yet defined a small business with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with less than 1,500 persons.[133] As for estimates regarding small businesses within the broadcast service, we rely on our estimates as discussed under mass media services. Although some of these companies may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of microwave service providers other than broadcast licensees that would qualify under the SBA's definition.

57. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[134] There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As we indicated in the introductory paragraph, all governmental entities with populations of less than 50,000 fall within the definition of a small business.[135] There are approximately 37,566 governmental entities with populations of less than 50,000.[136] All of these licensees are exempt from payment of regulatory fees.

58. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signalling and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[137] Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition, however, only GMRS licensees are subject to regulatory fees.

59. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[138] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

60. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159, ''FCC Remittance Advice,'' and pay a regulatory fee based on the number of licenses or call signs.[139] Interstate telephone service providers must compute their annual regulatory fee based on their adjusted gross interstate revenue using information they already supply to the Commission in compliance with the TRS Fund, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. Licensees/regulatees that must pay on the basis of subscriber counts shall submit documentation which supports the number of units for which payment is submitted. Each licensee/regulatee shall provide certification by affixing their signature to the FCC Form 159 that all information submitted is true and accurate. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

61. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject

[129] See 13 CFR 121.201, SIC Major Group Code 44—Water Transportation (4491, 4492, 4493, 4499) and 45—Transportation by Air (4522, 4581).

[130] 47 CFR 101 et seq (formerly part 21 of the Commission's rules).

[131] Persons eligible under parts 80 and 90 of the Commission's rules can use private Operational Fixed Microwave services. See 47 CFR 80 et seq, 90 et seq. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use an operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[132] Broadcast Auxiliary Microwave Service is governed by part 74 of title 47 of the Commission's rules. See 47 CFR 74 et seq. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as a main studio and an auxiliary studio. The broadcast auxiliary microwave services also include mobile TV pickups which relay signals from a remote location back to the studio.

[133] 13 CFR 121.201, SIC 4812.

[134] With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules. 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communication related to the actual delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

[135] 5 U.S.C. 601(5).

[136] United States Dept. of Commerce, Bureau of the Census, 1992 Census of Governments (1992 Census).

[137] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C , and subpart B, respectively, of part 95 of the Commission's rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

[138] These licensees are governed by subpart I of part 22 of the Commission's rules. 47 CFR 22.1001 through 22.1037.

[139] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs)and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under Section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. Although not mandatory, the latter procedure may require additional technical skills. Licensees who pay small fees in advance supply fee information as part of their application and do not need to use the FCC Form 159.

62. Licensees and regulatees that are exempt from payment of regulatory fees due to their status under Section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), shall submit a copy of their current IRS Determination Letter or equivalent certification from a governmental authority attesting to their non-profit status.

63. Licensees and regulatees are advised that failure to submit the required regulatory fee and/or the required supporting documentation in a timely manner will subject the licensee or regulatee to a late payment fee of an additional 25% in addition to the required fee.[140] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[141] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantees if that person or entity fails to pay a delinquent debt owed to any federal agency.[142] Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[143]

64. The Commission's rules currently make provision for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[144] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

[140] 47 U.S.C. 1.1164(a).

[141] 47 U.S.C. 1.1164(c).

[142] Public Law 104–134, 110 Stat. 1321 (1996).

[143] 31 U.S.C. 7701(c)(2)(B).

[144] 47 U.S.C. 1.1166.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. *The Omnibus Consolidated Appropriation Act,* Public Law 104–208 , requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. See 47 U.S.C. 159 (a). We have sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small business entities. The Commission agrees with the comments submitted by AMTA concerning inclusion of all SMR providers among licensees subject to payment of regulatory fees. Clarifying language has been added to this FRFA. (See paragraph 50 infra.)

66. With the introduction of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The statute establishing regulatory fees provides for permitted amendments to be made to the schedule of fees in the public interest.[145] The methodology adopted in this Report and Order minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

67. Conversely, we have found that our costs for regulating commercial microwave (domestic public fixed) services are significantly lower than previously thought. We are, therefore, eliminating the annual ''large'' regulatory fee for domestic public fixed services and combining this fee category with the private microwave service with a single ''microwave'' designation. The impact on domestic public fixed licensees will be a reduction of the fee to a ''small'' up front payment for the entire license term applied only to new, modification and renewal applicants. Current domestic public fixed licensees are exempt from payment of a regulatory fee until such time as they apply for a modification or renewal of their license.

68. We have developed and adopted an alternative methodology for assessing fees to recover the regulatory costs attributable to AM and FM radio stations. The radio industry has requested relief for small stations, and we have received two alternative proposals which we have evaluated. One would segment licensees by Arbitron radio markets in addition to station class.[146] The other proposal would segment licensees by service area population in addition to station class.[147] Although neither proposal was found workable in its proposed state, we have expanded upon the use of population data to formulate our own schedule. The impact of adoption of our proposal will result in lower fees for smaller, less powerful stations relative to larger, more powerful stations in the same radio market; or stations potentially serving a larger population.

69. Several categories of licensees and regulatees are exempt from payment of regulatory fees. See Footnote 103 supra.

Report to Congress: The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA (or summary thereof) will also be published in the **Federal Register**, along with this Report and Order.

Attachment B—Sources of Payment Unit Estimates for FY 1997

In order to calculate individual service fees for FY 1997, we adjusted FY 1996 payment units for each service to more accurately reflect expected FY 1997 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1997 estimates with actual FY 1996 payment units to ensure that our revised estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1997 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1997 payment units are based on FY 1996 actual payment units, it does not necessarily mean that our FY 1997 projection is exactly the same number as FY 1996. It means that we have either rounded the FY 1997 number or adjusted it slightly to account for these variables.

[145] See 47 U.S.C. 159 (b)(1)(A) and (b)(3).

[146] See discussion of Montana Broadcasters Association Comments at NPRM paragraphs 29–32 supra.

[147] See discussion of NAB Comments at NPRM paragraphs 33–36 supra.

[148] The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving any applications for IVDS in FY 1997. Therefore, since there is no volume, there will be no regulatory fee in the IVDS category for FY 1997.

[149] Licensees in the PMRS were given until August of 1996 to decide whether to convert to CMRS. For FY 1997, we anticipate a substantial increase in the volume of licensees in the CMRS category and a corresponding decrease in the number of licensees remaining in the PMRS category.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, IVDS,[148] Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases.
CMRS Mobile Services (incl. Cellular/Public Mobile Radio Services).[149]	Based on industry estimates of growth between FY 1996 and FY 1997 and WTB projections of new applications and average number of mobile units associated with each application.
CMRS Messaging Services	Based on industry estimates of the number of units in operation.
AM/FM Radio Stations	Based on Mass Media Bureau licensee data.
UHF/VHF Television Stations	Based on actual FY 1996 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1996 payment units.
LPTV, Translators and Boosters	Based on actual FY 1996 payment units.
Auxiliaries	Based on actual FY 1996 payment units.
MDS/MMDS	Based on actual FY 1996 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1996 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
IXCs/LECs,CAPs, Other Service Providers	Based on actual FY 1996 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1997 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1996 payment units.
Space Stations & LEOs	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimate.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on actual FY 1996 payment units.

Attachment C—Calculation of Revenue Requirements

Fee category	FY 1997 payment units	×	FY 1996 fee	×	Payment years	=	Computed FY 1997 revenue requirement	Pro-rated revenue requirement **
LM (220 MHz, ≤470 MHZ-Base, SMRS)	14,175		7		5		496,125	550,996
Private Microwave	5,350		7		10		374,500	415,920
IVDS	0		7		5		0	0
Marine (Ship)	19,400		3		10		582,000	646,369
GMRS/Other LM	82,900		3		5		1,243,500	1,381,031
Aviation (Aircraft)	2,120		3		10		63,600	70,634
Marine (Coast)	2,400		3		5		36,000	39,982
Aviation (Ground)	2,760		3		5		41,400	45,979
Amateur Vanity Call Signs	10,000		3		10		300,000	333,180
AM Class A	75		1,250		1		93,750	104,119
AM Class B	1,717		690		1		1,184,730	1,315,761
AM Class C	1,013		280		1		283,640	315,011
AM Class D	2,016		345		1		695,520	772,445
AM Construction Permits	38		140		1		5,320	5,908
FM Classes C, C1, C2, B	2,609		1,250		1		3,261,250	3,621,944
FM Classes A, B1, C3	2,762		830		1		2,292,460	2,546,006
FM Construction Permits	307		690		1		211,830	235,258
Satellite TV	101		690		1		69,690	77,398
Satellite TV Construction Permit	7		250		1		1,750	1,944
VHF Markets 1–10	43		32,000		1		1,376,000	1,528,186
VHF Markets 11–25	64		26,000		1		1,664,000	1,848,038
VHF Markets 26–50	78		17,000		1		1,326,000	1,472,656
VHF Markets 51–100	137		9,000		1		1,233,000	1,369,370
VHF Remaining Markets	225		2,500		1		562,500	624,713
VHF Construction Permits	5		5,550		1		27,750	30,819
UHF Markets 1–10	89		25,000		1		2,225,000	2,471,085
UHF Markets 11–25	86		20,000		1		1,720,000	1,910,232
UHF Markets 26–50	106		13,000		1		1,378,000	1,530,407
UHF Markets 51–100	163		7,000		1		1,141,000	1,267,195
UHF Remaining Markets	165		2,000		1		330,000	366,498
UHF Construction Permits	50		4,425		1		221,250	245,720
Auxiliaries	20,000		35		1		700,000	777,420
International HF Broadcast	6		280		1		1,680	1,866
LPTV/Translators/Boosters	2,200		190		1		418,000	464,231
CARS	1,640		325		1		533,000	591,950
Cable Systems	65,000,000		0.55		1		35,750,000	39,703,950
IXC, LECs, CAPS, Others	59,685,000,000		0.00098		1		58,491,300	64,960,438
CMRS Mobile Services (Cellular/Public Mobile)	47,300,000		0.17		1		8,041,000	8,930,335
CMRS One-Way Paging	40,850,000		0.02		1		817,000	907,360
Domestic Public Fixed/Commercial Microwave	18,845		155		1		2,920,975	3,244,035
MDS/MMDS	1,144		155		1		177,320	196,932

Fee category	FY 1997 payment units	×	FY 1996 fee	×	Payment years	=	Computed FY 1997 revenue requirement	Pro-rated revenue requirement**
International Circuits	164,000		4		1		656,000	728,554
International Public Fixed	15		225		1		3,375	3,748
Earth Stations	2,500		370		1		925,000	1,027,305
Space Stations (Geosynchronous)	41		70,575		1		2,893,575	3,213,604
Space Stations (Low Earth Orbit)	1		97,725		1		97,725	108,533
INTELSAT/INMARSAT Signatory	2		233,425		1		466,850	518,484
Total Estimated Revenue Collected							137,334,365	152,523,546
Total Revenue Requirement							152,523,000	152,523,000
Difference							(15,188,635)	546

** 1.1106 factor applied

Attachment D—Calculation of Regulatory Costs

Fee Category	Actual FY 1996 regulatory costs	Overhead & other indirect pro rated	Total costs with overhead & other indirect pro rated	Total costs pro-rated to $152 million**	Adjusted pro-rated costs***
LM (220 MHz, >470 MHZ–Base, SMRS)	536,985	210,246	747,231	792,718	792,718
Private Microwave	897,318	351,327	1,248,645	1,324,655	1,324,655
IVDS	319,930	125,262	445,192	472,293	472,293
Marine (Ship)	4,010,683	1,570,303	5,580,986	5,920,722	5,920,722
GMRS/Other LM	4,534,058	1,775,220	6,309,278	6,693,348	6,693,348
Aviation (Aircraft)	633,302	247,957	881,259	934,905	934,905
Marine (Coast)	495,912	194,164	690,077	732,084	732,084
Aviation (Ground)	322,995	126,462	449,457	476,817	476,817
Amateur Vanity Call Signs	166,171	65,061	231,232	245,308	245,308
AM Radio	3,107,681	1,216,750	4,324,431	4,587,676	
AM Class A					189,930
AM Class B					2,401,649
AM Class C					574,836
AM Class D					1,409,793
AM Construction Permits					11,010
FM Radio	5,734,251	2,245,131	7,979,382	8,465,118	
FM Classes C, C1, C2, B					4,787,871
FM Classes A, B1, C3					3,365,731
FM Construction Permits					310,670
Satellite TV					97,164
Satellite TV Construction Permit					2,440
VHF Television	3,660,252	1,433,099	5,093,351	5,403,403	
VHF Markets 1–10					1,187,582
VHF Markets 11–25					1,436,145
VHF Markets 26–50					1,144,429
VHF Markets 51–100					1,064,163
VHF Remaining Markets					485,476
VHF Construction Permits					23,950
UHF Television	2,549,806	998,326	3,548,132	3,764,121	
UHF Markets 1–10					1,181,817
UHF Markets 11–25					913,584
UHF Markets 26–50					731,930
UHF Markets 51–100					606,046
UHF Remaining Markets					175,281
UHF Construction Permits					117,518
Auxiliaries	242,897	95,1023	37,9993	58,574	358,574
International HF Broadcast	211,016	82,619	293,635	311,510	433,299
LPTV/Translators/Boosters	258,297	101,131	359,427	381,307	380,729
CARS	56,147	21,983	78,131	82,887	82,761
Cable Systems	18,871,818	7,388,882	26,260,700	27,859,291	27,859,291
IXC, LECs, CAPS, Others	37,118,528	14,533,016	51,651,544	54,795,774	54,795,774
CMRS Mobile Services (Cellular/Public Mobile)*	8,507,532	3,330,954	11,838,486	12,559,141	12,559,141
CMRS One-Way Paging	649,651	254,358	904,009	959,039	959,039
Domestic Public Fixed/Commercial Microwave	61,900	24,236	86,136	91,379	91,379
MDS/MMDS	798,729	312,726	1,111,455	1,179,114	1,179,114
International Circuits	4,766,610	1,866,270	6,632,880	7,036,649	3,928,584
International Public Fixed	22,621	8,857	31,478	33,394	101,103
Earth Stations	176,173	68,977	245,150	260,074	1,415,445
Space Stations (Geosynchronous)	4,595,562	1,799,300	6,394,862	6,784,142	5,055,163
Space Stations (Low Earth Orbit)	4,451	1,743	6,194	6,571	2,412,035
INTELSAT/INMARSAT Signatory	7,441	2,914	10,355	10,985	1,097,692
Overhead & Other Indirect Costs	40,452,376				

Fee Category	Actual FY 1996 regulatory costs	Overhead & other indirect pro rated	Total costs with overhead & other indirect pro rated	Total costs pro-rated to $152 million **	Adjusted pro-rated costs ***
Total	143,771,096	40,452,376	143,771,096	152,523,000	152,520,988
Total Revenue Requirement	152,523,000	.....	152,523,000	152,523,000	152,523,000
Difference	(8,751,904)	.....	(8,751,904)	0	(2,012)

* CMRS actual FY 1996 regulatory costs have been reduced $149,233 to exclude amounts inadvertantly included in the NPRM.

** 1.060873875 factor applied

*** The pro rated costs shown in the previous column needed to be adjusted to accurately reflect full-year costs attributable to each international fee category. This was necessary because certain cost accounting fee codes associated with international activities were utilized for only a small portion of FY 1996. This resulted in a skewed allocation of costs. Actual activity FTEs were utilized to make this adjustment. In making these adjustments to international fee costs, overall costs attributable to international activities did not change. Additionally, adjustments were made in this column to sub-allocate actual TV and radio costs to markets and station class, respectively. This was accomplished on a proportional basis by the same ratios between the markets and classes as those which exist between the pro-rated revenue requirements calculated for the FY 1997 TV and radio regulatory fees.

NOTE: Columns may not add due to rounding.

Attachment E—Calculation of FY 1997 Regulatory Fees

Fee category	Pro-rated revenue requirement	Adjusted activity costs	Costs vs. revenue requirement difference (percent)	Pro-rated revenue requirement plus 25% ceiling	Round 1 target revenue	Round 1 adjustable target revenue	Round 1 pro-rated target revenue**	Round 2 target revenue	Round 2 adjustable target revenue	Round 2 pro-rated target revenue***	Computed new FY 1997 regulatory fee	Rounded new FY 1997 regulatory fee	Expected FY 1997 revenue
LM (220 MHz, >470 MHZ-Base, SMRS)	550,996	792,718	43.87	688,745	688,745	.....	688,745	688,745	.....	688,745	10	10	708,750
Private Microwave	415,920	1,324,655	218.49	519,900	519,900	.....	519,900	519,900	.....	519,900	10	10	536,000
IVDS	0	472,293	.....	0	0	.....	0	0	.....	0	.....	.....	.....
Marine (Ship)	646,369	5,920,722	816.00	807,961	807,961	.....	807,961	807,961	.....	807,961	4	5	970,000
GMRS/Other LM	1,381,031	6,693,348	384.66	1,726,289	1,726,289	.....	1,726,289	1,726,289	.....	1,726,289	4	5	2,072,500
Aviation (Aircraft)	70,634	934,905	1223.59	88,293	88,293	.....	88,293	88,293	.....	88,293	4	5	106,000
Marine (Coast)	39,982	732,084	1731.03	49,978	49,978	.....	49,978	49,978	.....	49,978	4	5	60,000
Aviation (Ground)	45,979	476,817	937.03	57,474	57,474	.....	57,474	57,474	.....	57,474	4	5	69,000
Amateur Vanity Call Signs	333,180	245,308	–26.37	416,475	245,308	245,308	310,879	310,879	310,879	311,096	3	5	500,000
AM Class A	104,119	189,930	82.42	130,149	130,149	.....	130,149	130,149	.....	130,149	1,735	1,725	129,375
AM Class B	1,315,761	2,401,649	82.53	1,644,701	1,644,701	.....	1,644,701	1,644,701	.....	1,644,701	958	950	1,631,150
AM Class C	315,011	574,836	82.48	393,764	393,764	.....	393,764	393,764	.....	393,764	389	390	395,070
AM Class D	772,445	1,409,793	82.51	965,556	965,556	.....	965,556	965,556	.....	965,556	479	480	967,680
AM Construction Permits	5,908	11,010	86.36	7,385	7,385	.....	7,385	7,385	.....	7,385	194	195	7,410
FM Classes C,C1,C2,B	3,621,944	4,787,871	32.19	4,527,430	4,527,430	.....	4,527,430	4,527,430	.....	4,527,430	1,735	1,725	4,500,525
FM Classes A,B1,C3	2,546,006	3,365,731	32.20	3,182,508	3,182,508	.....	3,182,508	3,182,508	.....	3,182,508	1,152	1,150	3,176,300
FM Construction Permits	235,258	310,670	32.06	294,073	294,073	.....	294,073	294,073	.....	294,073	958	950	308,750
Satellite TV	77,398	97,164	25.54	96,748	96,748	.....	96,748	96,748	.....	96,748	958	950	95,950
Satellite TV Construction Permit	1,944	2,440	25.51	2,430	2,430	.....	2,430	2,430	.....	2,430	347	345	2,415
VHF Markets 1–10	1,528,186	1,187,582	−22.29	1,910,233	1,187,582	1,187,582	1,505,023	1,505,023	1,505,023	1,506,076	35,025	35,025	1,618,950
VHF Markets 11–25	1,848,038	1,436,145	−22.29	2,310,048	1,436,145	1,436,145	1,820,027	1,820,027	1,820,027	1,821,301	28,458	28,450	1,416,000
VHF Markets 26–50	1,472,656	1,144,429	−22.29	1,840,820	1,144,429	1,144,429	1,450,335	1,450,335	1,450,335	1,451,350	18,607	18,600	1,719,900
VHF Markets 51–100	1,369,370	1,064,163	−22.29	1,711,713	1,064,163	1,064,163	1,348,614	1,348,614	1,348,614	1,349,558	9,851	9,850	1,253,550
VHF Remaining Markets	624,713	485,476	−22.29	780,891	485,476	485,476	615,244	615,244	615,244	615,674	2,736	2,725	630,000
VHF Construction Permits	30,819	23,950	−22.29	38,524	23,950	23,950	30,352	38,524	.....	23,950	4,790	4,800	38,500
UHF Markets 1–10	2,471,085	1,181,817	−52.17	3,088,856	1,181,817	1,181,817	1,497,717	1,497,717	1,497,717	1,498,765	16,840	16,850	1,524,125
UHF Markets 11–25	1,910,232	913,584	−52.17	2,387,790	913,584	913,584	1,157,785	1,157,785	1,157,785	1,158,595	13,472	13,475	1,126,600
UHF Markets 26–50	1,530,407	731,930	−52.17	1,913,009	731,930	731,930	927,575	927,575	927,575	928,224	8,757	8,750	792,350
UHF Markets 51–100	1,267,195	606,046	−52.17	1,583,994	606,046	606,046	768,042	768,042	768,042	768,580	4,715	4,725	721,275
UHF Remaining Markets	366,498	175,281	−52.17	458,123	175,281	175,281	222,134	222,134	222,134	222,289	1,347	1,350	301,125
UHF Construction Permits	245,720	117,518	−52.17	307,150	117,518	117,518	148,931	148,931	148,931	149,035	2,981	2,975	248,750
Auxiliaries	777,420	358,574	−53.88	971,775	358,574	358,574	454,421	454,421	454,421	454,739	23	25	500,000
International HF Broadcast	1,866	433,299	23,120.74	2,333	2,333	.....	2,333	2,333	.....	2,333	389	390	2,340
LPTV/Translators/Boosters	464,231	380,729	−17.99	580,289	380,729	380,729	482,498	482,498	482,498	482,836	219	220	484,000
CARS	591,950	82,761	−86.02	739,938	82,761	82,761	104,883	104,883	104,883	104,956	64	65	106,600
Cable Systems	39,703,950	27,859,291	−29.83	49,629,938	27,859,291	27,859,291	35,306,079	35,306,079	35,306,079	35,330,794	0.54	0.54	35,100,000
IXC, LECs, CAPS, Others	64,960,438	54,795,774	−15.65	81,200,548	54,795,774	54,795,774	69,442,684	69,442,684	69,442,684	69,491,294	0.00116	0.00116	69,234,600
CMRS Mobile Services (Cellular/Public Mobile)	8,930,335	12,559,141	40.63	11,162,919	11,162,919	.....	11,162,919	11,162,919	.....	11,162,919	0.24	0.24	11,352,000
CMRS One-Way Paging	907,360	959,039	5.70	1,134,200	959,039	959,039	1,215,390	1,134,200	.....	1,134,200	0.03	0.03	1,225,500
Domestic Public Fixed/Commercial Microwave	3,244,035	91,379	−97.18	4,055,044	91,379	91,379	115,805	115,805	115,805	115,886	6	5	94,225
MDS/MMDS	196,932	1,179,114	498.74	246,165	246,165	.....	246,165	246,165	.....	246,165	215	215	245,960
International Circuits	728,554	3,928,584	439.23	910,693	910,693	.....	910,693	910,693	.....	910,693	6	5	820,000
International Public Fixed	3,748	101,103	2,597.52	4,685	4,685	.....	4,685	4,685	.....	4,685	312	310	4,650
Earth Stations	1,027,305	1,415,445	37.78	1,284,131	1,284,131	.....	1,284,131	1,284,131	.....	1,284,131	514	515	1,287,500
Space Stations (Geosynchronous)	3,213,604	5,055,163	57.31	4,017,005	4,017,005	.....	4,017,005	4,017,005	.....	4,017,005	97,976	97,975	4,016,975
Space Stations (Low Earth Orbit)	108,533	2,412,035	2,122.40	135,666	135,666	.....	135,666	135,666	.....	135,666	135,666	135,675	135,675
INTELSAT/INMARSAT Signatory	518,484	1,097,692	111.71	648,105	648,105	.....	648,105	648,105	.....	648,105	324,053	324,050	648,100
Total Estimated Revenue Collected	152,523,549	152,520,988	.....	190,654,436	127,435,859	93,840,776	152,519,498	152,446,480	117,678,673	152,514,281	.....	.....	152,885,125
Total Revenue Requirement	152,523,000	152,523,000	.....	152,523,000	152,523,000	.....	152,523,000	152,523,000	.....	152,523,000	.....	.....	152,523,000
Difference	549	(2,012)	.....	38,131,436	(25,087,142)	.....	(3,502)	(76,520)	.....	(8,719)	.....	.....	362,125

1.2673 factor applied * 1.0007 factor applied.

