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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–134; Special Conditions No. 25–ANM–131]

Special Conditions: Empresa Brasileira de Aeronautica S.A., (EMBRAER) Model EMB–145 Airplane; Thrust Reverser Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Empresa Brasileira de Aeronautica S.A., (EMBRAER) Model EMB–145 airplane. This airplane will have a novel or unusual design feature associated with thrust reversers as optional equipment. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR).

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Colin Fender, FAA, Flight Test and Systems Branch of the Transport Standards Staff, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone 425–227–2191.

SUPPLEMENTARY INFORMATION:

Background

Embraer first made application for a U.S. Type Certificate for the Model EMB–145 on August 30, 1989, to the FAA Atlanta Aircraft Certification Office through the Brazilian Centro Técnico Aeroespacial (CTA). On June 2, 1992, Embraer filed for an extension of that application. The EMB–145 is a 50 passenger, pressurized, low-winged, ''T'' tailed, transport category airplane with retractable tricycle type landing gear. The airplane is powered by two Allison Model AE3007A high bypass ratio turbofan engines mounted on the aft fuselage, which are controlled by a Full Authority Digital Engine Control (FADEC). The cockpit will include a complete set of Electronic Flight Instrumentation and Engine Indication and Crew Alerting Systems (EFIS and EICAS).

Embraer has proposed to certificate and market the EMB–145 with thrust reversers as optional equipment. Thrust reversers have been shown to play a significant role in reducing accelerate-stop distances on wet and contaminated runways and have contributed to the transport category airplane fleet's accelerate-stop safety record.

The establishment of the transport category airplane safety record, with regard to accelerate-stop and landing overruns, is tied to the availability of auxiliary braking means that are independent of wheel-brake, tire, and runway surface interaction. On early transport category airplanes with propellers driven by reciprocating engines or turbine powerplants, auxiliary braking was provided by commanding the propellers to a reverse pitch position, causing a deceleration, rather than acceleration, of air through the propeller disk. Due to the large diameter of the propellers, this was quite an effective braking means. Though these early transports did not have the high operating speeds of today's jet fleet, they also did not benefit from the sophisticated wheel-brake antiskid systems available today. As runway friction conditions degrade to those associated with a surface covered by ice, even today's antiskid systems will provide little in the way of stopping force. As runway friction conditions degrade, the braking contribution of reverse pitch systems increases considerably.

As the first generation turbojet-powered transport category airplanes went into service in the latter half of the 1950s, thrust reverser systems were developed to provide this same type of auxiliary braking as reverse pitch propellers by reversing the engine exhaust flow. As powerplant technology evolved and low bypass ratio turbofan engines entered commercial service in the early 1960's, thrust reversers were developed to reverse both the fan and core exhaust flows, thus maintaining the availability of auxiliary braking. With the advent of large high bypass ratio turbofan engines in the late 1960s, many thrust reverser systems reversed the fan exhaust flow only, which provided a substantial auxiliary braking effect due to the majority of the total inlet flow going through the fan section. Numerous test programs, by both research organizations and aerospace manufacturers, have substantiated the increased stopping benefit provided by thrust reversers as runway surface friction conditions deteriorate.

The vast majority of jet-powered transport category airplanes in service have been of the large, passenger carrying variety. Research shows that with the exception of a very limited number of airplane types, some of which had considerably slower takeoff and landing speeds than their counterparts, all these large, passenger carrying, turbojet/turbofan-powered transports included thrust reverser systems as part of their basic design (i.e., as standard equipment). The last such aircraft certified without thrust reversers as part of the basic design was the British Aerospace 146 (BAe 146) in 1983. When the sheer numerical majority of these large transports is combined with their high-use operating environment, often requiring takeoffs and landings to be made on slippery runway surfaces, it is clear that thrust reversers must have played a role in establishing their excellent safety record.

It should also be noted that as the number of small transport category airplanes in service has increased, notably corporate jets and regional airliners, there has been an increasing tendency for these airplanes to be equipped with some type of thrust reversing system. Nearly all the regional airliners are turbopropeller-powered with reverse pitch capability, and an increasing number of corporate jets include thrust reversers as standard equipment.

The accelerate-stop and landing distances presented in the FAA approved Airplane Flight Manual (AFM) are determined from measurements of the various influential parameters taken during certification flight tests. These flight tests are

accomplished by FAA test pilots (or manufacturers' Designated Engineering Representative (DER) test pilots) under controlled conditions on dry runways. In the operational environment, even on dry runways, the ability of an airplane to match the AFM accelerate-stop performance is based on many factors, including the correct and timely execution of procedures by the pilot and maximum stopping performance being available from the wheel braking system. As runway surface conditions degrade to wet, contaminated, or icy, the accompanying reduction in available friction will result in an increase in stopping distances, causing the wet runway accelerate-stop distances to exceed the dry runway accelerate-stop distances published in the AFM. Obviously, if the takeoff is runway length-limited as determined from the dry runway AFM accelerate-stop distances, and the runway surface is anything but dry, the probability for an overrun accident is increased significantly. (This increased risk factor is acknowledged for the landing scenario in part 121, the operating rules for air carriers and commercial operators of large aircraft, which requires an increase in the landing field length required for landings on wet runways.)