Attachment F—FY 1997 Schedule of Regulatory Fees

Fee category	Annual regulatory fee
PMRS (per license) (Formerly Land Mobile—Exclusive Use at 220–222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR Part 90)	10
Microwave (per license) (47 CFR Part 101)	10
Interactive Video Data Service (per license) (47 CFR Part 95)	[1]
Marine (Ship) (per station) (47 CFR Part 80)	5
Marine (Coast) (per license) (47 CFR Part 80)	5
General Mobile Radio Service (per license) (47 CFR Part 95)	5
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	5
Aviation (Aircraft) (per station) (47 CFR Part 87)	5
Aviation (Ground) (per license) (47 CFR Part 87)	5
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	5
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90)	.24
CMRS Messaging Services (per unit) (47 CFR Parts 20, 22 and 90)	.03
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	215
Radio—AM and FM (47 CFR Part 73):	
Group 1	2,000
Group 2	1,800
Group 3	1,600
Group 4	1,400
Group 5	1,200
Group 6	1,000
Group 7	800
Group 8	600
Group 9	400
Group 10	200
AM Construction Permits	195
FM Construction Permits	950
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	35,025
Markets 11–25	28,450
Markets 26–50	18,600
Markets 51–100	9,850
Remaining Markets	2,725
Construction Permits	4,800
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	16,850
Markets 11–25	13,475
Markets 26–50	8,750
Markets 51–100	4,725
Remaining Markets	1,350
Construction Permits	2,975
Satellite Television Stations (All Markets)	950
Construction Permits—Satellite Television Stations	345
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	220
Broadcast Auxiliary (47 CFR Part 74)	25
Cable Antenna Relay Service (47 CFR Part 78)	65
Cable Television Systems (per subscriber) (47 CFR Part 76)	.54
Interstate Telephone Service Providers (per revenue dollar)	.00116
Earth Stations (47 CFR Part 25)	515
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	97,975
Low Earth Orbit Satellite (per operational system) (47 CFR Part 25)	135,675
International Bearer Circuits (per active 64KB circuit)	5
International Public Fixed (per call sign) (47 CFR Part 23)	310
International (HF) Broadcast (47 CFR Part 73)	390

[1] No fee.

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Attachment G

COMPARISON BETWEEN FY 1996 & FY 1997

PROPOSED & FINAL REGULATORY FEES

Fee Category	Annual Regulatory Fee FY 1996	NPRM Proposed Fee FY 1997	Annual Regulatory Fee FY 1997
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220-222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	7	10	10
Microwave (per license) (47 CFR Part 101)	7	10	10
Interactive Video Data Service (per license) (47 CFR Part 95)	7	No Fee	No Fee
Marine (Ship) (per station) (47 CFR Part 80)	3	5	5
Marine (Coast) (per license) (47 CFR Part 80)	3	5	5
General Mobile Radio Service (per license) (47 CFR Part 95)	3	5	5
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	3	5	5

Fee Category	Annual Regulatory Fee FY 1996	NPRM Proposed Fee FY 1997	Annual Regulatory Fee FY 1997
Aviation (Aircraft) (per station) (47 CFR Part 87)	3	5	5
Aviation (Ground) (per license) (47 CFR Part 87)	3	5	5
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	3	5	5
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90)	.17	.24	.24
CMRS Messaging Services [formerly One Way Paging] (per unit) (47 CFR Parts 20, 22, and 90)	.02	.03	.03
Domestic Public Fixed Radio	155	See Microwave	See Microwave
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	155	215	215
AM Radio (47 CFR Part 73)			
Class A	1,250	1,750	See Radio
Class B	690	965	See Radio
Class C	280	390	See Radio
Class D	345	480	See Radio
Construction Permits	140	195	195
FM Radio (47 CFR Part 73)			
Classes C, C1, C2, B	1,250	1,750	See Radio
Classes A, B1, C3	830	1,050	See Radio

Fee Category	Annual Regulatory Fee FY 1996	NPRM Proposed Fee FY 1997	Annual Regulatory Fee FY 1997
Construction Permits	690	965	950
TV (47 CFR Part 73) VHF Commercial			
Markets 1-10	32,000	44,700	35,025
Markets 11-25	26,000	30,500	28,450
Markets 26-50	17,000	16,350	18,600
Markets 51-100	9,000	4,925	9,850
Remaining Markets	2,500	835	2,725
Construction Permits	5,550	7,750	4,800
TV (47 CFR Part 73) UHF Commercial			
Markets 1-10	25,000	18,875	16,850
Markets 11-25	20,000	15,625	13,575
Markets 26-50	13,000	8,250	8,750
Markets 51-100	7,000	2,875	4,725
Remaining Markets	2,000	815	1,350
Construction Permits	4,425	5,950	2,975
Satellite Television Stations (All Markets)	690	975	950
Construction Permits - Satellite Television Stations	250	350	345
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	190	225	220

Fee Category	Annual Regulatory Fee FY 1996	NPRM Proposed Fee FY 1997	Annual Regulatory Fee FY 1997
Broadcast Auxiliary (47 CFR Part 74)	35	25	25
Cable Antenna Relay Service (47 CFR Part 78)	325	65	65
Earth Stations (47 CFR Part 25)	370	515	515
Cable Television Systems (per subscriber) (47 CFR Part 76)	.55	.55	.54
Interstate Telephone Service Providers (per revenue dollar)	.00098	.00119	.00116
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	70,575 70,575	98,575 98,575	97,975 97,975
Low Earth Orbit Satellite (per operational system) (47 CFR Part 25)	97,725	136,500	135,675
INMARSAT/INTELSAT Signatory (per signatory)	233,425	326,025	No Fee
International Bearer Circuits (per active 64KB circuit)	4	5	5
International Public Fixed (per call sign) (47 CFR Part 23)	225	315	310
International (HF) Broadcast (47 CFR Part 73)	280	390	390
Radio [AM & FM] (47 CFR Part 73)			
Group 1			2,000
Group 2			1,800
Group 3			1,600
Group 4			1,400

Fee Category	Annual Regulatory Fee FY 1996	NPRM Proposed Fee FY 1997	Annual Regulatory Fee FY 1997
Group 5			1,200
Group 6			1,000
Group 7			800
Group 8			600
Group 9			400
Group 10			200

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Attachment H—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act, 47 U.S.C. 159(g) as modified in the instant Report and Order. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, and 1996 and the services subject to the fee schedule, and the comments of the parties in our proceeding to adopt fees for FY 1997. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission. See 47 U.S.C. 159(b) (2), (3).

2. Exemptions. Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity may be asked to submit a current IRS Determination Letter documenting that it is exempt from taxes under Section 501of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of Section 9, that the regulatory fees reflect the benefits provided to the licensees. See 47 U.S.C. 159(b)(1)(A). In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Mobile Radio Services (PMRS) (Formerly Land Mobile Services):* Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[150] For FY 1997, PMRS licensees will pay a $10 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.[151] The total regulatory fee due is either $50 for a license with a five year term or $100 for a license with a 10 year term.

5. *Microwave Services*: These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the

[150] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[151] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1997 is less than one-tenth of one percent and, therefore, is statistically insignificant.

Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 1997, Microwave licensees will pay a $10 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 for the ten year license term.

6. *Interactive Video Data Service (IVDS)*: The IVDS is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The IVDS provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The IVDS is offered on a private carrier basis. The Commission does not anticipate receiving any applications in the IVDS during FY 1997. Therefore, for FY 1997, there is no regulatory fee for IVDS licensees.

b. Shared Use Services

7. *Marine (Ship) Service*: This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 1997, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $5 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 for the ten year license term.

8. *Marine (Coast) Service*: This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1997, licensees of Marine (Coast) Stations will pay a $5 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $25 per call sign for the five-year license term.

9. *Private Land Mobile (Other) Services*: These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 1997, licensees of services in this category will pay a $5 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $25 for the five-year license term.

10. *Aviation (Aircraft) Service*: These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 1997, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $5 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1997, licensees of Aviation (Ground) Stations will pay a $5 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $25 per call sign for the five-year license term.

12. General Mobile Radio Service (GMRS): These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 1997, GMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $25 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This fee covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. For FY 1997, applicants for Amateur Vanity Call-Signs will pay a $5 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a vanity call sign. The total regulatory fee due would be $50 per license for the ten-year license term.[152]

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.,* Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (*e.g.,* Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);[153] Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), assigned to its customers, including resellers of its services. For FY 1997, the regulatory fee is $.24 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging, qualifying interconnected Business Radio Services, and 220–222 MHz Land Mobile Systems), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), and licensees of Personal Communications Service (PCS) one-

[152] Section 9(h) exempts ''amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)'' from the requirement. However, Section 9(g)'s fee schedule explicitly includes ''Amateur vanity call signs'' as a category subject to the payment of a regulatory fee.

[153] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment. Further, Congress provided for a three year transition period until August 10, 1996, for conversion to CMRS. *See* Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI section 6002(b), 107 Stat. 312,392. Therefore, licensees who had not converted to CMRS prior to December 31, 1995, are not subject to the CMRS Mobile Services fee for FY 1996.

way and two-way paging. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. We have replaced the CMRS One-Way Paging regulatory fee category with a CMRS Messaging Services category for regulatory fee collection purposes. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 1997, the regulatory fee is $.03 per unit.

2. Mass Media Services

16. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

17. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules.[154] In response to numerous requests, we have combined class of station and grade B contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 1997 are as follows:

Group 1	$2,000
Group 2	1,800
Group 3	1,600
Group 4	1,400
Group 5	1,200
Group 6	1,000
Group 7	800
Group 8	600
Group 9	400
Group 10	200

18. Licensees may determine the appropriate fee payment by referring to the list provided at Attachment K to this Report and Order. This same information will be available on the FCC's internet world wide web site (http://www.fcc.gov), by calling the FCC's National Call Center (1–888–225–5322), and will be included in the Public Notices mailed to each licensee.

b. Construction Permits—Commercial AM Radio

19. This category includes holders of permits to construct new Commercial AM Stations. For FY 1997, permittees will pay a fee of $195 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated class of the station.

c. Construction Permits—Commercial FM Radio

20. This category includes holders of permits to construct new Commercial FM Stations. For FY 1997, permittees will pay a fee of $950 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated class of the station.

d. Commercial Television Stations

21. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the Television & Cable Factbook, Stations Volume No. 65, 1997 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10	$35,025
VHF Markets 11–25	28,450
VHF Markets 26–50	18,600
VHF Markets 51–100	9,850
VHF Remaining Markets	2,725
UHF Markets 1–10	16,850
UHF Markets 11–25	13,475
UHF Markets 26–50	8,750
UHF Markets 51–100	4,725
UHF Remaining Markets	1,350

e. Commercial Television Satellite Stations

22. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $950 annually. Those stations designated as Television Satellite Stations in the 1997 Edition of the Television and Cable Factbook are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

23. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1997, VHF permittees will pay an annual regulatory fee of $4,800. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

24. This category includes holders of permits to construct new UHF Television Stations. For FY 1997, UHF Television permittees will pay an annual regulatory fee of $2,975. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

25. The fee for UHF and VHF Television Satellite Station construction permits for FY 1997 is $345. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

26. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 Report and Order. Community based Translators are exempt from regulatory fees. For FY 1997, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $220 for each license held.

j. Broadcast Auxiliary Stations

27. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 1997, licensees of Commercial Auxiliary Stations will pay a $25 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

28. This category includes Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1997, MDS

[154] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

and MMDS stations will pay an annual regulatory fee of $215 per call sign.

3. Cable Services

a. Cable Television Systems

29. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 1997, Cable Systems will pay a regulatory fee of $.54 per subscriber.[155] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1996. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 Report and Order, Appendix B at Paragraph 31.

b. Cable Antenna Relay Service

30. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1997, licensees will pay an annual regulatory fee of $65 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

31. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *infra*).

b. Interstate Telephone Service Providers

32. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. See Telecommunications Relay Services, 8 FCC Rcd 5300 (1993), 58 FR 39671 (July 26, 1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1997, carriers must multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or services) by the factor 0.00116 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

	Total	Interstate
(1) Revenue reported in TRS Fund worksheets		
(2) Less: Access charges paid		
(3) Less: Other telecommunications facilities and services taken for resale		
(4) Adjusted revenues (1)minus(2)minus(3)		
(5) Fee factor		0.00116
(6) Fee due (4)times(5)		

5. International Services

a. Earth Stations

33. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. VSAT systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. Mobile Satellite Earth Stations, operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[156] Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas, authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 1997, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $515 per authorization or registration as well as a separate fee of $515 for each associated Hub Station.

34. Receive-only earth stations. For FY 1997, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geosynchronous)

35. Geosynchronous Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1997, entities authorized to operate geosynchronous space stations (including DBS satellites) will be assessed an annual regulatory fee of $97,975 per operational station in orbit. Payment is required for any geosynchronous satellite that has been launched and tested and is authorized to provide service.

c. Low Earth Orbit Satellites (LEOs)

36. Low Earth Orbit Satellite Systems are space stations that orbit the earth in non geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/

[155] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 Report and Order at Paragraph 100.

[156] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1997.

or private carrier basis. For FY 1997, entities authorized to operate Low Earth Orbit Satellite Systems will be assessed an annual regulatory fee of $135,675 per operational system in orbit. Payment is required for any LEO System that has one or more operational satellites (launched, tested and providing service).

d. International Bearer Circuits

37. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Compare FY 1994 Report and Order at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 Kbps circuits, or equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits.

However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1997, the regulatory fee is $5.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 Kbps circuits
36	630
24	288
18	240

e. International Public Fixed

38. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1997, International Public Fixed Radio Service licensees will pay a $310 annual regulatory fee per call sign.

f. International (HF) Broadcast

39. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 KHz to 26,100 KHz range to provide service to the general public in foreign countries. For FY 1997, International HF Broadcast Stations will pay an annual regulatory fee of $390 per station license.

Attachment I—Description of FCC Activities

I. Activities That Are Not Included In Regulatory Fees

1. *Authorization of Service:* The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities. Although Authorization of Service is described in this attachment, it is *not* one of the activities included as a feeable activity for regulatory fee purposes pursuant to Section 9(a)(1) of the Act. 47 U.S.C. § 159(a)(1).

II. Activities That Are Included In Regulatory Fees

2. *Policy and Rulemaking:* Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

3. *Enforcement:* Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

4. *Public Information Services:* The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

Attachment J—FCC Cost Accounting Activity and Project Codes

Activity Codes

10 Authorization of Service
11 TeleCom Act—Authorization of Service
20 Policy and Rule Making
21 TeleCom Act—Policy and Rule Making
30 Enforcement
31 TeleCom Act—Enforcement
40 Public Information Services
41 TeleCom Act—Public Information Services
51 Spectrum Auction Direction & Support
70 Executive Direction & Support
80 Bureau/Office Direction & Support
91 Spectrum Auction—Authorization of Service
92 Spectrum Auction—Policy & Rule Making
93 Spectrum Auction—Enforcement
94 Spectrum Auction—Public Information Services

Project Codes

N01 Land Mobile—Exclusive Use
N02 Microwave
N03 Interactive Video Data Service (IVDS)
N04 Aviation (Aircraft)
N05 Aviation (Ground)
N06 Marine (Ship)
N07 Marine (Coast)
N08 General Mobile Radio Service (GMRS)
N09 Land Mobile—Shared Use
N10 Amateur Vanity Call Signs
N11 Cable Antenna Relay Service (CARS)
N12 Cable Television Systems
N13 Domestic Public Fixed Radio
N14 Cellular Radio
N15 Public Mobile Radio/CMRS/two-way paging
N16 Public Mobile Radio(one-way paging)
N17 International Public Fixed Radio
N18 Earth Stations
N19 Space Stations
N20 IXCS, LECS, and Other Providers
N21 International Bearer Circuits
N22 Personal Communication Services (PCS)
N23 AM Radio
N24 FM Radio
N25 VHF Television
N26 UHF Television
N27 Broadcast Auxiliary
N28 LPTV/Translators/Boosters
N29 International Short Wave
N30 Multipoint Distribution Service/MMDS
N31 Amateur Radio
N32 Direct Broadcast Satellite (DBS)
N33 Commercial Radio Operators
N34 Restricted Permits
N35 Citizens' Band and Radio Control
N36 Certification/Type Accept.& Approval/Notifications
N37 Other
N38 Low Earth Orbiting Satellites
N39 Signatory to Inmarsat and Instelsat

Project Codes-Spectrum Auction Only

N51 Cellular Unserved
N52 IVDS RSAs/Defaults
N53 800 MHz SMR
N54 PCS Narrowband

N55 PCS D, E, & F
N56 LMDS 28 GHz
N57 LMS (AVM)
N58 DARS
N59 220 MHz

Project Codes-Reimbursable Agreements

P01 Special Travel Initiatives
P02 Travel Reimbursement Program—Section 1353
P03 U.S. Department of Commerce
P04 Bureau of Alcohol, Tobacco and Firearms
P05 U. S. Customs Service
P06 Office of Naval Research
P07 VOA Computer Models
P08 NTIS/ECAC
P09 NTIS Tapes—Master Files
P10 NTIS Tapes—Public Access
P11 U.S. Coast Guard
P12 Drug Enforcement Agency
P13 Radio Marti
P14 ITU Fellows
P15 TV Marti
P16 NTIS—Source Program
P17 Miscellaneous Reimbursable

Attachment K—AM/FM Fees

Note: This attachment because of its size and cost is not being printed in the **Federal Register**. The information contained in this attachment is available by calling the FCC National Call Center at 1–888–225–5322 and is also available at the FCC web site (http://www.fcc.gov).

Attachment L—Parties Filing Comments and Reply Comments

Parties Filing Comments on the Notice of Proposed Rule Making

Ram Mobile Data USA Limited Partnership
American Mobile Telecommunications Association, Inc.
Paging Network, Inc.
Personal Communications Industry Association
IXC Carrier, Inc.
Industrial Telecommunications Association, Inc.
L/Q Licensee, Inc.
National Association of Broadcasters
Montana Broadcasters Association
Arkansas Broadcasters Association
Wright Broadcasting Systems, Inc.
PanAmSat Corporation
GE American Communications, Inc.
SBC Communications, Inc.
Comsat Corporation
American Radio Relay league, Inc.

Parties Filing Comments on the Initial Regulatory Flexibility Analysis

American Mobile Telecommunications Association, Inc.

Parties Filing Reply Comments on the Notice of Proposed Rule Making

Century Cellunet, Inc.
Arch Communications Group, Inc.
Personal Communications Industry Association
PanAmSat Corporation
GE American Communications, Inc.
Hughes Communications, Inc./DIRECTV, Inc. (Joint)
Columbia Communications Corporation
S&S Communications
Ameritech
Missouri Broadcasters Association

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federal register

Friday
July 11, 1997

Part IV

Environmental Protection Agency

Proposed Modification of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5855–7]

Proposed Modification of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Proposal To Terminate the EPA NPDES Storm Water Baseline Industrial General Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed modifications of the NPDES Storm Water Multi-Sector General Permit for Industrial Activities and Proposal to Terminate the EPA Storm Water Baseline Industrial General Permit.

SUMMARY: The Regional Administrators of EPA Regions I, II, III, IV, VI, IX, and X are today providing notice of a proposed modification of EPA's final NPDES storm water multi-sector general permit (MSGP) which was first issued on September 29, 1995 (60 FR 50804), and amended on February 9, 1996 (61 FR 5248), February 20, 1996 (61 FR 6412), and September 24, 1996 (61 FR 50020). EPA is proposing to modify the MSGP to authorize storm water discharges from previously excluded facilities so that they may be covered by the MSGP after expiration of EPA's baseline general permit. EPA is also proposing the following limited specific changes to the MSGP as published on September 29, 1995 (60 FR 50804): (1) Authorization of mine dewatering discharges from construction sand and gravel, industrial sand and crushed stone mines in non-NPDES areas of EPA Regions II and X; (2) inclusion in Sector A of the MSGP of the effluent limitation guideline in 40 CFR part 429, subpart I for discharges resulting from spray down of lumber and wood products in storage yards (wet decking); (3) clarification that Sectors X and AA authorize discharges from all facilities in major SIC groups 27 and 34 respectively; and (4) addition of new sector (sector AD) to the MSGP to authorize discharges from Phase I facilities which may not fall into one of the sectors of the modified MSGP, and selected Phase II discharges which are designated for permitting in accordance with 40 CFR 122.26(g)(1)(i).

The Regional Administrators are also providing notice that the Agency does not intend to reissue the NPDES storm water baseline industrial general permit which was issued on September 9, 1992 (57 FR 41236) or September 25, 1992 (57 FR 44438), depending on the geographic area of applicability, and propose to terminate this permit (with the limited exceptions discussed in Section I below) upon final modification of the multi-sector permit. As a result, all industrial facilities previously permitted under the baseline permit, except as otherwise noted in this notice, would therefore be required to seek storm water permit coverage under the modified multi-sector permit when issued in final or submit an application for an individual permit.

DATES: Comments on the proposed modifications must be received or postmarked by midnight no later than August 15, 1997. See below for scheduled hearings and public meetings.

ADDRESSES: The index to the administrative record for this permit is available at the appropriate Regional Office or from the EPA Water Docket Office in Washington, DC. The administrative record is stored in two locations. Documents immediately referenced in this modification notice are stored at the EPA Water Docket Office at the address listed below. All other documents which were used to support the original issuance of the multi-sector general permit in 1995 are a supplement to the record for this modification action but are stored at Science Applications International Corporation (SAIC), 1710 Goodridge Drive, McLean, Virginia 22102. These materials include, for example, the permit applications and sampling data provided to EPA by group applicants. The immediate and supplemental record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For appointments to examine any portion of the administrative record, please call the Water Docket Office at (202) 260–3027. Copies of the proposed permit modification may be acquired from the Office of Water Resource Center by dialing (202) 260–7786. A reasonable fee may be charged for copying. Specific record information can also be made available at the appropriate Regional Office upon request.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed permit modifications, contact the appropriate EPA Regional Office. The name, address and phone number of the EPA Regional Storm Water Coordinators are provided in Part III.H of this fact sheet.

PUBLIC COMMENT PERIOD: Public comments are being invited only for those specific modifications which are proposed for the MSGP, as well as EPA's proposal to transfer permit coverage from the baseline permit to the MSGP. EPA stresses that the MSGP overall is not being reconsidered at this time. The public should send an original and three copies of their comments and enclosures (including references) addressing any aspect of this notice to: ATTN: MSGP Modification-Comments, W–97–06, Water Docket, MC–4101, U.S. EPA, Room 2616 Mall, 401 M Street SW., Washington, DC 20460.

To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency requests commenters to type or print in ink any comments. Each comment should cite the page number and, where possible, the section(s) and/or paragraph(s) in the proposed permitting actions to which the comment relates. Commenters should use a separate paragraph for each issue discussed. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to: ow-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–97–06. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in Wordperfect 5.1 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for this proposed permit modification has been established under docket number W–97–06 and includes supporting documentation as well as printed, paper versions of electronic comments. It does not include any information claimed as CBI.

PUBLIC MEETINGS AND HEARINGS: Public meetings and hearings to discuss the proposed permitting actions are scheduled in certain Regions as follows:

EPA Region VI

Date: July 21, 1997.
Time: 1 p.m. (Public Meeting).
Location: Howard Johnson Hotel at Hobby Airport, 7777 Airport Blvd., Houston, Texas 77061.

Date: July 28, 1997.
Time: 1 p.m. (Public Meeting).
Location: Albuquerque Marriott Hotel, 2101 Louisiana Blvd., NE, Albuquerque, New Mexico 87110.

Date: August 11, 1997.
Time: 9 a.m. (Public Meeting), 1 p.m. (Public Hearing).

Location: U.S. EPA Regional Office, 12th Floor State Conference Rooms, 1445 Ross Avenue, Dallas, Texas 75202–2733.

EPA Region IX

Date: August 12, 1997.

Time: 1 p.m. to 5 p.m. (Public Hearing).

Location: Arizona Department of Environmental Quality, Public Meeting Room, 3033 North Central Avenue, Phoenix, Arizona 85012.

Persons wishing to make an oral presentation must restrict themselves to 15 minutes and are encouraged to have written copies of their comments for inclusion in the official record.

State Certification

EPA is providing copies of today's proposed permitting actions to States and Indian Tribes where the proposed actions would be effective. The States and Tribes will review the proposed actions to ensure that they will not result in violation of water quality criteria. EPA will work with the States and Tribes to obtain their certification in accordance with Section 401 of the Clean Water Act. EPA will prepare certifications for Indian lands where there is no approved Tribe or where the approved Tribes have not established water quality standards.

The Coastal Zone Management Act (CZMA) requires that all Federal licensing and permitting actions be reviewed for consistency with each approved State coastal zone management plan. EPA has also initiated this review.

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Explanation of Proposed Permit Modifications

The following discussion is an explanation and rationale for the permitting actions and permit modifications that EPA proposes to take in today's notice. The actual language of the proposed permit modifications follows the signature pages at the end of this discussion.

I. Background

On September 9, 1992 (57 FR 41175) or September 25, 1992 (57 FR 44412), depending on the geographic area involved, EPA issued a final NPDES storm water baseline industrial general permit (not including construction activity) for the following areas:

EPA Region I—for the States of Maine, Massachusetts and New Hampshire; and for Indian Country lands located in Massachusetts, New Hampshire, and Maine.

EPA Region II—for Puerto Rico and Indian Country lands located in New York. (On April 14, 1993, EPA proposed modifications to the baseline general permit issued in Puerto Rico to address changes to the 401 certification conditions requested by the Environmental Quality Board (EQB) of Puerto Rico. On September 24, 1993 the changes became final. These modifications, however, did not alter the original issuance and expiration date of the baseline permit in Puerto Rico.)

EPA Region III—for the District of Columbia and Federal facilities in Delaware.

EPA Region IV—for the State of Florida; and for Indian Country lands located in Florida, Mississippi, and North Carolina.

EPA Region VI—for the States of Louisiana, New Mexico, Oklahoma and Texas; and for Indian Country lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Ute Reservation lands), Oklahoma, and Texas.

EPA Region VIII—for the State of South Dakota; for Indian Country lands located in Colorado, Montana, South Dakota, North Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for Federal facilities in Colorado; and for the Ute Mountain Ute Reservation in Colorado and New Mexico.

EPA Region IX—for the State of Arizona; for the Territories of Johnston Atoll, American Samoa, Guam, and Midway and Wake Islands; and for Indian Country lands located in California, and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho.

EPA Region X—for the States of Alaska and Idaho; for Indian country lands located in Alaska, Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

Most of the above the areas were covered by the September 9, 1992 notice of permit issuance. The September 25, 1992 notice covered only the States of Florida (except for Indian lands which were covered by the September 9, 1992 notice) and Massachusetts, the District of Columbia, Guam and American Samoa, Indian lands in New York and Federal facilities in Delaware. The baseline permit expires on September 9, 1997 or September 25, 1997, depending on the area of applicability, and EPA is not proposing to reissue the baseline permit in those areas where the multi-sector general permit modification will become effective.

(Please note that Part VII.B.—continuation of the Expired General Permit of the 1992 baseline general permit states that the baseline permit expires on October 1, 1997. At this time EPA believes the better reading is that the permits expire on September 9, 1997 and September 25, 1997, as noted above. (Under the Clean Water Act an NPDES permit can only be issued for a maximum of five years.) As described above, the baseline permits became

effective on either September 9, 1992, or September 25, 1992, depending on location, and these are the dates from which the expiration date must be determined. Part VII.B. originally anticipated that the baseline permit would become effective on October 1, 1992, which it did not.)

Today, EPA is proposing to transfer permit coverage from the baseline general permit to the multi-sector general permit (MSGP) which was originally issued on September 29, 1995 (60 FR 50804), and amended on February 9, 1996 (61 FR 5248), February 20, 1996 (61 FR 6412), and September 24, 1996 (61 FR 50020). As a result, most industrial facilities previously permitted under the baseline permit (except for those located in certain excluded areas discussed below) would therefore be required to seek storm water permit coverage under the modified multi-sector permit or an individual permit.

This action is consistent with the long-term permitting strategy for storm water discharges associated with industrial activity which was finalized on April 2, 1992 (57 FR 11394). This strategy includes the following four permitting tiers:

Tier I—Baseline Permitting—One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity.

Tier II—Watershed Permitting—Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.

Tier III—Industry-Specific Permitting—Specific industry categories will be targeted for individual or industry-specific general permits.

Tier IV—Facility-Specific Permitting—A variety of factors will be used to target specific facilities for individual permits.

The long-term permitting strategy begins with baseline permitting as was done in 1992 with the baseline general permit. However, baseline permitting may not provide optimum water quality benefits since the same basic permit conditions are supplied to a wide variety of facilities operating in different geographic area. As such, the long-term strategy also calls for additional permitting over time with more specific permit conditions developed for facilities in Tiers II, III and IV above.

The MSGP is based on information received as a result of the group permit application process described at 40 CFR 122.26(c)(2). EPA received applications from approximately 1,200 groups representing nearly all of the categories of industrial facilities listed in the storm water regulations at 40 CFR 122.26(b)(14). To facilitate permit issuance for the group applications, EPA consolidated the groups into 29 industrial sectors, with subsectors also included in certain sectors as appropriate.

The group applications included information concerning the specific types of operations which are present at the different types of industrial facilities, potential sources of pollutants from the facilities, industry-specific best management practices (BMPs) which are available, and monitoring data from the different types of facilities. Using this information, EPA was able to develop sector-specific BMPs for the MSGP which are better tailored to controlling the discharges of pollutants from the various facilities than the requirements of the baseline permit which only include generic BMP requirements which are applied across a wide variety of industries. In addition, the monitoring requirements of the MSGP are based on actual monitoring data rather than best professional judgment which is largely the case for the baseline permit.

Given the above factors, EPA believes that the MSGP should provide improved water quality benefits as compared to the baseline permit. For this reason, and in accordance with the long-term permitting strategy, EPA is proposing to transfer permit coverage from the baseline permit to the MSGP after expiration of the baseline permit.

As discussed in Section II below, the MSGP omitted coverage for a small number of categories of facilities which were authorized to discharge under the baseline general permit. As such, EPA is proposing to modify the coverage of the MSGP to include these categories in order that they may be eligible for coverage when transferring from the baseline permit to the MSGP. However, if this modification does not become effective prior to the expiration dates of the baseline general permit, the baseline permit can be automatically extended under provisions of the Administrative Procedures Act (APA). Under such an extension, existing facilities with coverage under the baseline permit may retain coverage under the baseline permit until the modified MSGP becomes effective for them. An extension could last anywhere from a number of additional days, weeks, or month. Regardless of the duration of the extension, any facility with coverage under the baseline that wants to retain coverage under the extended baseline permit, must submit a Notice of Intent between August 1, 1997 and two days (48 hours) prior to the date of expiration of the baseline (on either September 9, 1997 or September 25, 1997, depending upon location) to remain covered under the extended baseline permit. Once the final modified multi-sector permit is issued, the extended baseline permit will expire 30 days later (except for facilities located in certain excluded areas as discussed below) and all facilities must than transfer to the multi-sector permit within the time frame allowed under the conditions of the modified multi-sector permit, or submit an individual permit application. For facilities where individual permits are required, baseline permit coverage would be extended until final determinations are made on the individual permit applications.

The excluded areas where the baseline permit will continue to apply include the Island of American Samoa, Federal facilities in Colorado, and Indian Country lands located in Colorado (including the portion of the Ute Mountain Ute Reservation located in New Mexico), Montana, North Dakota, South Dakota (including the portion of the Pine Ridge Reservation located in Nebraska), Utah (except for the Goshute and Navajo Reservation lands (see Region IX)) and Wyoming. Maintaining storm water permit coverage under the baseline permit is necessary since the MSGP does not apply to facilities located in these areas, and the Agency is not proposing to expand the MSGP's scope of coverage to include them through this modification.

There are also a few areas where the baseline permit was issued but not the MSGP, where the baseline permit is proposed nevertheless to be terminated. These areas as Indian Country lands in New York, North Carolina and Mississippi. Only a very small number of permittees exist in these areas and individual permits would be issued as needed.

II. Coverage of Proposed Modified MSGP

The proposed modified multi-sector storm water permit will cover storm water discharges associated with industrial activity in most geographic areas where EPA is the NPDES permitting authority, described earlier in this fact sheet. In accordance with the long-term permitting strategy discussed above, EPA's intent when issuing the baseline general permit was to cover all of the categories of industrial facilities which may discharge storm water associated with industrial activity as defined at 40 CFR 122.26(b)(14). The baseline permit does include certain

generic coverage limitations which are also found in section I.B.3 of the MSGP. These exclusion include discharges such as those which may contribute to a violation of a water quality standard, and discharges which adversely affect endangered species or their critical habitat.

As noted above, group applications were not received from all of the categories of facilities listed at 40 CFR 122.26(b)(14), and certain categories were not included in the MSGP which had been included in the baseline permit. In order to cover all the types of facilities to be transferred from the baseline permit, EPA is proposing to expand the coverage of the MSGP to authorize storm waster discharges from these additional categories of facilities.

The MSGP already authorizes storm water discharges from a wide range of industrial facilities which are summarized below in Table 1:

TABLE 1—SECTOR/SUBSECTORS COVERED BY THE MSGP

Subsector	SIC code	Activity represented
Sector A. Timber Products		
1*	2421	General Sawmills and Planning Mills.
2	2491	Wood Preserving.
3*	2411	Log Storage and Handling.
4*	2426	Hardwood Dimension and Flooring Mills.
	2429	Special Product Sawmills, Not Elsewhere Classified.
	243X** (except 2434)	Millwork, Veneer, Plywood, and Structural Wood.
	244X	Wood Containers.
	245X	Wood Buildings and Mobile Homes.
	2493	Reconstituted Wood Products.
	2499	Wood Products, Not Elsewhere Classified.
Sector B. Paper and Allied Products Manufacturing		
1	261X	Pulp Mills.
2	262X	Paper Mills.
3*	263X	Paperboard Mills.
4	265X	Paperboard Containers and Boxes.
5	267X	Converted Paper and Paperboard Products, Except Containers and Boxes.
Sector C. Chemical and Allied Products Manufacturing		
1*	281X	Industrial Inorganic Chemicals.
2*	282X	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass.
4*	284X	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
5	285X	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
6	286X	Industrial Organic Chemicals.
7*	287X	Agricultural Chemicals.
8	289X	Miscellaneous Chemical Products.
9	3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors.
Sector D. Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers		
1*	295X	Asphalt Paving and Roofing Materials.
2	299X	Miscellaneous Products of Petroleum and Coal.
Sector E. Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing		
1	321X	Flat Glass.
	322X	Glass and Glassware, Pressed or Blown.
	323X	Glass Products Made of Purchased Glass.
2	3241	Hydraulic Cement.
3*	325X	Structural Clay Products.
	326X (except 3261)	Pottery and Related Products.
	3297	Non-Clay Refractories.
4*	327X (except 3274)	Concrete, Gypsum and Plaster Products.
	3295	Minerals and Earth's, Ground, or Otherwise Treated.
Sector F. Primary Metals		
1*	331X	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.
2*	332X	Iron and Steel Foundries.
3	333X	Primary Smelting and Refining of Nonferrous Metals.
4	334X	Secondary Smelting and Refining of Nonferrous Metals.
5*	335X	Rolling, Drawing, and Extruding of Nonferrous Metals.
6*	336X	Nonferrous Foundries (Castings).

TABLE 1—SECTOR/SUBSECTORS COVERED BY THE MSGP—Continued

Subsector	SIC code	Activity represented
7	339X	Miscellaneous Primary Metal Products.
Sector G. Metal Mining (Ore Mining and Dressing)		
1	101X	Iron Ores.
2*	102X	Copper Ores.
3	103X	Lead and Zinc Ores.
4	104X	Gold and Silver Ores.
5	106X	Ferroalloy Ores, Except Vanadium.
6	108X	Metal Mining Services.
7	109X	Miscellaneous Metal Ores.
Sector H. Coal Mines and Coal Mining-Related Facilities		
NA*	12XX	Coal Mines and Coal Mining-Related Facilities.
Sector I. Oil and Gas Extraction		
1*	131X	Crude Petroleum and Natural Gas.
2	132X	Natural Gas Liquids.
3*	138X	Oil and Gas Field Services.
Sector J. Mineral Mining and Dressing		
1*	141X	Dimension Stone.
	142X	Crushed and Broken Stone, Including Rip Rap.
	148X	Nonmetallic Minerals, Except Fuels.
2*	144X	Sand and Gravel.
3	145X	Clay, Ceramic, and Refractory Materials.
4	147X	Chemical and Fertilizer Mineral Mining.
	149X	Miscellaneous Nonmetallic Minerals, Except Fuels.
Sector K. Hazardous Waste Treatment Storage or Disposal Facilities		
NA*	NA	Hazardous Waste Treatment Storage or Disposal.
Sector L. Landfills and Land Application Sites		
NA*	NA	Landfills and Land Application Sites.
Sector M. Automobile Salvage Yards		
NA*	5015	Automobile Salvage Yards.
Sector N. Scrap Recycling Facilities		
NA*	5093	Scrap Recycling Facilities.
Sector O. Steam Electric Generating Facilities		
NA*	NA	Steam Electric Generating Facilities.
Sector P. Land Transportation		
1	40XX	Railroad Transportation.
2	41XX	Local and Highway Passenger Transportation.
3	42XX (except 4221–4225)	Motor Freight Transportation and Warehousing.
4	43XX	United States Postal Service.
5	5171	Petroleum Bulk Stations and Terminals.
Sector Q. Water Transportation		
NA*	44XX	Water Transportation.
Sector R. Ship and Boat Building or Repairing Yards		
NA	373X	Ship and Boat Building or Repairing Yards.
Sector S. Air Transportation Facilities		
NA*	45XX	Air Transportation Facilities.

TABLE 1—SECTOR/SUBSECTORS COVERED BY THE MSGP—Continued

Subsector	SIC code	Activity represented
Sector T. Treatment Works		
NA*	NA	Treatment Works.
Sector U. Food and Kindred Products		
1	201X	Meat Products.
2	202X	Dairy Products.
3	203X	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties.
4*	204X	Grain Mill Products.
5	205X	Bakery Products.
6	206X	Sugar and Confectionery Products.
7*	207X	Fat and Oils.
8	208X	Beverages.
9	209X	Miscellaneous Food Preparations and Kindred Products.
	21XX	Tobacco Products.
Sector V. Textile Mills, Apparel, and Other Fabric Product Manufacturing		
1	22XX	Textile Mill Products.
2	23XX	Apparel and Other Finished Products Made From Fabrics and Similar Materials.
Sector W. Furniture and Fixtures		
NA	25XX	Furniture and Fixtures.
	2434	Wood Kitchen Cabinets.
Sector X. Printing and Publishing		
NA	2732	Book Printing.
	2752	Commercial Printing, Lithographic.
	2754	Commercial Printing, Gravure.
	2759	Commercial Printing, Not Elsewhere Classified.
	2796	Platemaking and Related Services.
Sector Y. Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries		
1*	301X	Tires and Inner Tubes.
	302X	Rubber and Plastics Footwear.
	305X	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
	306X	Fabricated Rubber Products, Not Elsewhere Classified.
2	308X	Miscellaneous Plastics Products.
	393X	Musical Instruments.
	394X	Dolls, Toys, Games and Sporting and Athletic Goods.
	395X	Pens, Pencils, and Other Artists' Materials.
	396X	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal.
	399X	Miscellaneous Manufacturing Industries.
Sector Z. Leather Tanning and Finishing		
NA	311X	Leather Tanning and Finishing.
	NA	Facilities that Make Fertilizer Solely from Leather Scraps and Leather Dust.
Sector AA. Fabricated Metal Products		
1*	3429	Cutlery, Hand Tools, and General Hardware.
	3441	Fabricated Structural Metal Products.
	3442	Metal Doors; Sash, Frames Molding and Trim.
	3443	Fabricated Plate Work (Boiler Shops).
	3444	Sheet Metal Work.
	3451	Screw Machine Products.
	3452	Bolts, Nuts, Screws, Rivets, and Washers.
	3462	Metal Forgings and Stampings.
	3471	Electroplating, Plating, Polishing, Anodizing, and Coloring.
	3494	Valves and Pipe Fittings, Not Elsewhere Classified.
	3496	Miscellaneous Fabricated Wire Products.
	3499	Miscellaneous Fabricated Metal Products.
	391X	Jewelry, Silverware, and Plated Ware.
2*	3479	Coating, Engraving, and Allied Services.

TABLE 1—SECTOR/SUBSECTORS COVERED BY THE MSGP—Continued

Subsector	SIC code	Activity represented
Sector AB. Transportation Equipment, Industrial or Commercial Machinery		
NA	35XX (except 357)	Industrial and Commercial Machinery (except Computer and Office Equipment).
NA	37XX (except 357)	Transportation Equipment (except Ship and Boat Building and Repairing).
Sector AC. Electronic, Electrical, Photographic and Optical Goods		
NA	36XX	Electronic, Electrical.
	38XX	Measuring, Analyzing and Controlling Instrument; Photographic and Optical Goods.
	357	Computer and Office Equipment.

*Denotes subsector with analytical (chemical) monitoring requirements.
**X or XX denotes any number or numbers from 0 to 9 in the SIC code.
NA indicates those industry sectors in which subdivision into subsectors was determined to be not applicable.

EPA has reviewed the categories of additional facilities to be added to the MSGP and also considered the coverage and existing requirements of the various sectors/subsectors already included in the MSGP. Based on this review, EPA believes for each category of facility to be added, a sector/subsector of the MSGP is available with appropriate BMP and monitoring requirements for the new categories. The new categories of facilities, and the sectors/subsectors in which they are proposed to be added, are summarized in Table 2 below. EPA is also proposing to add a new sector AD which will allow coverage for any regulated storm water discharge associated with industrial activity not described by any of the other sectors.