In the operating conditions described above, any additional braking means, such as thrust reversers, will be beneficial. This is particularly true since the braking contribution of reverse thrust increases as runway surface friction decreases. This inverse relationship between reverse thrust braking contribution and runway surface friction is further enhanced as ground speed increases.

Since 1990 the Transport Airplane Directorate (TAD) has been developing new part 25 accelerate-stop criteria that includes accountability for the degradation in stopping force due to wet runway surfaces. Test results obtained from several research organizations showed a fixed stopping distance factor of two, relative to dry runway stopping distances, to be representative of what could be expected in normal operations. The proposed accelerate-stop standards, published as Notice of Proposed Rulemaking (NPRM) 93–8, assumed a similar degradation in braking by prescribing a wet/dry braking coefficient of friction ratio of one-half (i.e., μ WET = 0.5 μ DRY) as the primary basis for calculating wet runway accelerate-stop distances. An integral part of the proposed wet runway accelerate-stop rule is credit for the amount of reverse thrust available (provided certain reliability and controllability criteria are met).

The accelerate-stop certification basis for the EMB–145 is § 25.109, as amended by Amendment 25–42, effective March 1, 1978. Thrust reversing systems are not required by the FAR and, when installed, no performance credit is granted for their availability in the dry runway accelerate-stop distances required by § 25.109, as amended by Amendment 25–42, effective March 1, 1978. However, the vast majority of transport category airplanes in service at the time the regulatory changes of Amendment 25–42 were promulgated were equipped with thrust reversers. Consequently, the certification of transport category airplanes intended to be operated in Part 121-type commercial service without thrust reversers was not envisaged at the time Amendment 25–42 was promulgated.

In consideration of the intended operation of the EMB–145, the FAA considers the non-inclusion of thrust reversers into the basic airplane to be an unusual design feature that is not adequately addressed by the airworthiness regulations of part 25, and therefore proposes to apply special conditions to the EMB–145 in accordance with § 21.16. In accordance with the preamble material to Amendment 25–54 (page 274), addressing the definition of a novel or unusual design feature (as used in § 21.16), the non-inclusion of thrust reversers in the basic EMB–145 design can be considered a ''novel or unusual design feature'' since such designs were not envisaged at the time the current airworthiness standard (i.e., § 25.109, Amendment 25–42) was developed. This application requires the development of requirements not fully addressed by part 25 nor by any published FAA guidance.

These special conditions provide all the necessary requirements to determine acceptability of the EMB–145 without the incorporation of thrust reversers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Empresa Brasileira de Aeronautica S.A. must show that the Model EMB–145 meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–84.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–145 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must make a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model EMB–145 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model EMB–145 will have an unusual design feature which is the lack of incorporation of thrust reversers as standard equipment.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–96–7–NM for the Empresa Brasileira de Aeronautica S.A., (EMBRAER) Model EMB–145, was published in the **Federal Register** on November 18, 1996. Three commenters submitted comments.

All commenters state the special conditions are inappropriate since thrust reversers are not required for part 25 certification and part 25 airplanes not equipped with thrust reversers have exhibited the same level of safety as those with thrust reversers. The FAA does not contest the fact that part 25 does not require thrust reversers. With regard to the level of safety issue, it is obvious that the additional braking provided by reverse thrust will always improve safety, and the amount of that improvement will increase with decreasing runway surface friction. The only accelerate-stop performance information required to be in the Airplane Flight Manual (AFM) by the current part 25 airworthiness regulations is based on a dry runway surface; these dry runway accelerate-stop distances may (and will) be used with no adjustments for takeoffs made on wet and contaminated runways. This could be of critical importance for an airplane the size of the EMB–145, which in all likelihood will see a sizable number of operations on relatively short

runways, thus increasing the probability of its being dry runway takeoff or landing field length-limited.

One commenter states that the main consideration of the special conditions is that the non-inclusion of thrust reversers is classified as an unusual design feature because the EMB–145 is intended for operation in part 121-type commercial service. Consequently, the commenter states the special conditions are not appropriate under part 25 since the certification basis is independent of the rules an airplane might be operated under. The FAA does not agree with the commenter's statement. The overall operational safety of an airplane is as much the concern of the Aircraft Certification Service of the FAA as it is the Flight Standards Service, particularly where aircraft performance is a consideration since it is the Aircraft Certification Service personnel who witness the flight testing and approve the resulting Airplane Flight Manual performance that scheduled operations will be based on.