TABLE 2.—PROPOSED PLACEMENT OF ADDITIONAL FACILITIES INTO THE MSGP

SIC code	MSGP sector/subsector
2833–2836—Medicinal chemicals and botanical products; pharmaceutical preparations,; invitro and invivo diagnostic substances; biological products, except diagnostic substances.	Subsector i (Drugs) of Sector C - Chemical and Allied Products Manufacturing (Subsector i added to sector C - no analytical monitoring proposed).
2911—Petroleum refining	Sector I—Oil and Gas Extraction.
3131—Boot and shoe cut stock and findings (leather soles, inner soles, other boot and finished wood heels).	Sector V—Textile Mills, Apparel and other Fabric Products.
3142–3144—house slippers; men's dress, street and work shoes; women's dress, street and work shoes.	Sector V—Textile Mills, Apparel and other Fabric Products.
3149—Footwear, except rubber, include athletic shoes	Sector V—Textile Mills, Apparel and other Fabric Products.
3151—Leather gloves and mittens	Sector V—Textile Mills, Apparel and other Fabric Products.
3161—Luggage and cases	Sector V—Textile Mills, Apparel and other Fabric Products
3171—Women's handbags and purses, leather	Sector V—Textile Mills, Apparel and other Fabric Products
3172—Personal leather goods, e.g., billfolds, key cases, coin purses, checkbooks, etc..	Sector V—Textile Mills, Apparel and other Fabric Products
3199—Leather goods, not elsewhere classified, e.g. saddlery, belts, holsters, leather aprons.	Sector V—Textile Mills, Apparel and other Fabric Products
3231—Glass products, made of purchased glass	Subsector 1 (Glass Products) of Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3261—Vitreous china plumbing fixtures, and china and earthenware fitting and bathroom accessories.	Subsector 3 (Structural clay products, pottery and related products and non-clay refractories) of Sector E - Glass, Clay, Cement, Concrete and Gypsum Product Manufacturing
3274—Lime, agricultural/building lime, dolomite, lime plaster	Subsector 4 (Concrete, Gypsum and Plaster Products) of Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3281—Cut stone and stone products, benches, blackboards, table tops, pedestals, etc..	Subsector 1 (Glass Products) of Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3291—Abrasive products	Subsector 1 (Glass Products) of Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3292—Asbestos products, tiles, building materials, except paper, insulating pipe coverings.	Subsector 1 (Glass Products) of Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3296—Mineral wool, insulation	Subsector 1 (Glass Products) of Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3299—Nonmetallic mineral products, not elsewhere classified, plaster of Paris and paper-mache, etc.	Subsector 1 (Glass Products) of Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
4221–5—Warehousing facilities without trucking services	Subsector 3 (Motor Freight Transportation and Warehousing) of Sector P - Land Transportation
LF—Open dumps	Sector L—Landfills and Land Application Sites

After permittee transfer to the MSGP occurs, the effluent limitations, monitoring requirements and other conditions of the MSGP would apply to facilities previously covered by the baseline general permit as appropriate. The requirements for the new categories of facilities which would be added to the MSGP would be those set forth in

the MSGP for the sectors/subsectors shown above in Table 2 Section III below discusses the differences between the baseline permit and the MSGP and the requirements for transferred facilities.

EPA will maintain NPDES permitting authority over oil and gas exploration and production related industries, and pipeline operations, which are regulated by the Oklahoma Corporation Commission (see 61 FR 65049) Oklahoma received NPDES program authorization for only those discharges covered by the authority of the Oklahoma Department of Environmental Quality (ODEQ)

III. Requirements for Transferred Facilities

In today's document, EPA is making certain clarifications and interpretations regarding how certain conditions of the MSGP will apply to permittees transferring from the baseline general permit. These interpretations and clarifications address: (1) deadlines for SWPPP revisions and implementation for transferring permittees; (2) MSGP sampling schedules and sample types (3) the submittal of sample data (4) applicability of certain limitations; (5) interpretation of the expiration date of the baseline industrial general permit; (6) interpretations of the timeframes for submittal of an NOI for APA extension of the baseline general permit; (7) the applicability of the Endangered Species Act (ESA) and National Historic Preservation Act (NEPA); (8) the applicability of the co-located activities requirements; (9) use of the NOI form, (10) applicability of the new North American Industry Classification System (NAICS) (11) non-storm water discharges; (12) releases of reportable quantities of hazardous substances and oil, and (13) exemptions from analytical monitoring. These clarifications were discussed below.

The requirements of the MSGP, including sector-specific requirements were described in detail in the fact sheet accompanying the original issuance of the MSGP (September 29, 1995, 60 FR 50804) and is incorporated by reference into this fact sheet. All transferring facility operators should acquire a copy of the 1995 multi-sector general permit and study it carefully to ensure full compliance with all terms and conditions. Certain important requirements for facilities, which transfer to the MSGP from the baseline general permit are emphasized below.

A. Notification Requirements

To obtain coverage under the modified MSGP, facilities which were previously authorized to discharge under the baseline permit must submit a Notice of Intent (NOI) not later than 30 days after the effective date of the MSGP modification. During this 30 day time period, if beyond the expiration dates of the baseline permit, permittees would have the opportunity to maintain storm water discharge authorization under the 1992 baseline general permit if each permittee acquires extended coverage in accordance with the provisions of the Administrative Procedures Act.

To maintain extended coverage under the 1992 baseline permit after its expiration dates (September 9, 1997, or September 25, 1997 (depending on geographic location)) a permittee must submit a new NOI requesting extended coverage. This NOI must be postmarked between August 1, 1997 and not later than two days (48 hours) before September 9, 1997, or not later than two days (48 hours) before September 25, 1997 (depending on the geographic location). Once this is done, the baseline permit conditions would continue to apply during the entire time period prior to the applicability of the modified NSGP since the termination date of the APA extended baseline permit would be 30 days after the effective date of the modified MSGP. If a timely NOI for APA extension under the baseline general permit is filed, the requirements of the baseline general permit would continue to apply and coverage under the NSGP is perfected at which time the baseline general is terminated.

It is EPA's intent to have the effective date of the MSGP modification be the date of publication in the **Federal Register** due to the need to provide for permit coverage of new facilities, this will after new facilities seeking coverage under the modification. Existing facilities covered by the baseline general permit, will have 30 days to switch to the modified MSGP. For this reason, the termination of the baseline general permit will be effective 30 days after the date of publication of the MSGP modification, consistent with the APA and normal rules for permit effective dates.

If for some reason the termination date of the baseline general permit would be after the otherwise effective expiration date of the baseline general permit, this approach is still permissible EPA's proposed approach is different from modifying an expired, as EPA is proposing an intention not to reissue the previous baseline general permit. If EPA were issuing an individual permit, EPA could always issue a ''permit denial.'' EPA's proposed approach is the general permit analong to such NPSDES permitting action and may not be taken by EPA in all situations.

Once the multi-sector permit modification becomes effective the permittee must then submit a second NOI, which would be due not later than 30 days after the effective date of the MSGP modification to gain permit coverage under the modified multi-sector permit.

Under today's proposed modification, Part II.A.9 would be added to the MSGP which would include a 30-day period after the effective date of the modified MSGP for submittal of an NOI for facilities transferring to the MSGP. The NOI form currently is use for the MSGP can be found in Addendum B to the MSGP published on September 29, 1995 (60 FR 51265). For convenience, this form is also attached to this proposed modification. This NOI form must also be used to request extended coverage under the baseline permit in accordance with the APA. To extend coverage for the baseline permit, the permittee must check the box labeled ''Baseline Industrial'' in item number I– Permit Selection and submit the NOI to the NOI Center mailing address noted below.

For a permittee currently under the baseline general permit who's currently eligible to voluntarily transfer to the multi-sector permit they may do so prior to expiration of the baseline permit. These permittees must complete and submit a new NOI and check the box labeled ''Multi-Sector'' in item number I– Permit Selection, of the form.

The NOI form for the MSGP differs from the form for the original 1992 baseline permit in that new requirements have been added to ensure compliance the National Historic Preservation Act (NHPA) and Endangered Species Act (ESA). The requirements are described in Section II.A of the September 29, 1995 fact sheet to the multi-sector permit and are repeated below (as applicable to facilities transferring permit coverage) for convenience. These special conditions would not be applicable to facilities requesting extended baseline permit coverage under the APA.

1. Historic Preservation

The NHPA prohibits Federal actions that would affect a property that either is listed on, or is eligible for listing on, the National Historic Register. EPA therefore cannot issue NPDES permits for discharges that will affect historic properties unless measures will be taken such a under a written agreement between the applicant and the State Historic Preservation Officer (SHPO) that outlines all measures to be undertaken by the applicant to mitigate

or prevent adverse effects to the historic property. Storm water discharges may only be covered under the MSGP if the discharges (and BMPs to control pollutants in the discharges) will not affect a historic property that is listed or is eligible to be listed in the National Register, or the operator has obtained and is in compliance with a written agreement signed by the SHPO that outlines measures to be taken to mitigate or prevent adverse effects to the historic site. Provided there are no other factors limiting permit eligibility, MSGP coverage will then be granted 48 hours after the postmark date on the envelope used to mail the NOI.

The NOI form for the MSGP requires a certification by discharges that their discharges and accompanying BMPs will comply with the requirements of the NHPA. Facilities being transferred from the baseline permit which cannot make this certification must submit individual permit applications to the permitting authority in accordance with the time frames set forth above for NOI submittal. Agency officials have notified representatives of the ACHP of this permit modification and the approach being taken.

2. Endangered Species

The ESA of 1973 requires Federal Agencies such as EPA to ensure, in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services), that nay actions authorized, funded, or carried out by the Agency (e.g., EPA issued NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C. 1536(a)(2), 50 CFR 402 and 40 CFR 122.49(c)). EPA completed a formal consultation with the Services on the action of issuing the MSGP on April 5, 1995. The terms and conditions of the MSGP reflect the results of that consultation and would not be changed in any way, or otherwise affected, with this proposed modification. EPA has initiated informal consultation with the Services on this proposed modification. As with all facilities currently permitted under the MSGP, these conditions apply to all facilities to be transferred to the MSGP form the baseline permit.

Under the MSGP, storm water discharges that are likely to adversely affect species identified in Addendum H of the MSGP are not authorized permit coverage under the MSGP. Permittees are also not authorized permit coverage if the BMPs they plan to construct and operate as a part of the required storm water pollution prevention plan (SWPPP) are likely to adversely affect a species identified in Addendum H. Addendum H can be found in the September 29, 1995 notice for the MSGP.

To be eligible for coverage under the MSGP, facilities which are being transferred from the baseline permit must review the list of species and their locations which are contained in Addendum H of the MSGP and which are described in the instructions for completing the application requirements under this permit. If an applicant determines that none of the species identified in the addendum are found in the county in which the facility is located, than there is no likelihood of an adverse effect and they are eligible for permit coverage. Applicants must then certify that their discharges, and the construction of storm water BMPs, are not likely to adversely affect species and will be granted MSGP permit coverage 48 hours after the date of the postmark on the envelope used to mail the NOI form, provided there are no other factors limiting permit eligibility.

If species identified in Addendum H are found to be located in the same county as the facility seeking MSGP coverage, then the applicant must determine whether the species are in proximity to the storm water discharges at the facility, or any BMPs to be constructed to control storm water runoff. A species is in proximity to a storm water discharge when the species is located in the path or down gradient area through which or over which point source storm water flows from industrial activities to the point of discharge into the receiving water, and once discharged into the receiving water, in the immediate vicinity of, or nearby, the discharge point. A species is also in proximity if a species is located in the area of a site where storm water BMPs are planned to be constructed. If an applicant determines there are no species in proximity to the storm water discharge, or the BMPs to be constructed, then there is no likelihood of adversely affecting the species and the applicant is eligible for permit coverage.

If species are in proximity to the storm water discharges or areas of BMP construction, as long as they have been considered as part of a previous ESA authorization of the applicant's activity, and the environmental baseline established in that authorization is unchanged, the applicant may be covered under the permit. The environmental baseline generally includes the past and present impact of all Federal, state and private actions that were occurring at the time the initial NPDES authorization and current ESA section 7 action by EPA was taken. Therefore, if a permit applicant has received previous authorization and nothing has changed or been added to the environmental baseline established in the previous authorization, then coverage under this permit will be provided.

In the absence of such previous authorization, if species identified in Addendum H are in proximity to the discharges or construction areas for BMPs, then the applicant must determine whether there is any likely adverse effect upon the species. This is done by the applicant conducting a further examination or investigation, or an alternative procedure, as described in the instructions in Addendum H of the permit. If the applicant determines that there is no likely adverse effect upon the species, then the applicant is eligible for permit coverage. If the applicant determines that there likely is, or will likely be an adverse effect, then the applicant is not eligible for MSGP coverage.

All dischargers applying for coverage under the MSGP must provide in the application information on the Notice of Intent form: (1) A determination as to whether there are any species identified in Addendum H in proximity to the storm water discharges and BMP construction areas, and (2) a certification that their storm water discharges and the construction of BMPs to control storm water are not likely to adversely affect species identified in Addendum H, or are otherwise eligible for coverage due to a previous authorization under the ESA. Coverage is contingent upon the applicant's providing truthful information concerning certification and abiding by any conditions imposed by the permit.

Dischargers (including those being transferred to the MSGP from the baseline permit) who are not able to determine whether there will be any adverse effect on species, cannot sign the certification to gain coverage under the MSGP and must apply to EPA for an individual NPDES storm water permit. The deadlines for the individual applications are the same as those given above for the NOIs for facilities transferred from the baseline permit. As appropriate, EPA will conduct ESA section 7 consultation when issuing such individual permits.

Regardless of the above conditions, EPA may require that a permittee apply for an individual NPDES permit on the

basis of possible adverse effects on species or critical habitats. Where there are concerns that coverage for a particular discharger is not sufficiently protective of listed species, the Services (as well as any other interested parties) may petition EPA to require that the discharger obtain an individual NPDES permit and conduct an individual section 7 consultation as appropriate.

In addition, the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fish and Wildlife Service (as well as any other interested parties) may petition EPA to require that a permittee obtain an individual NPDES permit. The permittee is also required to make the SWPPP, annual site compliance inspection report, or other information available upon request to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fish and Wildlife Service Regional Director, or his/her authorized representative.

These mechanisms allow for the broadest and most efficient coverage for the permittee while still providing for the most efficient protection of endangered species. They significantly reduce the number of dischargers that must be considered individually and therefore allow the Agency and the Services to focus their resources on those discharges that are indeed likely to adversely affect water-dependent listed species. Straightforward mechanisms such as these allow applicants more immediate access to permit coverage, and eliminates ''permit limbo'' for the greatest number of permitted discharges. At the same time it is more protective of endangered species because it allows both agencies to focus on the real problems, and thus, provide endangered species protection in a more expeditious manner.

3. North American Industry Classification System

EPA recognizes that a new North American Industry Classification System (NAICS) was recently adopted by the Office of Management and Budget (62 FR 17288, April 9, 1997). NAICS replaces the 1987 standard industrial classification (SIC) code system for the collection of statistical economic data. However, the use of the new system for nonstatistical purposes is optional. EPA considered the use of NAICS for the modified multi-sector permit, but elected to retain the 1987 SIC code system since the storm water regulations (40 CFR 122.26(b)(14)) reference the existing system and this system has generally proven to be adequate. EPA will address the new NAICS system in future rulemaking.

B. Special Conditions

The MSGP includes certain special conditions which are similar to corresponding conditions found in the baseline general permit. Except for the requirements for co-located facilities (Section III.B.3 below), permittees which have been operating under the baseline permit should generally be familiar with these requirements already.

1. Non-Storm Water Discharges

Non-storm water discharges are generally not authorized by either the MSGP or the baseline permit. However, both permits do authorize a list of minor non-storm discharges such as fire hydrant flushings, potable water sources, routine external building washdown water, uncontaminated ground water and certain other discharges, provided the discharges are identified in the SWPPP and appropriate pollution prevention measures are included for the discharges. In addition, permittees should also check the sector-specific SWPPP requirements in the MSGP for any additional requirements pertaining to non-storm water requirements.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

The MSGP and the baseline general permit include the same conditions pertaining to releases of reportable quantities of hazardous substances and oil. Such releases must be reported to the National Response Center and the permitting authority, and the SWPPP must be amended to prevent such discharges in the future.

3. Co-Located Industrial Facilities

The MSGP includes a special condition pertaining to co-located facilities which was not included in the baseline general permit (see 60 FR 50813). If an industrial plant includes co-located facilities which fall into more than one sector of the MSGP, then the sector-specific SWPPP and monitoring requirements for both sectors apply to the industrial plant overall. The baseline permit had required that when an industrial plant includes facilities which fall into more than one monitoring category, then the facility overall must comply with the monitoring requirements of both categories. However, the baseline permit did not include sector-specific BMP requirements. In addition, both the baseline permit and the MSGP provide that if monitoring for the same parameter is required for more than one category (or sector), then only one sample analysis is required for that parameter.

C. SWPPP Requirements

Both the baseline general permit and the MSGP require that permittees develop and implement SWPPPs to control the discharge of pollutants in storm water discharges. The SWPPPs required by the baseline permit included various generic BMPs for all categories of facilities covered by the permit. The following is a summary of the requirements:

- Pollution Prevention Team—the SWPPP must identify the individuals who are responsible for development and implementation of the SWPPP.
- Site Evaluation—the SWPPP must include a map of the facility and an assessment of the potential sources of storm water pollution at the facility.
- Generic BMPs including good housekeeping, preventive maintenance, spill prevention and response, employee training, record keeping, non-storm water discharge evaluation, erosion control measures and storm water management measures as appropriate.
- Comprehensive site inspection/compliance evaluation.
- Special requirements for Emergency Planning and Community Right to Know Act (EPCRA) section 313 facilities.

The baseline general permit required that covered facilities develop their SWPPPs no later than April 1, 1993, and come into compliance with their SWPPPs by October 1, 1993. The MSGP (as amended on February 9, 1996, 61 FR 5248) required that covered facilities develop and implement their SWPPPs by September 25, 1996. However, the MSGP also allows up to 3 years after permit finalization (i.e., no later than September 29, 1998) for completion of control measures identified in the SWPPP which involve construction.

The SWPPP which is required by the MSGP includes the same basic BMPs which are found in the baseline general permit and also sector-specific BMPs which are unique to the types of facilities in the various sectors. As such, the SWPPPs which have been developed by facilities which are currently operating under the baseline permit should already include the basic requirements of the MSGP. However, facilities which are transferred to the MSGP from the baseline permit will have to review the sector-specific BMP requirements of the MSGP and, as needed, upgrade their SWPPPs to

comply with the requirements of the MSGP. Appendix A to this fact sheet summarizes the sector-specific requirements of the MSGP, including sector-specific SWPPP requirements, monitoring requirements (with a comparison to baseline permit requirements), numeric effluent limitations and inspection requirements. A more detailed description can be found in Section VIII of the September 29, 1995 fact sheet.

1. Deadline for SWPPP Revision and Implementation for Transferred Facilities

EPA is proposing to add a special deadline to the MSGP for SWPPP revision and implementation for transferred facilities. The proposed modified MSGP would require SWPPP modification and implementation within 90 days after the effective date of the MSGP modification. However, to implement control measures involving construction, transferred facilities would have until September 29, 1998, which is the original deadline for implementing constructed BMPs under the MSGP. During the time period prior to SWPPP upgrade, the existing requirements of the baseline permit would apply and would be incorporated into the MSGP.

2. Special Requirements for Facilities Subject to EPCRA Section 313 Requirements

The MSGP includes the same special BMP requirements for facilities subject to the reporting requirements of section 313 of the EPCRA as are found in the baseline general permit. Both permits require certain additional BMPs for facilities which are required to report for ''water priority chemicals.'' However, the list of such chemicals in the MSGP (Addendum F of the MSGP differs somewhat from the list in the baseline permit due to changes in EPCRA reporting requirements which occurred subsequent to the issuance of the baseline permit. As such, facilities transferring to the MSGP should check the MSGP's list of ''water priorities chemicals'' to determine whether the special EPCRA requirements would apply.

The baseline permit also requires that the SWPPP for facilities subject to EPCRA Section 313 be certified by a professional engineer every 3 years. However, the MSGP only requires certification in accordance with the regular signatory requirements of the permit, i.e., by a responsible corporate official.

The MSGP also provides an exemption from the EPCRA Section 313 requirements for situations where an operator certifies that all water priority chemicals which are handled and/or stored on-site are only in gaseous or non-soluble liquid or solid forms (at atmospheric pressure and temperature). This exemption was not included in the baseline permit, and some facilities may be eligible for this exemption upon transfer from the baseline permit to the MSGP.

D. Monitoring and Reporting Requirements

Both the baseline general permit and the MSGP include analytical storm water monitoring requirements for certain categories of dischargers. However, the requirements differ somewhat with regard to the parameters for which sampling and analysis are required, and the industrial categories which are affected. In addition, the MSGP (Sector M) does not include the provision in the baseline permit for auto recyclers that monitoring only be required for facilities above a certain size. The group application monitoring data did not support such an exemption.

Appendix A to this fact sheet summarizes the monitoring requirements of the MSGP, and the differences from the baseline permit. Additional information can be found in the fact sheets accompanying the issuance of the baseline permit (see 57 FR 41248) and the MSGP (see 60 FR 50822). Facilities which are transferred to the MSGP from the baseline permit will be required to comply with the requirements of the MSGP. The key differences are discussed below.

1. Sampling Schedule

The MSGP differs from the baseline permit with regards to the schedule for analytical monitoring. The baseline permit had required monitoring for certain facilities once or twice each year during the term of the permit. The MSGP, however, requires monitoring quarterly, as appropriate, during years 2 and 4 of the term of the permit. For purposes of this monitoring, year 2 runs from October 1, 1996, through September 30, 1997. For transferred facilities and other dischargers obtaining MSGP coverage after September 30, 1997 (i.e., new dischargers, existing unpermitted dischargers and dischargers transitioning industrial storm water discharge permit coverage from an individually drafted NPDES permit to the MSGP), EPA is proposing that monitoring would only be required in year four (October 1, 1998, through September 30, 1999) since year two will be completed or largely completed prior to any permit transfers.

Also, as discussed below in Section III.E, both the baseline permit and the MSGP authorize certain discharges subject to numeric effluent limitations. Section III.E discusses the limits, and the sampling and reporting requirements.

2. Sample Type

The baseline general permit requires grab and composite sampling for most parameters. As an alternative, the baseline permit also provides that one grab sample may be taken from a holding pond with a retention period greater than 24 hours. The requirements of the MSGP, however, have been simplified in that only a grab sample is required for all sectors except Sector S (air transportation) where grab and composite samples are required. Both the baseline permit and MSGP require that the grab sample be taken within the first 30 minutes of the discharge, unless this is impractical, in which case sampling is required within the first hour of discharge.

3. Quarterly Visual Examination Requirements of the MSGP

The MSGP requires quarterly visual examinations of storm water discharges for all sectors except Sector S, which covers air transportation. A full description of the requirements for the visual examinations is found in Section VI.E.8 of the fact sheet accompanying the issuance of the MSGP. Basically, the MSGP requires that grab samples of storm water discharges be taken and examined visually for the presence of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen or other obvious indicators of storm water pollution. The grab samples must be taken within the first 30 minutes after storm water discharges begin, or as soon as practicable, but not longer than 1 hour after discharges begin. The sampling must be conducted quarterly during the following time periods: January-March, April-June, July-September and October-December of each year. The reports summarizing these quarterly visual storm water examinations must be maintained on-site with the SWPPP.

The baseline general permit did not include requirements for visual examinations and facilities which are transferred to the MSGP will have to comply with these additional sampling requirements. For transferred facilities, these sampling requirements would begin in the first full calendar quarter of coverage of the MSGP. EPA believes that this type of sampling provides an

inexpensive means for permittees to quickly assess the effectiveness of their SWPPPs and make any necessary modifications to address the results of the visual examinations.

4. Exemptions from Analytical Monitoring

Both the MSGP and the baseline general permit include certain provisions for exemptions from analytical monitoring. Both permits provide that facilities need not monitor if they certify that no significant materials or industrial activities are exposed to storm water. For the MSGP, however, the certification is on a pollutant-by-pollutant basis, i.e., if there are no exposed sources of a particular pollutant, then monitoring for that pollutant need not be conducted. For the baseline permit, monitoring must be conducted for the entire suite of pollutants required by the permit if any industrial materials or activities are exposed.

The MSGP also includes an exemption from monitoring (again on a pollutant-by-pollutant basis) in the fourth year of the permit if the monitoring results of the second year are below certain benchmark values which are found below in Table 3:

TABLE 3.—PARAMETER BENCHMARK VALUES

Parameter name	Benchmark level	Source
Biochemical Oxygen Demand(5).	30 mg/L	4
Chemical Oxygen Demand.	120 mg/L	5
Total Suspended Solids.	100 mg/L	7
Oil and Grease	15 mg/L	8
Nitrate+Nitrite Nitrogen.	0.68 mg/L	7
Total Phosphorus	2.0 mg/L	6
pH	6.0–9.0 s.u.	4
Acrylonitrile (c)	7.55 mg/L	2
Aluminum, Total (pH 6.5–9).	0.75 mg/L	1
Ammonia	19 mg/L	1
Antimony, Total	0.636 mg/L	9
Arsenic, Total (c)	0.16854 mg/L	9
Benzene	0.01 mg/L	10
Beryllium, Total (c).	0.13 mg/L	2
Butylbenzyl Phthalate.	3 mg/L	3
Cadmium, Total (H).	0.0159 mg/L	9
Chloride	860 mg/L	1
Copper, Total (H)	0.0636 mg/L	9
Dimethyl Phthalate.	1.0 mg/L	11
Ethylbenzene	3.1 mg/L	3
Fluoranthene	0.042 mg/L	3
Fluoride	1.8 mg/L	6
Iron, Total	1.0 mg/L	12
Lead, Total (H)	0.0816 mg/L	1
Manganese	1.0 mg/L	13
Mercury, Total	0.0024 mg/L	1
Nickel, Total (H)	1.417 mg/L	1
PCB–1016(c)	0.000127 mg/L	9
PCB–1221(c)	0.10 mg/L	10
PCB–1232(c)	0.000318 mg/L	9
PCB–1242(c)	0.00020 mg/L	10
PCB–1248(c)	0.002544 mg/L	9
PCB–1254(c)	0.10 mg/L	10
PCB–1260(c)	0.000477 mg/L	9
Phenols, Total	1.0 mg/L	11
Pyrene (PAH,c)	0.01 mg/L	10
Selenium, Total (*).	0.2385 mg/L	9
Silver, Total (H)	0.0318 mg/L	9
Toluene	10.0 mg/L	3
Trichloroethylene (c).	0.0027 mg/L	3
Zinc, Total (H)	0.117 mg/L	1

Sources:
1. ''EPA Recommended Ambient Water Quality Criteria.'' Acute Aquatic Life Freshwater.
2. ''EPA Recommended Ambient Water Quality Criteria.'' LOEL Acute Freshwater.
3. ''EPA Recommended Ambient Water Quality Criteria.'' Human Health Criteria for Consumption of Water and Organisms.
4. Secondary Treatment Regulations (40 CFR 133).
5. Factor of 4 times BOD5 concentration—North Carolina benchmark.
6. North Carolina storm water benchmark derived from NC Water Quality Standards.
7. National Urban Runoff Program (NURP) median concentration.
8. Median concentration of Storm Water Effluent Limitation Guideline (40 CFR Part 419).
9. Minimum Level (ML) based upon highest Method Detection Limit (MDL) times a factor of 3.18.
10. Laboratory derived Minimum Level (ML).
11. Discharge limitations and compliance data.
12. ''EPA Recommended Ambient Water Quality Criteria.'' Chronic Aquatic Life Freshwater.
13. Colorado—Chronic Aquatic Life Freshwater—Water Quality Criteria.

Notes:
(*) Limit established for oil and gas exploration and production facilities only.
(c) carcinogen.
(H) hardness dependent.
(PAH) Polynuclear Aromatic Hydrocarbon.
Assumptions:
Receiving water temperature—20 C.
Receiving water pH—7.8.
Receiving water hardness CaCO3 100 mg/L.
Receiving water salinity 20 g/kg.
Acute to Chronic Ratio (ACR) 10.

EPA believes that monitoring results below these benchmarks indicate that a generally effective SWPPP is being implemented at a facility, and that further monitoring should not be required. The exemption also provides an incentive for facilities to implement an effective SWPPP, which will reduce pollutant discharges.

The baseline permit requires continued analytical monitoring for certain categories of facilities throughout the term of the permit regardless of sampling results. For facilities which are transferred to the MSGP from the baseline permit, EPA is proposing that monitoring not be required in year 4 for particular pollutants if the average of the two most recent monitoring results conducted for the baseline permit are below the benchmarks. However, if monitoring was not conducted for the appropriate pollutants, then the exemption would not be available. In addition, the exemption would not be available if the industrial activities at a facility have changed such that the most recent monitoring results do not reflect current activities.

It should also be pointed out that the monitoring exemption discussed above based on the absence of exposure at a facility is available in year 4 of the MSGP regardless of past monitoring results. This exemption is available for facilities already covered by the MSGP and those to be transferred to the MSGP from the baseline permit. EPA believes that the exemption provides an incentive for facilities to eliminate exposure of materials and activities to storm water, thereby reducing pollutant discharges. We should also point out, however, that the discharges discussed in Section III E below which are subject to numeric effluent limitations are not eligible for any of the exemptions from monitoring.

5. Reporting Requirements

The baseline permit requires annual reporting of analytical monitoring results for those facilities subject to semi-annual monitoring. Facilities which are subject to annual monitoring must retain the results on-site. The MSGP requires that monitoring results be submitted to the permitting authority at the end of each year in which sampling is required (postmarked by March 31 of the year following the monitoring period, e.g., by March 31, 1998, for the year two monitoring period). The results of the quarterly visual examinations need not be submitted, but must be retained on-site in the SWPPP.

E. Numeric Effluent Limitations

The MSGP includes the same numeric effluent limitations for coal pile runoff as are found in the baseline permit. These limits are: (1) Maximum of 50 mg/L for total suspended solids (TSS) and a pH range of 6–9 standard units. Any untreated overflow from facilities designed, constructed and operated to treat the runoff associated with a 10-year, 24-hour rainfall event is not

subject to the 50 mg/L limit for TSS. Dischargers previously covered under the baseline permit must be compliant with this limitation upon submittal of the NOI for coverage under multi-sector permit.

The baseline general permit had not authorized any storm water discharges subject to numeric ELGs. The MSGP, however, does authorize certain storm water discharges subject to ELGs including the coal pile runoff at steam electric power plants mentioned above, and for the following categories: phosphate fertilizer manufacturing (40 CFR part 418), asphalt paving and roofing emulsions (40 CFR part 443), and cement manufacturing materials storage pile runoff (40 CFR part 411). In addition, the MSGP currently authorizes mine dewatering discharges from construction sand and gravel, industrial sand and crushed stone facilities (40 CFR Part 436) in Region VI and Arizona. (As discussed below in section III.F.1, this proposed modification to the MSGP would expand this mine dewatering authority to also include certain areas in EPA Regions II and X.) These numeric effluent limitations can be found in Appendix A to this fact sheet.

The baseline permit requires semi-annual monitoring (with annual reporting) of coal pile runoff. However, the MSGP only requires annual monitoring for all of the discharges subject to numeric effluent limits (except mine dewatering discharges in Sector J where the monitoring frequency is quarterly). The annual monitoring periods run from October 1 through September 30 of each year, and reporting is required by November 30 of each year. The quarterly monitoring results are due no later than the last day of the month following the collection of the sample.

F. Miscellaneous Proposed Permitting Actions

In today's notice, EPA is also proposing the following limited specific changes to the MSGP as published on September 29, 1995 (60 FR 50804): (1) Authorization of mine dewatering discharges from construction sand and gravel, industrial sand and crushed stone mines in non-NPDES areas of EPA Regions II and X, (2) inclusion in Sector A of the MSGP of the effluent limitation guideline in 40 CFR part 429 Subpart I for discharges resulting from spray down of lumber and wood products in storage yards (wet decking), (3) clarification that Sectors X and AA authorize discharges from all facilities in major SIC groups 27 and 34 respectively, and (4) addition of new sector (sector AD) to the MSGP to authorize discharges from Phase I facilities which may not fall into one of the sectors of the modified MSGP, and selected Phase II discharges which are designated for permitting in accordance with 40 CFR 122.26(g)(1)(i). These are discussed below.

1. Coverage of Mine Dewatering Discharges in EPA Regions II and X

Sector J of the final MSGP authorizes mine dewatering discharges composed entirely of storm water or ground water seepage from construction sand and gravel, industrial sand and crushed stone mines in EPA Region VI states and Arizona. These discharges are subject to effluent limitations guidelines found at 40 CFR part 436, subparts B, C and D. An individual permit or an alternative general permit are currently necessary for the discharges in areas other than Region VI and Arizona. For increased permitting flexibility, EPA is proposing to extend this authorization to facilities in the non-NPDES portions of the Regions II and X. These areas include Puerto Rico in Region II, and in Region X the States of Idaho (except Duck Valley Reservation lands) and Alaska, Federal facilities in the State of Washington, and Federal Indian Reservations in the States of Washington and Oregon (except Fort McDermitt Reservation lands in Oregon). This proposed action will avoid the need to issue individual NPDES permits, or an alternate general permit for discharges in these areas.

2. Discharges Resulting From Spray Down of Lumber and Wood Products in Storage Yards in Sector A

The MSGP authorizes non-storm water discharges resulting from the spray down of lumber and wood products in storage yards (wet decking), provided that no chemical additives are used in the spray and no chemicals are applied to the wood during storage. The MSGP, however, inadvertently omitted the numerical effluent limitation guideline in 40 CFR part 429, Subpart I which applies to such discharges. Accordingly, EPA is proposing to modify the MSGP to incorporate the applicable effluent limitation guideline and appropriate monitoring requirements for clarification.

The numerical limits which apply to these non-storm water discharges are: there shall be no debris discharged and the pH shall range from 6.0 to 9.0. The term ''debris'' refers to woody material such as bark, twigs, branches, heartwood or sapwood that does not pass through a 2.54 cm (1.0 inch) diameter round opening and is present in the discharge from a wet storage facility. EPA is proposing to include these effluent limitations and also include a requirement for annual monitoring of the discharges.

3. Clarification of Coverage in Sectors X and AA of the MSGP

Sectors X and AA of the MSGP contain narrative descriptions of industrial activities, SIC code major group listings and specific four digit SIC codes listings for which coverage would be available. These three methods of describing the types of industry allowed coverage under these two sectors has proven to be confusing and EPA is now proposing to clarify the coverage of these two sectors in this modification.

Sector X was intended by EPA to cover all industry in major SIC group 27 (printing, publishing and allied industries), and sector AA was intended to cover all industry in major SIC group 34. EPA has been accepting NOIs from all facilities within these two major SIC groups, regardless of the four digit SIC code listings, which mistakenly, have been interpreted to be more restrictive. Through this clarification, EPA wants to make it clear that all qualifying industries in these two major groups can make use of the multi-sector storm water general permit.

4. Addition of Sector AD to the MSGP

EPA is also proposing to add another sector to the MSGP (Sector AD) to cover discharges from Phase I facilities which may not fall into one of the sectors of the proposed modified MSGP, and to provide a readily available means for covering many of the Phase II storm water facilities which are designated for permitting prior to the permit application deadline for Phase II sources of August 7, 2001. As discussed earlier, EPA is proposing to modify the MSGP to include all facilities which were authorized under the baseline general permit, but excluded from the MSGP. Although EPA believes that all such previously excluded facilities have been identified and included in the proposed modified MSGP, Sector AD is also proposed to be added to cover any inadvertent omissions.

For Phase II storm water sources, NPDES regulations at 40 CFR 122.26(g)(1)(i) provide that permit applications may be required within 180 days of notice for discharges which contribute to a violation of a water quality standard, or are determined to be significant sources of pollutants. For discharges other than municipal separate storm sewer discharges, 40 CFR 122.26(g)(2) provides that individual permit applications may be required in accordance with 40 CFR 122.26(c)(1), or

an NOI under a general permit may be required. Sector AD would provide a means through which general permit coverage could be obtained for many designated Phase II facilities and as such, would facilitate implementation of the requirements of 40 CFR 122.26(g)(1)(i). However, for cases where Sector AD is inappropriate, individual permits or an alternate general permit would be required. In addition, part I.B.3.f of the MSGP does not authorize coverage for discharges which may be contributing to a violation of a water quality standard. As such, for discharges permitted under 40 CFR 122.26(g)(1)(i), Sector AD could only be used for discharges which are determined to be a significant source of pollutants.

Sector AD is proposed to be added in part XI.AD of the MSGP. The SWPPP requirements for this sector would be the same as in the baseline general permit to ensure flexibility given the broad universe of potential types of facilities which may be covered. Also, no analytical monitoring requirements are proposed for the new sector; however, quarterly visual examinations would be required as in most other sectors. In addition, the requirements common to all sectors of the MSGP which are set forth in parts I–X and XII of the MSGP would also apply to Sector AD.

G. Response to National Mining Association Concerning Sector G of the MSGP

As discussed above, the MSGP authorizes selected storm water discharges subject to ELGs. However, Sector G for the ore mining industry is not among the sectors for which the MSGP authorizes such discharges. In section VIII.G of the fact sheet for the MSGP, EPA provided a table (Table G–4) regarding the applicability of ELGs to storm water discharges from ore mining operations. On October 10, 1995, the National Mining Association challenged the interpretations of the ELGs contained in Table G–4, particularly the broad interpretation of the term ''mine drainage'' to include runoff from waste rock and overburden (*National Mining Ass'n* versus *EPA*, No. 95–3519 (8th Cir.)).

During oral argument in this litigation, EPA indicated that it would prepare another notice regarding the applicability of ELGs to mining operations addressing some of the sources of concern. Because some mining operations may have filed NOIs under the baseline permit based on an interpretation of the ELGs that differed from the Agency interpretation published in the MSGP, in the upcoming EPA notice (which is expected in July, 1997) the Agency may provide additional information regarding the eligibility for coverage under the MSGP when it takes final action. Because this notice may affect continuing authorization from storm water discharges from mining operations transferring from the baseline permit to the MSGP, affected mining operations should consult the upcoming notice regarding the ELGs. After publication of that notice, permittees operating under the baseline permit should call the EPA Regional storm water contacts listed below in section III. H if they have questions concerning the clarification or the eligibility of their discharges under the MSGP.

H. Regional Offices

Notice of Intent Address. Notices of Intent to be authorized to discharge under the MSGP should be sent to:

Storm Water Notice of Intent (4203), USEPA, 401 M Street, S.W., Washington, DC 20460.

For further information, please call the appropriate EPA Regional storm water contacts listed below:

- ME, MA, NH, Federal Indian Reservations in CT, MA, NH, ME, RI, and Federal Facilities in VT, EPA, Region I, Water Management Division, (WCP), Storm Water Staff, JFK Federal Building, Boston, MA 02203, Contact: Thelma Hamilton (617) 565–3569.
- PR, EPA, Region II, Division of Environmental Planning and Protection (2DEPP–WPB) Storm Water Staff, 290 Broadway, New York, NY 10007–1866, Contact: Sergio Bosques (212) 637–3717.
- DC and Federal Facilities in DE, EPA, Region III, Water Protection Division, (3WP13), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107, Contact: Elaine Harbold (215) 566–5744.
- FL and Federal Indian Reservations in FL, EPA, Region IV, Water Management Division, Surface Water Permits Section (SWPFB), 61 Forsyth Street, SW., Atlanta, GA 30303–3104, Contact: Floyd Wellborn (404) 562–9296.
- NM and TX; Federal Indian Reservations in LA, NM (Except Navajo and Ute Mountain Ute Reservation Lands), OK, and TX; and oil and gas exploration and production related industries, and pipeline operations, which are regulated by the Oklahoma Corporation Commission, EPA, Region VI, NPDES Permits Oversight Team (6WQ–PO), 1455 Ross Avenue, Dallas, TX 75202–2733.

For all facilities in NM and facilities on Indian Country lands in OK, contact Brian Burgess (214) 665–7534.

For all facilities in TX and facilities on Indian Country lands in LA and oil/gas/pipeline related industries in OK contact Lowell Seaton (214) 665–8304.

- AZ, Johnston Atoll, Guam, Midway Island, Wake Island, all Federal Indian Reservations in AZ, CA, and NV; those portions of the Duck Valley, Fort McDermitt, and Goshute Reservations that are outside NV; those portions of the Navajo Reservation that are outside AZ, EPA, Region IX, Water Management Division, (WTR–5), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105, Contact: Eugene Bromley (415) 744–1906.
- AK and ID; Federal Indian Reservations in AK, ID (except the Duck Valley Reservation), OR (except the Fort McDermitt Reservation), and WA; and Federal facilities in WA, EPA, Region X, Office of Water (OW–130), Storm Water Staff, 1200 Sixth Avenue, Seattle, WA 98101, Contact: Joe Wallace (206) 553–8399.

IV. Cost Estimates

Cost estimates for the MSGP were included with final fact sheet accompanying the issuance of the MSGP on September 29, 1995 and are not being repeated here. However, costs for the facilities being transferred to the MSGP from the baseline permit are expected to be lower than for those initially applying for coverage under the MSGP since the transferred facilities will already have responded to some of the requirements of the MSGP.

V. Economic Impact (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 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal

mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this modified general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

VI. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), P.L. 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (*See*, e.g., UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law * * *''

As discussed in the RFA section of this notice, NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA has determined that the proposed modification would not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the proposed modification would not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (*See* UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The proposed modification also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the modified permit.

VII. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the proposed permitting action under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of the MSGP have already been approved in previous submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. Under 5 U.S.C. 605(b), no Regulatory Flexibility Analysis is required where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's proposed permitting actions will provide small entities the opportunity to obtain storm water permit coverage through the modified general permit (i.e., the MSGP) resulting from the group application process. The group application information submitted to EPA provided a basis for the development of storm water permit conditions tailored specifically for each industry. The MSGP requirements have been designed to minimize significant administrative and economic impacts on small entities and transfer of permit coverage from the baseline permit to the MSGP should not have a significant impact on industry in general. Moreover, the MSGP reduces a significant burden on regulated sources of applying for individual permits.

IX. Official Signatures

Accordingly, I hereby find pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit modification will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: June 27, 1997.

John Devillars,

Regional Administrator, Region I.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: June 30, 1997.

Jeanne M. Fox,

Regional Administrator, Region 2.

Accordingly, I hereby find pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit modification will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: June 26, 1997.

Stanley Luskowski,

Acting Regional Administrator, Region 3.

Accordingly, I hereby find pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit modification will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: July 1, 1997.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

Accordingly, I hereby find pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit modification will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: July 2, 1997.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Accordingly, I hereby find pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit modification will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: June 27, 1997.

Felicia Marcus,

Regional Administrator, Region 9.

Accordingly, I hereby find pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit modification will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Dated: June 26, 1997.

Charles E. Findley,

Acting Regional Administrator, for Chuck Clarke, Regional Administrator, Region X.

Proposed Permit Modifications

Proposed Modification of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Proposal To Terminate the EPA NPDES Industrial Storm Water Baseline General Permit

For reasons set forth in the preamble, Parts II, IV, VI, and XI.A, C, D, E, I, J, L, P, V, X and AA of the NPDES Storm Water Multi-Sector General Permit (MSGP) are proposed to be modified as described below. A new Part XI.AD is proposed to be added to the MSGP. These proposed modifications and additional requirements will become effective on the date of **Federal Register** publication of the final modifications.

Notice is also being published of EPA's proposal to terminate the NPDES Storm Water Baseline Industrial General Permit 30 days after the effective date of these MSGP modifications where the Baseline Industrial General Permit is extended in accordance with the provisions of the Administrative Procedures Act (APA).

I. NOI Submittal Deadline for Facilities Transferring From the Baseline Industrial General Permit

PART II—[AMENDED]

The deadline for NOI submittal for facilities currently covered by the Baseline Industrial General Permit that are being transferred to the MSGP is established by adding Part II.A.9 to the MSGP. Also added is Part II.A.10 which instructs facilities ineligible to transfer to the MSGP because of Endangered Species Act of National Historic Preservation Act requirements to apply for an individual NPDES permit from the appropriate EPA Regional Office.

Part II. Notification Requirements

A. Deadlines for Notification

* * * * *

9. Facilities Being Transferred to the Multi-Sector General Permit as a Result of the Expiration of the Baseline Industrial General Permit. Facilities currently covered by the Baseline Industrial General Permit for an existing storm water discharge associated with industrial activity that have not already submitted an NOI in accordance with Part II.A.6 to transfer coverage to the Multi-Sector General Permit, shall do so on or before 30 days after the effective date of the modification of the Multi-Sector Permit. The requirements of the Baseline Industrial General Permit will continue to apply to facilities transferring permit coverage during this time period where an extension of the Baseline Industrial General Permit has been acquired by the permittee in accordance with the Administrative Procedures Act (APA).

Where an extension of the Baseline Industrial General Permit has been acquired by a permittee under the provisions of the APA, coverage under such extended permit shall terminate in all applicable areas 30 days after the effective date of the modified MSGP with the exception of facilities subject to Part II.A.10 and for facilities located in the following areas: the Island of American Samoa; federal facilities in Colorado; and Indian Country lands located in the States of Colorado (including the portion of the Ute Mountain Ute Reservation located in New Mexico), Montana, North Dakota, South Dakota (including the portion of the Pine Ridge Reservation located in Nebraska), Utah (except for the Goshute and Navajo Reservation lands (see Region 9)), and Wyoming.

Facilities currently permitted under the Baseline Industrial General Permit in these exempted areas, however, must submit a new NOI postmarked between August 1, 1997 and not later than two days (48 hours) prior to September 9, 1997, or to September 25, 1997 (depending on the geographic location) to extend permit coverage under the Baseline Industrial General Permit.

10. Facilities Ineligible for Transfer to the Multi-Sector General Permit From the Baseline Industrial General Permit. Facilities seeking storm water permit coverage who, after attempting to comply with all eligibility conditions of the permit, are still ineligible for transfer to the Multi-Sector Permit due to Endangered Species Act requirements, National Historic Preservation Act requirements or other requirements of the permit shall submit an application for an individual NPDES permit to the appropriate EPA Regional Office listed in Part I.A of this permit. These individual permit applications shall be submitted no later than 30 days after the effective date of the modified Multi-Sector Permit.

II. Deadlines for Storm Water Pollution Prevention Plan Preparation and Compliance for Facilities Transferring From the Baseline Industrial General Permit

PART IV—[AMENDED]

For facilities transferring to the MSGP as a result of the expiration of the Baseline Industrial General Permit, the deadline for storm water pollution prevention plan preparation and compliance is established in the MSGP by adding Part IV.A.10 as follows:

Part IV. Storm Water Pollution Prevention Plans

A. Deadlines for Plan Preparation and Compliance

* * * * *

10. Facilities Being Transferred From the Baseline Industrial General Permit to the Multi-Sector General Permit. Facilities transferring industrial storm water discharge coverage from the Baseline Industrial General Permit to the Multi-Sector General Permit shall revise and begin implementation of their pollution prevention plans to address requirements under Part XI. no later than 90 days after the date of modification of the Multi-Sector Permit. For cases where construction is necessary to implement measures required by the plan, a schedule shall be included which provides compliance with the plan as expeditiously as practicable but no later than September 29, 1998.

III. Modification of Monitoring and Reporting Requirements

PART VI—[AMENDED]

Part VI is amended by adding Part VI.D and referencing Part VI.D in Parts VI.A and VI.B as shown below. Also, the reporting addresses have been updated in Part VI.B.1.

Part VI. Monitoring and Reporting Requirements

A. Monitoring Requirements

1. Limitations on Monitoring Requirements. a. Except as required by paragraph b., only those facilities with discharges or activities identified in Part VI.C., Part VI.D. and Part XI. are required to conduct sampling of their storm water discharges associated with industrial activity. Monitoring requirements under Parts VI.C., VI.D. and XI. are additive. Facilities with discharges or activities described in more than one monitoring section are subject to all applicable monitoring requirements from each section.

b. The Director can provide written notice to any facility otherwise exempt

from the sampling requirements of Parts VI.C., VI.D. and XI. that it shall conduct discharge sampling for a specific monitoring frequency for specific parameters.

B. Reporting: Where to Submit

1. Location. Signed copies of discharge monitoring reports required under Parts VI.C., VI.D., and XI., individual permit applications, and all other reports required herein, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed below. For each outfall, one Discharge Monitoring Report form must be submitted per storm event sampled.

a. *CT, MA, ME, NH, RI, VT,* EPA, Regional I, Office of Ecosystem Protection, Municipal Assistance Unit, JFK Federal Building, Boston, MA 02203.

b. *PR,* EPA, Region II, Division of Environmental Planning and Protection (2DEPP–WPB), Storm Water Staff, 290 Broadway, New York NY 10007–1866.

c. *DE, DC,* EPA, Region III, Water Protection Division (3WP30), 841 Chestnut Building, Philadelphia, PA 19107.

d. *FL,* EPA, Region IV, Water Management Division, Surface Water Permits Section (SWPFB), 61 Forsyth St., SW, Atlanta, GA 30303–3104.

e. *NM (except see Regional IX for Navajo lands), TX, LA Indian Country lands; OK Indian Country lands; oil an gas exploration and production related industries, and pipeline operations, which are regulated by the Oklahoma Corporation Commission,* EPA, Region VI, Enforcement and Compliance Assurance Division (6EN–WC), EPA SW MSGP, P.O. Box 50625, Dallas, TX 75250.

f. *AZ, CA, NV, Johnson Atoll, Guam, Midway Island, Wake Island, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Fort McDermitt Reservation in OR, the Duck Valley Reservation in NV and ID,* EPA, Region IX, Water Management Division (WTR–5), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105.

g. *AK, ID (except see Region IX for Duck Valley Reservation lands), OR (except see Region IX for Fort McDermitt Reservation lands), WA,* EPA, Region X, Office of Water (OW–130), Storm Water Staff, 1200 Sixth Avenue, Seattle, WA 98101.

* * * * *

D. Monitoring Requirements for Dischargers Transferring Permit Coverage to Multi-Sector General Permit as a Result of Expiration of Baseline Industrial General Permit, and Other Dischargers Obtaining Multi-Sector General Permit Coverage After September 30, 1997.

Facilities transferring permit coverage to the Multi-Sector Permit as a result of the expiration of the Baseline Industrial General Permit, and other dischargers (i.e., new dischargers; existing dischargers formerly unpermitted under either an individually drafted NPDES permit or another NPDES general permit; and, dischargers transitioning industrial storm water discharge permit coverage from an individually drafted NPDES permit to the Multi-Sector Permit) obtaining coverage after September 30, 1997, are required to monitor in accordance with the applicable requirements listed in Part XI. during the 4th year of the Multi-Sector Permit (October 1, 1998–September 30, 1999). Submittal of Discharge Monitoring Report Forms (or certifications) reporting monitoring results are to be postmarked no later than March 31, 2000, and sent to the appropriate EPA Regional Office listed in Part VI.B.

Facilities with discharges subject to numeric effluent limitations that are eligible for coverage (see Part V.B. Part XI.A.4., Part XI.C.5., Part XI.D.4., Part XI.E.4., Part XI.J.4., and Part XI.O.4.) are to monitor and report as required by the permit.

Facilities transitioning from the Baseline Industrial General Permit to the Multi-Sector Permit may use their most recent monitoring data submitted to EPA, on a parameter-by-parameter basis, which was obtained through Baseline Permit monitoring efforts to compare with appropriate monitoring cut-off concentrations in order to meet the Multi-Sector 4th year monitoring requirements mentioned above. This provision is only allowable where such data represents current industrial storm water discharges from a facility. Facilities with discharges subject to the numeric effluent limitations mentioned above cannot use previously generated sampling data and must conduct monitoring for the life of the Multi-Sector Permit for those discharges.

IV. Modification of Types of Facilities Covered by the MSGP; Inclusion of Effluent Limitations for Wet Deck Storage Areas; and, Addition of New Part XI.AD

PART XI—[AMENDED]

1. Parts XI.A.4 and 5 are amended to include technology-based effluent limitations and monitoring requirements for non-storm water discharges from wet deck storage areas as currently authorized under Part XI.A.2.a(2) of the MSGP.

2. Part XI.C.1 is amended by adding subsector I. which authorizes discharges from facilities within SIC Code 283. The existing Part XI.C.2 is deleted which had not authorized discharges from SIC code 283 facilities. The existing Part XI.C.1.i is renumbered as Part XI.C.2. Also, a clarification is added in Part XI.C.1.h that facilities with SIC code 3952 other than those listed are covered by Part XI.Y.

3. Part XI.D.1.e is amended to show the appropriate parts of the permit which provide coverage for storm water discharges from petroleum refineries (Part XI.I.), oil recycling facilities (Part XI.N.), and fat and oil rendering facilities (Part XI.U.).

4. Part XI.E.1 is amended to authorize discharges from manufacturers of the following products: glass products made of purchased glass (SIC code 3231); vitreous china plumbing fixtures, and china and earthenware fittings and bathroom accessories (SIC code 3261), lime (SIC code 3274), stone and stone products (SIC code 3281); abrasive products (SIC code 3291); asbestos products (SIC code 3292), mineral wool (SIC code 3296), and nonmetallic mineral products not elsewhere classified (SIC code 3299). Also the SIC code exclusions in the existing Part XI.E.1 pertaining to SIC code 3274, 3281, 3291,3292 and 3296 are deleted.

Part XI.E.5.a is modified to include the following categories of facilities among those which must conduct analytical monitoring: Manufacturers of vitreous china plumbing fixtures, and china and earthen ware fittings and bathroom accessories (SIC code 3261) and lime (3274). The monitoring requirements for SIC code 3261 facilities are found in Table E–1 and the requirements for SIC code 3274 facilities are found in Table E–2.

5. Part XI.I.1.a. is amended to authorize discharges from facilities in SIC code 2911 (petroleum refineries), except for discharges subject to effluent limitations guidelines.

6. Part XI.J.a(1) is amended to authorize mine dewatering discharges composed entirely of storm water or ground water seepage from construction sand and gravel, industrial sand, and crushed stone mining facilities located in EPA Regions II and X. Similar revisions are made to Part XI.J.4.a (Numeric Effluent Limitations) and Part XI.J.5.b (Monitoring and Reporting Requirements). These discharges are authorized in the current MSGP only for such facilities located in EPA Region VI and for such facilities located in Arizona in EPA Region IX.

7. Parts XI.L.1 and 2 are amended to authorize discharges from open dumps. Similar language changes have been made in Part XI.L.3, 4 and 5 to include applicability to open dumps.

8. Part XI.P.1 is amended to authorize discharges from facilities in SIC code 4221–4225 (public warehousing and storage) that do not have vehicle and equipment maintenance shops and/or equipment cleaning operations but have areas (exclusive of access roads and rail lines) where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products or industrial machinery that are exposed to storm water.

9. Part XI.V.1 is amended to authorize industrial storm water discharges from facilities in SIC code 31 (except 3111), which covers manufacturers of finished leather and artificial leather products.

10. Part XI.X.1 is amended to clarify that this sector authorizes industrial storm water discharges from all SIC 27 facilities.

11. Part XI.AA.1 is amended to clarify that this sector authorizes industrial storm water discharges from all SIC 34 facilities.

12. Part XI.AD. is added to provide an industrial sector for facilities which meet the definition of storm water associated with industrial activity (40 CFR 122.26(b)(14)) and are required by the Director to obtain permit coverage in accordance with 40 CFR 122.26(a)(1)(v) or 40 CFR 122.26(a)(9) and 122.26.(g)(1)(i), and can not be classified in another industrial section of this permit (i.e., Parts XI.A–XI.AC).

The proposed revisions of the MSGP listed above in PART XI (AMENDED), items 1 through 12 would appear in the modified MSGP as shown below:

Part XI. Specific Requirements for Industrial Activities

A. Storm Water Discharges Associated With Industrial Activity From Timber Products Facilities

* * * * *

2. Special Conditions

a. Prohibition of Non-Storm Waster Discharges

* * * * *

(2) In addition to the discharges described in part III.A.2., the following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph XI.A.3.a(3)(g)(I) (Measures and Controls for Non-storm Water Discharges) and the effluent limitations described in paragraph XI.A.4.a: discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage.

* * * * *

4. Numeric Effluent Limitations

In addition to the numeric effluent limitations described in Part V.B, the following limitations shall be met by existing and new dischargers.

a. *Wet Deck Storage Area Runoff.* Non-storm water discharges from areas used for the storage of logs where waters, without chemical additives, in intentionally sprayed or deposited on logs to deter decay or infestation by insects are required to meet the following effluent limitations: pH shall be within the range of 6.0–9.0, and there will be no discharge of debris. Chemicals are not allowed to be applied to the stored logs. The term ''debris'' is defined as woody material such as bark, twigs, branches, heartwood or sapwood that will not pass through a 2.54 cm (1 in.) diameter round opening and is present in the discharge from a wet deck storage area. Dischargers subject to these numeric limitations must be in compliance with these limitations through the duration of permit coverage.

5. Monitoring and Reporting Requirements

* * * * *

d. Compliance Monitoring Requirements. Permittees with log storage area spray water discharges which are covered by this permit must monitor the discharge for the presence of debris and pH at least annually. Facilities must report in accordance with 5.d.(2) below (reporting). In addition to the parameters listed above, the permittee shall provide an estimate of the total volume (in gallons) of the discharge sampled.

(1) Sample Type. A minimum of one grab sample shall be taken. All samples shall be collected from the discharge point of the wet deck storage area and will not be taken during a storm water event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

(2) Reporting. Permittees with log storage area spray water discharges shall submit monitoring results, obtained during the reporting period beginning on the effective date of permit modification, on Discharge Monitoring Report Form(s) postmarked no later than the last day of the following month after the date of final permit modification. Signed copies of Discharge Monitoring Reports shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office indicated in Part VI.B. of this permit. For each outfall, one signed Discharge Monitoring Reports form shall be submitted for each sampling event.

(3) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph (2) (above), permittees with discharges of log storage area spray water through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph 5.d.(2) (above).

C. Storm Water Discharges Associated With Industrial Activity From Chemical and Allied Products Manufacturing Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges associated with industrial activity from a facility engaged in manufacturing the following products and generally described by the SIC code shown:

* * * * *

h. Ink and paints, including china painting enamels, India ink, drawing ink, platinum paints for burnt wood or leather work, paints for china painting, artists' paints and artists' water colors (SIC 3952, limited to those listed; for others in SIC 3952 not listed above, see Part XI.Y).

i. Medicinal chemicals and pharmaceutical products, including the grading grinding and milling of botanicals (including SIC 283).

2. Co-located Industrial Activities. When an industrial facility, described by the above coverage provisions of this section, has industrial activities being conducted on site that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multisector permit are additive for industrial activities being conducted at

the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

* * * * *

D. Storm Water Discharges Associated With Industrial Activity From Asphalt Paving Roofing Materials and Lubricant Manufacturers

1. Discharges Covered Under This Section

* * * * *

e. Limitations on Coverage. The following storm water discharges associated with industrial activity are not authorized by this section of the permit:

(1) Storm water discharges from petroleum refining facilities, including those that manufacture asphalt or asphalt products and that are classified as SIC code 2911 (see Part XI.I),

(2) Storm water discharges from oil recycling facilities (see Part XI.N), and

(3) Storm water discharges associated with fats and oils rendering (see Part XI.U).

* * * * *

E. Storm Water Discharges Associated With Industrial Activity From Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges from the following activities: manufacturing flat, pressed, or blown glass or glass containers; manufacturing hydraulic cement; manufacturing clay product including tile and brick; manufacturing of pottery and porcelain electrical supplies; manufacturing concrete products; manufacturing gypsum products; nonclay refractories; and grinding or otherwise treating minerals and earths. This section generally includes the following types of manufacturing operations: flat glass, (SIC code 3211); glass containers, (SIC code 3221); pressed and blown glass, not elsewhere classified, (SIC code 3229); glass products made of purchased glass (SIC code 3231) where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water, hydraulic cement, (SIC code 3241); brick and structural clay title, (SIC code 3251); ceramic wall and floor tile, (SIC code 3253); clay refractories, (SIC code 3255); structural clay products not elsewhere classified (SIC code 3259); vitreous china plumbing fixtures, and china and earthen ware fittings and bathroom accessories (SIC code 3261); vitreous china table and kitchen articles (SIC code 3262); fine earthenware table and kitchen articles (SIC code 3263); porcelain electrical supplies, (SIC code 3264); pattern products, (SIC code 3269); concrete block and brick, (SIC code 3271); concrete products, except block and brick (SIC code 3272); ready-mix concrete (SIC code 3273); lime (SIC code 3274); gypsum products, (SIC code 3275); cut stone and stone products (SIC code 3281); abrasive products (SIC code 3291); asbestos products (SIC code 3292); minerals and earths, ground or otherwise treated, (SIC code 3295); mineral wool (SIC code 3296); nonclay refractories (SIC code 3297); and nonmetallic mineral products not elsewhere classified (SIC code 3299).

* * * * *

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period October 1, 1996 lasting through to September 30, 1997 and the period beginning October 1, 1998 lasting through September 30, 1999, permittees that manufacture clay products and concrete products and gypsum products must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year during years 2 and 4) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification).

Clay product manufacturers include; brick and structural clay the tile manufacturers (SIC code 3251); ceramic wall and floor tile manufacturers (SIC code 3253), clay refractories (SIC code 3255), manufacturers of structural clay products, not elsewhere classified (SIC code 3259), manufacturers of vitreous china table and kitchen articles (SIC code 3232), manufacturers of vitreous china plumbing fixtures, and china and earthen ware fittings and bathroom accessories (SIC code 3261), manufacturers of fine earthenware table and kitchen articles (SIC code 3263), manufacturers of porcelain electrical supplies (SIC code 3264), pottery products (SIC code 3269), and non-clay refractories (3297). Facilities with these industrial activities must monitor for the pollutant listed in Table E–1.

Concrete and gypsum product manufacturers include concrete block and brick manufacturers (SIC code 3271), concrete products manufacturers (SIC code 3272), ready mix concrete manufacturers (SIC 3273), lime (3274), gypsum product manufacturers (SIC 3275), and manufacturers of mineral and earth products (SIC 3295). Facilities with these industrial activities must monitor for the pollutants listed in Table E–2.

* * * * *

I. Storm Water Discharges Associated With Industrial Activity From Oil and Gas Extraction Facilities and Petroleum Refineries

1. Discharges Covered Under This Section

(a) Coverage. This section of the permit covers all existing point source discharges of storm water associated with industrial activity to waters of the United States from oil and gas facilities listed under Standard Industrial Classification (SIC) Major Group 13 which are required to be permitted under 40 CFR 122.26(c)(1)(iii). These include ''* * * oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden raw material, intermediate products, finished products, by-products or waste products located on the site of such operations.'' Industries in SIC Major Group 13 include the extraction and production of crude oil, natural gas, oil sands and shale; the production of hydrocarbon liquids and natural gas from coal; and associated oil field service, supply and repair industries. This section also covers petroleum refineries listed under SIC code 2911. Contaminated storm water discharges from petroleum refining or drilling operations that are subject to nationally established BAT or BPT guidelines found at 40 CFR 419 and 435 respectively are not included.

Note that areas eligible for coverage at petroleum refineries will be very limited because the term ''contaminated runoff,'' as defined under 40 CFR 419.11, includes ''* * * runoff which comes into contact with any raw material, intermediate product, finished product, by-product or waste product located on petroleum refinery property.'' Areas at petroleum refineries which may be eligible for permit coverage, provided discharges from these areas are not co-mingled with ''contaminated runoff,'' include: vehicle and equipment storage, maintenance and refueling areas. Most areas at refineries will not be eligible for coverage including: raw material, intermediate product, by-product, waste material, chemical, and material storage areas; loading and unloading areas;

transmission pipelines, and, processing areas.

* * * * *

J. Storm Water Discharges Associated With Industrial Activity From Mineral Mining and Processing Facilities

1. Discharges Covered Under This Section

* * * * *

a. Limitations on Coverage. The following storm water discharges associated with industrial activity are not authorized by this permit:

(1) Storm water discharges associated with industrial activity which are subject to an existing effluent limitation guideline (40 CFR part 436), except mine dewatering discharges composed entirely of storm water or ground water seepage from construction sand and gravel, industrial sand, and crushed stone mining facilities located in Regions II, VI, X and Arizona.

* * * * *

4. Numeric Effluent Limitations. Except as discussed in 4a below, there are no additional numeric effluent limitations beyond those described in Part V.B. of this permit.

a. Regions II, VI and X, and Arizona—Construction Sand and Gravel; Industrial Sand, and Crushed Stone Mining, Mine Dewatering. Any discharge composed entirely of storm water or ground water seepage that derives from mine dewatering activities at construction sand and gravel, industrial sand, or crushed stone mining facilities located in Regions II, VI, and X, and in Arizona shall not exceed a maximum concentration for any day of 45 mg/L or an average of daily values for 30 consecutive days of 25 mg/L Total Suspended Solids (TSS) nor the 6.0 to 9.0 range limitation for pH. The discharge from the dewatering activity shall not be diluted with other storm water runoff or flows to meet this limitation. Dischargers subject to these numeric effluent limitations must be in compliance with these limits upon commencement of coverage and for the entire term of this permit.

* * * * *

5. Monitoring and Reporting Requirements

* * * * *

d. Compliance Monitoring Requirements. Permittees with construction sand and gravel, industrial sand, and crushed stone mining facilities in Regions II, VI and X, and Arizona that have mine dewatering discharges composed entirely of storm water or ground water seepage which are covered by this permit must monitor the discharge from the dewatering activity for the presence to TSS and pH at least quarterly (four times per year). Facilities must report in accordance with 5.d(2) below (reporting). In addition to the parameters listed above, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff, the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

* * * * *

L. Storm Water Discharges Associated With Industrial Activity From Landfills, Open Dumps, and Land Application Sites

1. Discharges Covered Under This Section

a. Coverage. The requirements listed under this section shall apply to storm water discharges associated with industrial activity from waste disposal at landfills, land application sites, and open dumps that receive or have received industrial wastes. Open dumps are solid waste disposal units that are not in compliance with Sate/Federal criteria established under RCRA Subtitle D. Landfills, land application sites, and open dumps that have storm water discharges from other types of industrial activities such as vehicle maintenance, truck washing, and/or recycling may be subject to additional requirements specified elsewhere in this permit.

* * * * *

b. Limitations. Storm water discharges associated with industrial activities from inactive landfills, land application sites, and open dumps occurring on Federal lands where an operator cannot be identified are ineligible for coverage under this permit.

1. Special Conditions

(a) Prohibition of Non-storm Water Discharges. In addition to the broad non-storm water prohibition in Part III.A of this permit, the discharge of leachate and vehicle and equipment washwaters to waters of the United States or a municipal separate storm sewer system is not authorized by this permit. Operators with such discharges must obtain coverage under a separate NPDES permit (other than this permit).

2. Storm Water Pollution Prevention Plan Requirements

b. Contents of Plan. The plan shall include, at a minimum, the following items:

* * * * *

(2) Description of Potential Pollutant Sources.

* * * * *

(a) Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations of active and closed landfill cells or trenches, locations of active and closed land application areas, locations where open dumping is occurring or has occurred, locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff, locations of any leachate collection and handling systems, locations where major spills or leaks identified under Part XI.L.3.a(2)(c) (Spills and Leaks) of this permit have occurred, and locations of the following activities where such activities are exposed to precipitation: fueling station, vehicle and equipment maintenance and/or cleaning areas, and waste and other significant material loading/unloading and storage areas. The map must indicate the outfall locations and the types of discharges contained in the drainage areas of the outfalls.

* * * * *

(e) Risk Identification and Summary of Potential Pollutant Sources include a narrative description of potential pollutant sources associated with any of the following, providing they occur at the facility: fertilizer, herbicide and pesticide application; earth/soil moving; waste hauling and loading/unloading; outdoor storage of significant materials including daily, interim and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill, land application, or open dumping areas; uncontrolled leachate flows; failure or leaks from leachate collection and treatment systems; haul roads; and vehicle tracking of sediments. The description shall specifically list any significant potential sources of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

* * * * *

(3) Measures and Controls.

* * * * *

(d) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan.

(i) For operating landfills, open dumps, and land application sites, inspections shall be conducted at least once every 7 days. Qualified personnel shall inspect areas of landfills and open dumps that have not yet been finally stabilized, active land application areas, areas used for storage of materials/wastes that are exposed to precipitation, stabilization and structural control measures, leachate collection and treatment systems, and locations where equipment and waste trucks enter and exit the site. Where landfill areas and open dumps have been finally stabilized and where land application has been completed, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semiarid areas (areas with an average annual rainfall of 10 to 20 inches), inspections will be conducted at least once every month. Erosion and sediment control measures shall be observed to ensure they are operating correctly.

(ii) For inactive landfills, open dumps, and land application sites, inspections shall be conducted at least quarterly, and qualified personnel shall inspect: landfill or open dump stabilization and structural erosion control measures and leachate collection and treatment systems, and all closed land application areas.

(f) Record keeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan. Landfill and open dump operators shall provide for a tracking system for the types of wastes disposed of in each cell or trench of a landfill or open dump. Land application site operators shall track the types and quantities of wastes applied in specific areas.

* * * * *

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

Landfill and open dump operators shall provide for temporary stabilization of materials stockpiled for daily, intermediate, and final cover. Stabilization practices to consider include, but are not limited to, temporary seeding, mulching, and placing geotextiles on the inactive portions of the stockpiles.

Landfill and open dump operators shall provide for temporary stabilization of inactive areas of the landfill or open dump which have an intermediate cover but no final cover.

Landfill and open dump operators shall provide for temporary stabilization of any landfill or open dumping areas which have received a final cover until vegetation has established itself. Land application site operators shall also stabilize areas where waste application has been completed until vegetation has been established.

* * * * *

(4) Comprehensive Site Compliance Evaluation

* * * * *

(a) Areas contributing to a storm water discharge associated with industrial activity at landfill, open dump and land application sites shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan such as spill response equipment, shall be made.

* * * * *

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period October 1, 1996 lasting through to September 30, 1997 and the period beginning October 1, 1998 lasting through September 30, 1999, permittees with landfill/land application/open dump sites must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) during years 2 and 4 of this permit except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Landfill/land application/open dump sites are required to monitor their storm water discharges for the pollutants of concern listed in Table L–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table L–1 below, the permittee shall provide: the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and, an estimate of the total volume (in gallons) of the discharge sampled.

TABLE L–1.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration
Total Suspended Solids (TSS) [1]	100 mg/L
Total Recoverable Iron [2]	1.0 mg/L

[1] Applicable to all landfill, open dump, and land application sites.

[2] Applicable to all facilities except MSWLF areas closed in accordance with 40 CFR 258.60 requirements.

(1) Monitoring Periods. Landfill/land application/open dump sites shall monitor samples collected during the sampling periods of: January through March, April through June, July through September, and October through December for the years specified in paragraph 5a. (above).

* * * * *

b. Reporting. Permittees with landfill/land application/open dump sites shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the monitoring period beginning October 1, 1996 and lasting through September 30, 1997 on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the month of March, 1998. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning October 1, 1998 and lasting through September 30, 1999, shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the month of March 2000. For each outfall, one Discharge Monitoring Report form must be submitted per storm event sampled. Signed copies of Discharge Monitoring Reports, or alternative certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate EPA Regional Office listed

in Part VI.G. of the fact sheet for this permit.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph 1.b. (above) landfill/land application/open dump sites, with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph 1.b. (above).

* * * * *

P. Storm Water Discharges Associated With Industrial Activity From Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, Rail Transportation Facilities, and United States Postal Service Transportation Facilities

1. Discharges Covered Under This Section. Storm water discharges from ground transportation facilities and rail transportation facilities (generally identified by Standard Industrial Classification (SIC) codes 40, 41, 42, 43, and 5171), that have vehicle and equipment maintenance shops (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication) and/or equipment cleaning operations are eligible for coverage under this section. Also covered under this section are facilities found under SIC code 4221–4225 (public warehousing and storage) that do not have vehicle and equipment maintenance shops and/or equipment cleaning operations but have areas (exclusive of access roads and rail lines) where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products or industrial machinery are exposed to storm water.

* * * *

V. Storm Water Discharges Associated With Industrial Activity From Textile Mills, Apparel and Other Fabric Product Manufacturing Facilities, Leather and Leather Product Manufacturing Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges from the following activities: Textile Mill Products, of and regarding facilities and establishments engaged in the preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine, and cordage, the manufacturing of broad woven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn; processes involved in the dyeing and finishing of fibers, yarn fabrics, and knit apparel; the integrated manufacturing of knit apparel and other finished articles of yarn; the manufacturing of felt goods (wool), lace goods, nonwoven fabrics; miscellaneous textiles, and other apparel products (generally described by SIC codes 22 and 23). This section also covers facilities engaged in manufacturing finished leather and artificial leather products (SIC 31, except 3111).

* * * * *

X. Storm Water Discharges Associated With Industrial Activity From Printing and Publishing Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges associated with industrial activity from the following types of facilities: newspaper, periodical, and book publishing or publishing and printing (SIC Codes 2711–2731); book printing (SIC Code 2732); miscellaneous publishing (SIC Code 2741); commercial printing, lithographic (SIC Code 2752); commercial printing, gravure (SIC Code 2754); commercial printing, not elsewhere classified (SIC Code 2759); manifold business forms, greeting cards, bankbooks, looseleaf binders and devices, bookbinding and related work, and typesetting (SIC Codes 2761–2791); and, plate making and related services (SIC Code 2796).

* * * * *

AA. Storm Water Discharges Associated With Industrial Activity From Fabricated Metal Products Industry

1. Discharges Covered Under this Section. The requirements listed under this section shall apply to storm water discharges associated with industrial activity from the fabricated metals industry listed below, except for electrical related industries: fabricated metal products, except machinery and transportation equipment, SIC 34, and jewelry, silverware, and plated ware (SIC Code 391).

* * * * *

AD. Storm Water Discharges Associated With Industrial Activity From Non-Classified Facilities

1. Discharges Covered Under This Section. The requirements of this section shall apply to all storm water discharges associated with industrial activity from facilities that: meet the definition of storm water associated with industrial activity (40 CFR 122.26(b)(14), except for construction activities as defined under 40 CFR 122.26(b)(14)(x)), can not be classified in another industrial sector of this permit (i.e., Parts XI.A–XI.AC), and are not excluded from permit coverage elsewhere in this permit; or, the Director has designated as needing a storm water permit under 40 122.26(g)(l)(i). Should conditions at a facility covered by this section change and industrial activities in another section(s) contained in XI.A–XI.AC apply, the facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to those contained in this section. The monitoring and pollution prevention plan terms and conditions of this permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

2. Special Conditions

a. *Prohibition of Non-storm Water Discharges.* Other than as provided in use this Section III.A. of this permit, non-storm water discharges are not authorized by this permit.

3. Storm Water Pollution Prevention Plan Requirements

a. *Contents of Plan.* The plan shall include, at a minimum, the following items:

(1) *Pollution Prevention Team.* Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant

sources. Each plan shall include, at a minimum:

(a) *Drainage.*

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.AD.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas. The map must indicate the outfall locations and the types of discharges contained in the drainage areas of the outfalls.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) *Inventory of Exposed Materials.* An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) *Spills and Leaks.* A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit. Such list shall be updated as appropriate during the term of the permit.

(d) *Sampling Data.* A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) *Risk Identification and Summary of Potential Pollutant Sources.* A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

(3) *Measures and Controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls.

(a) *Good Housekeeping.* Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner.

(b) *Preventive Maintenance.* A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) *Spill Prevention and Response Procedures.* Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requriemetns, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) *Inspections.* In addition to or as part of the comprehensive site evaluation required under paragraph XI.AD.3.a.(4) of this section, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) *Employee Training.* Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. The pollution prevention plan shall identify periodic dates for such training.

(f) *Recordkeeping and Internal Reporting Procedures.* A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) *Non-storm Water Discharges.*

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage

points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution prevention plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the sit. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.AD.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify. Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such sewers were not feasible. Non-storm water discharges to waters of the United states which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) *Sediment and Erosion Control.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.AD.3.a(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures or equivalent measures may include: vegetative sales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) *Comprehensive Site Compliance Evaluation.* Qualified personnel shall conduct site compliance evaluation once a year. Such evaluation shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the evaluation, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.AD.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.AD.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such evaluation and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the evaluation.

(c) A report summarizing the scope of the inspection, personnel making the evaluation, the date(s) of the evaluation, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.AD.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 3 years from the date of the evaluation. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V.B of this permit.

5. Monitoring and Reporting Requirements

(a) *Monitoring Requirements.*

(1) *Quarterly Visual Examination of Storm Water Quality.* Facilities shall perform and document a visual examination of a storm water discharge associated with industrial activity from each outfall, except discharges exempted below. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: January through March; April through June; July through September; and October through December.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The examination must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm

event. Whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

(c) Visual examination reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(e) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination and retain this documentation onsite with the records of the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(f) When a discharger is unable to conduct visual storm water examinations at an inactive and unstaffed site, the operator of the facility may exercise a waiver of the monitoring requirement as long as the facility remains inactive and unstaffed. The facility must maintain a certification with the pollution prevention plan stating that the site is inactive and unstaffed so that performing visual examinations during a qualifying event is not feasible.

* * * * *

This permit modification shall become effective on (leave blank).

Region I

Signed this ____th day of

David Fierra,

Office of Ecosystem Protection Director.

Areas of coverage	Permit No.
Connecticut Federal Indian Reservations.	CTR05*##F
Maine	MER05*###
Federal Indian Reservations	MER05*##F
Massachusetts	MAR05*###
Federal Indian Reservations	MAR05*##F
New Hampshire	NHR05*###
Federal Indian Reservations	NHR05*##F
Rhode Island Federal Indian Reservations.	RIR05*##F
Vermont Federal Indian Reservations.	VTR05*##F
Vermont Federal Facilities	VTR05*##F

Region II

Signed this ____ th day of

Kathleen C. Callahan,

Division of Environmental Planning and Protection Director.

Areas of coverage	Permit No.
Puerto Rico	PRR05*###
Federal Facilities	PRR05*##F

Region III

Signed this ____ th day of

Alvin R. Morris,

Water Protection Division Director.

Areas of coverage	Permit No.
District of Columbia	DCR05*###
Federal Facilities	DCR05*##F
Delaware Federal Facilities	DER05*##F

Region IV:

Signed this ____ th day of

Robert F. McGhee,

Water Management Division Director.

Areas of coverage	Permit No.
Florida	FLR05*###
Federal Indian Reservations	FLR05*##F

Region VI

Signed this ____ th day of

William B. Hathaway,

Water Quality Protection Division Director.

Areas of coverage	Permit No.
Louisiana Federal Indian Reservations.	LAR05*##F
New Mexico	NMR05*###
Federal Indian Reservations (except Navajo and Ute Mountain Ute Reservation lands).	NMR05*##F
Oklahoma:	
Federal Indian Reservations	OKR05*##F
Oil and gas exploration and production related industries and pipeline industries that are regulated by the Oklahoma Corporation Commission.	OKR05*###
Texas	TXR05*###
Federal Indian Reservations	TXR05*##F

Region IX

Signed this ____th day of

Felicia Marcus,

Regional Administrator.

Areas of coverage	Permit No.
Arizona	AZR05*###
Federal Indian Reservations	AZR05*##F
Federal Facilities	AZR05*##F
California:	
Federal Indian Reservations	CAR05*##F
Guam	GUR05*###
Idaho:	
Duck Valley Reservation	NVR05*##F
Nevada Federal Indian Reservations.	NVR05*##F
New Mexico:	
Navajo Reservation	AZR05*##F
Oregon:	
Fort McDermitt Reservation	NVR05*##F
Utah:	
Goshute Reservation	NVR05*##F
Navajo Reservation	AZR05*##F
Johnston Atoll	JAR05*###
Federal Facilities	JAR05*##F
Midway Island and Wake Island.	MWR05*###
Federal Facilities	MWR05*##F

Region X

Signed this ____th day of

Philip G. Millam,

Office of Water Director.

Areas of coverage	Permit No.
Alaska	AKR05*###
Alaska Federal Indian Reservations.	AKR05*##F
Idaho	IDR05*###
Federal Indian Reservations (except Duck Valley Reservation lands).	IDR05*##F
Federal facilities	IDR05*##F

Areas of coverage	Permit No.
Oregon Federal Indian Reservations (except for Fort McDermitt Reservation lands).	ORR05*##F
Washington Federal Indian Reservations.	WAR05*##F
Washington Federal Facilities	WAR05*##F

BILLING CODE 6560–50–M

THIS FORM REPLACES PREVIOUS FORM 3510-6 (8-92)
See Reverse for Instructions

Form Approved. OMB No. 2040-0086
Approval expires: 8-31-98

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity Under a NPDES General Permit

Submission of this Notice of Intent constitutes notice that the party identified in Section II of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with industrial activity in the State identified in Section III of this form. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Selection: You must indicate the NPDES Storm Water general permit under which you are applying for coverage. Check one of these.

Baseline Industrial ☐ Baseline Construction ☐ Multi-Sector (Group Permit) ☐

II. Facility Operator Information

Name: Phone:

Address: Status of Owner/Operator: ☐

City: State: ZIP Code:

III. Facility/Site Location

Name: Is the facility located on Indian Lands? (Y or N) ☐

Address:

City: State: ZIP Code:

Latitude: Longitude: Quarter: Section: Township: Range:

IV. Site Activity Information

MS4 Operator Name:

Receiving Water Body:

If you are filing as a co-permittee, enter storm water general permit number:

SIC or Designated Activity Code: Primary: 2nd:

Is the facility required to submit monitoring data? (1, 2, 3, or 4) ☐

If You Have Another Existing NPDES Permit, Enter Permit Number:

Multi-Sector Permit Applicants Only:

Based on the instructions provided in Addendum H of the Multi-Sector permit, are species identified in Addendum H in proximity to the storm water discharges to be covered under this permit, or the areas of BMP construction to control those storm water discharges? (Y or N) ☐

Will construction (land disturbing activities) be conducted for storm water controls? (Y or N) ☐

Is applicant subject to and in compliance with a written historic preservation agreement? (Y or N) ☐

V. Additional Information Required for Construction Activities Only

Project Start Date: Completion Date: Estimated Area to be Disturbed (in Acres):

Is the Storm Water Pollution Prevention Plan in compliance with State and/or Local sediment and erosion plans? (Y or N) ☐

VI. Certification: The certification statement in Box 1 applies to all applicants.
The certification statement in Box 2 applies only to facilities applying for the Multi-Sector storm water general permit.

BOX 1

ALL APPLICANTS:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

BOX 2

MULTI-SECTOR STORM WATER GENERAL PERMIT APPLICANTS ONLY:

I certify under penalty of law that I have read and understand the Part I.B. eligibility requirements for coverage under the Multi-Sector storm water general permit, including those requirements relating to the protection of species identified in Addendum H.

To the best of my knowledge, the discharges covered under this permit, and construction of BMPs to control storm water run-off, are not likely to and will not likely adversely affect any species identified in Addendum H of the Multi-Sector storm water general permit or are otherwise eligible for coverage due to previous authorization under the Endangered Species Act.

To the best of my knowledge, I further certify that such discharges, and construction of BMPs to control storm water run-off, do not have an effect on properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage due to a previous agreement under the National Historic Preservation Act.

I understand that continued coverage under the Multi-Sector general permit is contingent upon maintaining eligibility as provided for in Part I.B.

Print Name: Date:

Signature:

EPA Form 3510-6 (8-98)

Instructions - EPA Form 3510-
Notice Of Intent (NOI) For Storm Water Discharges Associated With Industrial Activity To Be Covered Under a NPDES General Permit

Who Must File A Notice Of Intent (NOI) Form

Federal law at 40 CFR Part 122 prohibits point source discharges of storm water associated with industrial activity to a water body(ies) of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. The operator of an industrial activity that has such a storm water discharge must submit a NOI to obtain coverage under a NPDES Storm Water General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a state agency, telephone or write to the Notice of Intent Processing Center at (703) 931-3230.

Where To File NOI Form

NOIs must be sent to the following address: Storm Water Notice of Intent (4203)
401 M Street, S.W.
Washington, DC 20460

Completing The Form

You must type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, call the Notice of Intent Processing Center at (703) 931-3230.

Section I Permit Selection

You **must** indicate the NPDES storm water general permit under which you are applying for coverage. Check one box only. The Baseline Industrial and Baseline Construction permits were issued in September 1992. The Multi-Sector Permit became effective October 1, 1995.

Section II Facility Operator Information

Provide the legal name of the person, firm, public organization, or any other entity tha operates the facility or site described in this application. The name of the operator may or may not be the same as the name of the facility. The responsible party is the legal entity that controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Enter the appropriate letter to indicate the legal status of the operator of the facility: F = Federal; S = State; M = Public (other than federal or state); P = Private.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete street address, including city, state, and ZIP code. Do not provide a P.O. Box number as the street address. **If applying for a Baseline Permit and the facility or site lacks a street address,** indicate the state and either the latitude and longitude of the facility to the nearest 15 seconds or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site. **If applying for the Multi-Sector Permit indicate the complete street address and either the latitude and longitude of the facility to the nearest 15 seconds or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.**

All applicants must indicate whether the facility is located on Indian lands.

Section IV Site Activity Information

If the storm water discharges to a municipal separate storm sewer system (MS4), enter the name of the operator of the MS4 (e.g., municipality name, county name) and the receiving water of the discharge from the MS4. (A MS4 is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by a state, city, town, borough, county, parish, district, association, or other public body which is designed or used for collecting or conveying storm water.)

If the facility discharges storm water directly to receiving water(s), enter the name of the receiving water(s).

If you are filing as a co-permittee and a storm water general permit number has been issued, enter that number in the space provided.

Indicate the monitoring status of the facility. Refer to the permit for information on monitoring requirements. Indicate the monitoring status by entering one of the following:

1 = Not subject to monitoring requirements under the conditions of the permit.
2 = Subject to monitoring requirements and required to submit data.
3 = Subject to monitoring requirements but not required to submit data.
4 = Subject to monitoring requirements but submitting certification for monitoring exclusion.

List, in descending order of significance, up to two 4-digit standard industrial classification (SIC) codes that best describe the principal products or services provided at the facility or site identified in Section III of this application. If you are applying for coverage under the construction general permit, enter "CO" (which represents SIC codes 1500 - 1799).

For industrial activities defined in 40 CFR 122.26(b)(14)(i)-(xi) that do not have SIC codes that accurately describe the principal products produced or services provided, use the following 2-character codes.

HZ = Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA [40 CFR 122.26 (b)(14)(iv)];
LF = Landfills, land application sites, and open dumps that receive or have received any industrial wastes, including those that are subject to regulation under subtitle D of RCRA [40 CFR 122.26 (b)(14)(v)];
SE = Steam electric power generating facilities, including coal handling sites [40 CFR 122.26 (b)(14)(vii)];
TW = Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage [40 CFR 122.26 (b)(14)(ix)]; or,
CO = Construction activities [40 CFR 122.26 (b)(14)(x)].

If there is another NPDES permit presently issued for the facility or site listed in Section III, enter the permit number. If an application for the facility has been submitted but no permit number has been assigned, enter the application number.

Facilities applying for coverage under the Multi-Sector storm water general permit must answer the last three questions in Section IV. Refer to Addendum H of the Multi-Sector general permit for a list of species that are either proposed or listed as threatened or endangered. "BMP" means "Best Management Practices" that are used to control storm water discharges.

Indicate whether any construction will be conducted to install or develop storm water runoff controls.

Section V Additional Information Required for Construction Activities Only

Construction activities must complete Section V in addition to Sections I through IV. Only construction activities need to complete Section V.

Enter the project start date and the estimated completion date for the entire development plan.

Provide an estimate of the total number of acres of the site on which soil will be disturbed (round to the nearest acre).

Indicate whether the storm water pollution prevention plan for the site is in compliance with approved state and/or local sediment and erosion plans, permits, or storm water management plans.

Section VI Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, 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, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 97–18079 Filed 7–10–97; 8:45 am]
BILLING CODE 6560–50–C

federal register

Friday
July 11, 1997

Part V

Department of Housing and Urban Development

24 CFR Part 586

Base Closure Community Redevelopment and Homeless Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 586

[Docket No. FR–3820–F–03]

RIN 2506–AB72

Base Closure Community Redevelopment and Homeless Assistance

AGENCY: Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This rule amends the Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance interim regulation of the Department of Housing and Urban Development published on August 17, 1995. The Department of Defense (DoD) made an identical publication on August 8, 1995. It establishes policies and procedures, developed by both DoD and HUD, to take into account Section 2838 of the National Defense Authorization Act for FY 96 and comments received from the public on the interim rule.

DATES: *Effective:* August 11, 1997.

FOR FURTHER INFORMATION CONTACT: Bill Poythress, Base Redevelopment Team, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, 75 Spring Street, SW, Atlanta, GA 30303–3388, (404) 331–5001, ext. 2546, or, TTY number for hearing and speech-impaired, 1–800–877–8391, or Patrick O'Brien, Base Closure and Community Reinvestment Office, Department of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, (703) 604–5844 (except for the 800 number, these telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION:

Regulatory History and Background Information

DoD and HUD published interim final rules on August 8, 1995, (60 FR 40277) and August 17, 1995, (60 FR 42972), respectively, implementing the Base Closure Community Redevelopment and Homeless Assistance Act, Public Law 103–421, (the ''Redevelopment Act''). Public comments were accepted until October 16, 1995. Comments were received from six different sources including State and local entities and non-profit organizations.

On February 10, 1996, the President signed the National Defense Authorization Act for FY 96 (Public Law 104–106) which, in section 2838, amended the Redevelopment Act. This final rule addresses both the comments received on the interim rules during the public comment period, and the amendments to the Redevelopment Act contained in Public Law 104–106. HUD's final rule is identical to DoD's final rule, published on July 1, 1997 (62 FR 35343). Readers are referred to the preamble of the DoD final rule for a full discussion of the public comments and statutory changes that affect this rule.

Extent of Changes to the Rule

DoD and HUD believe that the process created in the interim final rule requires few changes as evidenced by the limited number of comments received on the rule, the ease with which LRAs have been complying with the requirements set out in the rule, and most importantly, by the content of the applications that have been submitted to HUD for approval. The redevelopment plans contained in the applications that have been submitted have, for the most part, balanced the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities in an appropriate manner. As a result, extensive changes based on public comments have not been made. However, changes stemming from the recent amendments to the Redevelopment Act have been incorporated.

HUD's Review Process

Since the publication of the interim final rule, the area that has raised the most questions has been the process HUD uses to review applications. In accordance with the procedures outlined in the Redevelopment Act, the LRA must submit to HUD and DoD an application which includes a copy of the redevelopment plan and a homeless assistance submission. HUD reviews these applications and notifies DoD and the LRA of its findings. The review criteria used by HUD are outlined in § 586.35(b) of this rule.

To help facilitate the completion of approvable applications, HUD works with LRAs, the affected communities, and representatives of the homeless throughout the development of the redevelopment plan and application. HUD is available to provide assistance to LRAs throughout the planning process. Such assistance includes attending LRA workshops held under § 586.20(c)(3) and meeting with LRAs at their request to discuss specific issues.

HUD must receive the LRA's application no later than 270 days from the deadline for receipt of notices of interest. HUD's headquarters Base Redevelopment Team, and the local HUD Field Office will jointly review the applications and approve or disapprove the LRA's submission. This evaluation includes a completeness review to determine if all the required elements have been submitted by the LRA. The HUD Field Office will contact the LRA regarding any elements that were omitted. Next, HUD evaluates if the redevelopment plan balances the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities in an appropriate manner. Finally, HUD evaluates the legally binding agreements to ensure that the terms and conditions are clearly articulated.

To assist LRAs with completing their applications and to provide more information to interested parties about the Redevelopment Act process, including HUD's review process, HUD has developed a publication called the ''Guidebook on Military Base Reuse and Homeless Assistance.'' To obtain a copy write the Department of Housing and Urban Development, Base Redevelopment Team, 75 Spring Street, SW, Atlanta, GA 30303–3388 or call (404) 331–5001 x2546. The Guidebook is also available on the World Wide Web at: http://www.hud.gov/cpd/milbase.

I. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in §§ 586.20 and 586.30 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and assigned OMB control number 2506–0154. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, local and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Impact on the Environment

For the interim rule published for this part, HUD made a Finding of No Significant Impact with respect to the environment in accordance with HUD regulations in 24 CFR part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The changes made in the text of the final rule do not substantively affect the Finding of No Significant Impact prepared for the interim rule, and it remains applicable. That Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk on children.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule only states the Department's criteria and procedures for reviewing applications submitted by local redevelopment authorities (LRAs).

Federalism Impact

The General Counsel of HUD, as the Designated Official under Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have any impact under the Order. The rule states HUD's review criteria and procedures for reviewing applications submitted by the LRA for balancing homeless, community and economic redevelopment and other development needs of the communities in the vicinity of the installation.

List of Subjects in 24 CFR Part 586

Government property, Homeless, Housing, Intergovernmental relations, Surplus government property.

Accordingly, for the reasons set forth in the preamble, part 586 of title 24 of the Code of Federal Regulations is revised to read as follows:

PART 586—REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE—COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

Sec.
586.1 Purpose.
586.5 Definitions.
586.10 Applicability.
586.15 Waivers and extensions of deadlines.
586.20 Overview of the process.
586.25 HUD's negotiations and consultations with the LRA.
586.30 LRA application.
586.35 HUD's review of the application.
586.40 Adverse determinations.
586.45 Disposal of buildings and property.

Authority: 10 U.S.C. 2687 *note;* 42 U.S.C. 3535(d).

§ 586.1 Purpose.

This part implements the Base Closure Community Redevelopment and Homeless Assistance Act, as amended (10 U.S.C. 2687 *note*), which instituted a new community-based process for addressing the needs of the homeless at base closure and realignment sites. In this process, Local Redevelopment Authorities (LRAs) identify interest from homeless providers in installation property and develop a redevelopment plan for the installation that balances the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities. The Department of Housing and Urban Development (HUD) reviews the LRA's plan to see that an appropriate balance is achieved. This part also implements the process for identifying interest from State and local entities for property under a public benefit transfer. The LRA is responsible for concurrently identifying interest from homeless providers and State and local entities interested in property under a public benefit transfer.

§ 586.5 Definitions.

As used in this part:

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

Communities in the vicinity of the installation. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the LRA for the installation. If no LRA is formed at the local level, and the State is serving in that capacity, the communities in the vicinity of the installation are deemed to be those political jurisdiction(s) (other than the State) in which the installation is located.

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

Continuum of care system.

(1) A comprehensive homeless assistance system that includes:

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

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

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

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

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

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

Day. One calendar day including weekends and holidays.

DoD. Department of Defense.

HHS. Department of Health and Human Services.

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

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

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

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

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

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

HUD. Department of Housing and Urban Development.

Installation. A base, camp, post, station, yard, center, homeport facility for any ship or other activity under the jurisdiction of DoD, including any leased facility, that is approved for closure or realignment under the Base Closure and Realignment Act of 1988 (Pub. L. 100–526), as amended, or the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510), as amended (both at 10 U.S.C. 2687, *note*).

Local redevelopment authority (LRA). Any authority or instrumentality established by State or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

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

OEA. Office of Economic Adjustment, Department of Defense.

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

Public benefit transfer. The transfer of surplus military property for a specified public purpose at up to a 100 percent discount in accordance with 40 U.S.C. 471 *et seq.*, or 49 U.S.C. 47151–47153.

Redevelopment plan. A plan that is agreed to by the LRA with respect to the installation and provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.

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

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

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

Surplus property. Any excess property not required for the needs and the discharge of the responsibilities of all Federal Agencies. Authority to make this determination, after screening with all Federal Agencies, rests with the Military Departments.

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

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

§ 586.10 Applicability.

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

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

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

(2) For installations with Title V applications approved before October 25, 1994 where there is an approved Title V application, but property has not been assigned or otherwise disposed of by the Military Department, the LRA must ensure that its homeless assistance submission provides the Title V applicant with:

(i) The property requested;

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

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

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

(v) A combination of the properties, funding, and services and activities described in § 586.10(b)(2)(i) through (iv).

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

§ 586.15 Waivers and extensions of deadlines.

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

(b) Upon completion of a determination and finding of good cause, and except for deadlines and actions required on the part of DoD, HUD may waive any provision of §§ 586.20 through 586.45 in any particular case, subject only to statutory limitations.

§ 586.20 Overview of the process.

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

(b) *Responsibilities of the Military Department.* The Military Department shall make installation properties available to other DoD components and Federal agencies in accordance with the procedures set out at 32 CFR part 175. The Military Department will keep the LRA informed of other Federal interest in the property during this process. Upon completion of this process the Military Department will notify HUD and either the LRA, or the Chief Executive Officer of the State, as

appropriate, and publish a list of surplus property on the installation that will be available for reuse in the **Federal Register** and a newspaper of general circulation in the communities in the vicinity of the installation.

(c) *Responsibilities of the LRA.* The LRA should begin to conduct outreach efforts with respect to the installation as soon as is practicable after the date of approval of closure/realignment of the installation. The local reuse planning process must begin no later than the date of the Military Department's **Federal Register** publication of available property described at § 586.20(b). For those installations that began the process described in this part prior to August 17, 1995, HUD will, on a case by case basis, determine whether the statutory requirements have been fulfilled and whether any additional requirements listed in this part should be required. Upon the **Federal Register** publication described in § 586.20(b), the LRA shall:

(1) Publish, within 30 days, in a newspaper of general circulation in the communities in the vicinity of the installation, the time period during which the LRA will receive notices of interest from State and local governments, representatives of the homeless, and other interested parties. This publication shall include the name, address, telephone number and the point of contact for the LRA who can provide information on the prescribed form and contents of the notices of interest. The LRA shall notify DoD of the deadline specified for receipt of notices of interest. LRAs are strongly encouraged to make this publication as soon as possible within the permissible 30 day period in order to expedite the closure process.

(i) In addition, the LRA has the option to conduct an informal solicitation of notices of interest from public and non-profit entities interested in obtaining property via a public benefit transfer other than a homeless assistance conveyance under either 40 U.S.C. 471 *et seq.*, or 49 U.S.C. 47151–47153. As part of such a solicitation, the LRA may wish to request that interested entities submit a description of the proposed use to the LRA and the sponsoring Federal agency.

(ii) For all installations selected for closure or realignment prior to 1995 that elected to proceed under Public Law 103–421, the LRA shall accept notices of interest for not less than 30 days.

(iii) For installations selected for closure or realignment in 1995 or thereafter, notices of interest shall be accepted for a minimum of 90 days and not more than 180 days after the LRA's publication under § 586.20(c)(1).

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

(i) The LRA may not release to the public any information regarding the capacity of the representative of the homeless to carry out its program, a description of the organization, or its financial plan for implementing the program, without the consent of the representative of the homeless concerned, unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located. The identity of the representative of the homeless may be disclosed.

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

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

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

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

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

(E) A description of the financial plan, the organization, and the organizational capacity of the representative of the homeless to carry out the program; and

(F) An assessment of the time required to start carrying out the program.

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

(3) In addition to the notice required under § 586.20(c)(1), undertake outreach efforts to representatives of the homeless by contacting local government officials and other persons or entities that may be interested in assisting the homeless within the vicinity of the installation.

(i) The LRA may invite persons and organizations identified on the HUD list of representatives of the homeless and any other representatives of the homeless with which the LRA is familiar, operating in the vicinity of the installation, to the workshop described in § 586.20(c)(3)(ii).

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

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

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

(C) Learn about the LRA's process and schedule for receiving notices of interest as guided by § 586.20(c)(2); and

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

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

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

(5) Develop an application, including the redevelopment plan and homeless assistance submission, explaining how the LRA proposes to address the needs of the homeless. This application shall consider the notices of interest received from State and local governments, representatives of the homeless, and other interested parties. This shall include, but not be limited to, entities eligible for public benefit transfers under either 40 U.S.C. 471 *et seq.*, or 49 U.S.C. 47151–47153; representatives of the homeless; commercial, industrial, and residential development interests; and other interests. From the deadline date for receipt of notices of interest described at § 586.20(c)(1), the LRA shall have 270 days to complete and submit the LRA application to the appropriate Military Department and HUD. The application requirements are described at § 586.30.

(6) Make the draft application available to the public for review and comment periodically during the process of developing the application. The LRA must conduct at least one public hearing on the application prior to its submission to HUD and the appropriate Military Department. A summary of the public comments received during the process of developing the application shall be

included in the application when it is submitted.

(d) *Public benefit transfer screening.* The LRA should, while conducting its outreach efforts, work with the Federal agencies that sponsor public benefit transfers under either 40 U.S.C. 471 *et seq.* or 49 U.S.C. 47151–47153. Those agencies can provide a list of parties in the vicinity of the installation that might be interested in and eligible for public benefit transfers. The LRA should make a reasonable effort to inform such parties of the availability of the property and incorporate their interests within the planning process. Actual recipients of property are to be determined by the sponsoring Federal agency. The Military Departments shall notify sponsoring Federal agencies about property that is available based on the community redevelopment plan and keep the LRA apprised of any expressions of interest. Such expressions of interest are not required to be incorporated into the redevelopment plan, but must be considered.

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

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

§ 586.30 LRA application.

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

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

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

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

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

(A) Political jurisdictions that are required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table (Table 1), Priority Homeless Needs Assessment Table (Table 2), and narrative description thereof from that Consolidated Plan, including the inventory of facilities and services that assist the homeless in the jurisdiction.

(B) Political jurisdictions that are part of an urban county that is required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table (Table 1), Priority Homeless Needs Assessment Table (Table 2), and narrative description thereof from that Consolidated Plan, including the inventory of facilities and services that assist the homeless in the jurisdiction. In addition, the LRA shall explain what portion of the homeless population and subpopulations described in the Consolidated Plan are attributable to the political jurisdiction it represents.

(C) A political jurisdiction not described by § 586.30(b)(1)(ii)(A) or § 586.30(b)(1)(ii)(B) shall submit a narrative description of what it perceives to be the homeless population within the jurisdiction and a brief inventory of the facilities and services that assist homeless persons and families within the jurisdiction. LRAs that represent these jurisdictions are not required to conduct surveys of the homeless population.

(2) Notices of interest proposing assistance to homeless persons and/or families.

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

(ii) A copy of each notice of interest from representatives of the homeless for use of buildings and property and a description of the manner in which the LRA's application addresses the need expressed in each notice of interest. If the LRA determines that a particular notice of interest should not be awarded property, an explanation of why the LRA determined not to support that notice of interest, the reasons for which may include the impact of the program contained in the notice of interest on the community as described in § 586.30(b)(2)(iii); and

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

(3) Legally binding agreements for buildings, property, funding, and/or services.

(i) A copy of the legally binding agreements that the LRA proposes to enter into with the representative(s) of the homeless selected by the LRA to implement homeless programs that fill gaps in the existing continuum of care. The legally binding agreements shall provide for a process for negotiating alternative arrangements in the event that an environmental analysis conducted under § 586.45(b) indicates that any property identified for transfer in the agreement is not suitable for the intended purpose. Where the balance determined in accordance with § 586.30(b)(4) provides for the use of installation property as a homeless assistance facility, legally binding agreements must provide for the reversion or transfer, either to the LRA or to another entity or entities, of the buildings and property in the event they cease to be used for the homeless. In cases where the balance proposed by the LRA does not include the use of buildings or property on the installation, the legally binding agreements need not be tied to the use of specific real property and need not include a reverter clause. Legally binding agreements shall be accompanied by a legal opinion of the chief legal advisor of the LRA or political jurisdiction or jurisdictions which will be executing the legally binding agreements that the legally binding agreements, when executed, will constitute legal, valid, binding, and enforceable obligations on the parties thereto;

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

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

(4) An assessment of the balance with economic and other development needs.

(i) An assessment of the manner in which the application balances the expressed needs of the homeless and the

needs of the communities comprising the LRA for economic redevelopment and other development; and

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

(5) A description of the outreach undertaken by the LRA. The LRA shall explain how the outreach requirements described at § 586.20(c)(1) and § 586.20(c)(3) have been fulfilled. This explanation shall include a list of the representatives of the homeless the LRA contacted during the outreach process.

(c) *Public comments.* The LRA application shall include the materials described at § 586.20(c)(6). These materials shall be prefaced with an overview of the citizen participation process observed in preparing the application.

§ 586.35 HUD's review of the application.

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

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

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

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

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

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

(3) *Legally binding agreements.* Specifies the manner in which the buildings, property, funding, and/or services on or off the installation will be made available for homeless assistance purposes. HUD will review each legally binding agreement to verify that:

(i) They include all the documents legally required to complete the transactions necessary to realize the homeless use(s) described in the application;

(ii) They include all appropriate terms and conditions;

(iii) They address the full range of contingencies including those described at § 586.30(b)(3)(i);

(iv) They stipulate that the buildings, property, funding, and/or services will be made available to the representatives of the homeless in a timely fashion; and

(v) They are accompanied by a legal opinion of the chief legal advisor of the LRA or political jurisdiction or jurisdictions which will be executing the legally binding agreements that the legally binding agreements will, when executed, constitute legal, valid, binding, and enforceable obligations on the parties thereto.

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

(5) *Outreach.* Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation and whether the outreach requirements described at § 586.20(c)(1) and § 586.20(c)(3) have been fulfilled by the LRA.

(c) *Notice of determination.* (1) HUD shall, no later than the 60th day after its receipt of the application, unless such deadline is extended pursuant to § 586.15(a), send written notification both to DoD and the LRA of its preliminary determination that the application meets or fails to meet the requirements of § 586.35(b). If the application fails to meet the requirements, HUD will send the LRA:

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

(ii) An explanation of the determination; and

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

(2) In the event that no application is submitted and no extension is requested as of the deadline specified in § 586.20(c)(5), and the State does not accept within 30 days a DoD written request to become recognized as the LRA, the absence of such application will trigger an adverse determination by HUD effective on the date of the lapsed deadline. Under these conditions, HUD will follow the process described at § 586.40.

(d) *Opportunity to cure.* (1) The LRA shall have 90 days from its receipt of the notice of preliminary determination under § 586.35(c)(1) within which to submit to HUD and DoD a revised application which addresses the determinations listed in the notice. Failure to submit a revised application shall result in a final determination, effective 90 days from the LRA's receipt of the preliminary determination, that the redevelopment plan fails to meet the requirements of § 586.35(b).

(2) HUD shall, within 30 days of its receipt of the LRA's resubmission, send written notification of its final determination of whether the application meets the requirements of § 586.35(b) to both DOD and the LRA.

§ 586.40 Adverse determinations.

(a) *Review and consultation.* If the resubmission fails to meet the requirements of § 586.35(b), or if no resubmission is received, HUD will review the original application, including the notices of interest submitted by representatives of the homeless. In addition, in such instances or when no original application has been submitted, HUD:

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

(2) May consult with the applicable Military Department regarding the suitability of the buildings and property at the installation for use to assist the homeless; and

(3) May consult with representatives of the homeless and other parties as necessary.

(b) *Notice of decision.* (1) Within 90 days of receipt of an LRA's revised application which HUD determines does not meet the requirements of § 586.35(b), HUD shall, based upon its reviews and consultations under § 586.40(a):

(i) Notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless; and

(ii) Notify DoD and the LRA of the extent to which the revised

redevelopment plan meets the criteria set forth in § 586.35(b).

(2) In the event that an LRA does not submit a revised redevelopment plan under § 586.35(d), HUD shall, based upon its reviews and consultations under § 586.40(a), notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, either

(i) Within 190 days after HUD sends its notice of preliminary adverse determination under § 586.35(c)(1), if an LRA has not submitted a revised redevelopment plan; or

(ii) Within 390 days after the Military Department's **Federal Register** publication of available property under § 586.20(b), if no redevelopment plan has been received and no extension has been approved.

§ 586.45 Disposal of buildings and property.

(a) *Public benefit transfer screening.* Not later than the LRA's submission of its redevelopment plan to DoD and HUD, the Military Department will conduct an official public benefit transfer screening in accordance with the Federal Property Management Regulations (41 CFR part 101–47.303–2) based upon the uses identified in the redevelopment plan. Federal sponsoring agencies shall notify eligible applicants that any request for property must be consistent with the uses identified in the redevelopment plan. At the request of the LRA, the Military Department may conduct the official State and local public benefit screening at any time after the publication of available property described at § 586.20(b).

(b) *Environmental analysis.* Prior to disposal of any real property, the Military Department shall, consistent with NEPA and section 2905 of the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. 2687 *note*), complete an environmental impact analysis of all reasonable disposal alternatives. The Military Department shall consult with the LRA throughout the environmental impact analysis process to ensure both that the LRA is provided the most current environmental information available concerning the installation, and that the Military Department receives the most current information available concerning the LRA's redevelopment plans for the installation.

(c) *Disposal.* Upon receipt of a notice of approval of an application from HUD under § 586.35(c)(1) or § 586.35(d)(2), DoD shall dispose of buildings and property in accordance with the record of decision or other decision document prepared under § 586.45(b). Disposal of buildings and property to be used as homeless assistance facilities shall be to either the LRA or directly to the representative(s) of the homeless and shall be without consideration. Upon receipt of a notice from HUD under § 586.40(b), DoD will dispose of the buildings and property at the installation in consultation with HUD and the LRA.

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

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

Dated: June 27, 1997.

Jacquie M. Lawing,

Acting Assistant Secretary for Community Planning and Development.

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