Similarly, another commenter states that if performance credit is of established benefit in part 121-type commercial operations, the appropriate rule to require thrust reversers would be under part 121 and not the certification rules (i.e., part 25). The FAA questions the use of the term ''performance credit'' since no performance credit has been given in the past, as discussed in the preceding paragraph. The FAA understands this comment to mean if thrust reversers have provided benefits in part 121-type operations, then any rule to require their installation should be proposed under part 121. The FAA disagrees with this comment. The FAA's job is to ensure the safety of the traveling public; whether that is done through the Aircraft Certification Service or the Flight Standards Service is irrelevant in this case. As discussed in the notice of proposed special conditions, the thrust reverser issue is addressed in this context because the FAA has found that Embraer's type certificate application presents a novel or unusual design feature for which the applicable airworthiness standards do not provide adequate safety standards. In accordance with 14 CFR § 21.16, special conditions are the appropriate mechanism for dealing with such issues.

One commenter states that if the FAA considers the increased stopping benefit provided by thrust reversers as substantiation (sic) for requiring their installation, then performance credit should be granted for their use. The FAA has for many years gone on record as being opposed to granting general performance credit for the use of thrust reversers. One of the primary reasons for this position is that thrust reversers provided some compensation for the minimal amount of conservatism assumed in determining the accelerate-stop distances that takeoffs will be predicated on rejected takeoff accident data indicate that pilots do not always recognize and respond to a failure condition at or near V_1 in the time period assumed in calculating the AFM accelerate-stop distances. The FAA has proposed to grant performance credit for thrust reversers in the determination of accelerate-stop distances on wet runways, provided the stopping distances are based on the associated reduced wheel-brake stopping force available and certain reliability and controllability criteria are met.

One commenter notes that the proposed special conditions do not address the Master Minimum Equipment List (MMEL) allowance for airplanes to have thrust reversers rendered inoperative, and that the FAA did not consider the economic implications of this issue. The FAA does not consider this to be a relevant argument against requiring the installation of thrust reversers on the EMB–145. The MMEL allowance referred to by the commenter is classified as Level C which, among other things, places a 10-day limitation on the thrust reversers being inoperative. The 10-day limitation is, in part, based on the probability of occurrence of a situation in which the additional braking force provided by reverse thrust would be beneficial.

One commenter states that the inclusion of a proposed rule (i.e., NPRM 93–8) as a certification requirement was not appropriate. A related comment from another commenter noted that FAA's Aircraft Certification Service management has stated the FAA would not invoke unadopted regulations or policy on active certification programs. The FAA is not mandating compliance with the criteria of NPRM 93–8 as a certification requirement. Embraer has the option of installing thrust reversers on the airplane and determining accelerate-stop distances in accordance with part 25 at the amendment level described in the type certification basis for the EMB–145. It should also be noted that in ongoing certification programs, the FAA Transport Airplane Directorate routinely considers proposed rules as showing an equivalent level of safety to existing part 25 regulations.

One commenter also states that NPRM 93–8 is not harmonized with the European Joint Aviation Authorities (JAA) requirements. This statement is incorrect. The criteria of NPRM 93–8 was developed in conjunction with the JAA; requirements identical to those of NPRM 93–8 can be found in the equivalent AAA Notice of Proposed Amendment.

One commenter requests the FAA submit this major change in certification philosophy to the appropriate regulatory/industry forum. The FAA discussed the philosophy embodied in Notice No. SC–96–7–NM with flight test specialists from several foreign civil airworthiness authorities during its development. The FAA is within its legal bounds by treating airplanes on a case-by-case basis with special conditions in accordance with § 21.16. The FAA does not believe it is necessary to submit the certification philosophy embodied in Notice No. SC–96–7–NM to a regulatory/industry forum since the wet runway accelerate-stop criteria in NPRM 93–8, which gives performance credit for available reverse thrust on wet runways, will encourage manufacturers to incorporate thrust reversers as part of the basic design of their airplanes.

One commenter states that the FAA's contention that thrust reversers have played a significant role in the safety record of transport category airplanes is not supported by any form of factual information or data. The FAA disputes this commenter's position. A significant amount of testing has been conducted over the last 40 years that has repeatedly proven the increased benefit of reverse thrust as the runway surface condition deteriorates in terms of available wheel-braking force. It is obviously difficult to point at a particular rejected takeoff as an example since any successful field length-limited RTO that may have occurred on a wet or contaminated runway, whose takeoff weight was limited by a dry runway accelerate-stop distance, would not have been recorded. However, it stands to reason that the probability of such a case occurring would be very low without the additional braking force contribution provided by thrust reversers.

As discussed above, these special conditions are applicable to the EMB–145. Should Empresa Brasileira de Aeronautica S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion: This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the manufacturer who applied to

the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Empresa Brasileira de Aeronautica S.A., Model EMB–145 airplanes not equipped with thrust reversers.

1. The effect of wet runway surfaces on accelerate-stop distances for the Model EMB–145 must be accounted for in accordance with the criteria contained in NPRM 93–8 and its associated guidance.

2. Takeoff limitations for operation of the EMB–145 on wet runway surfaces must be predicated on the wet runway accelerate-stop criteria contained in NPRM 93–8.

Issued in Renton, Washington, on August 18, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–22919 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–16]

RIN 2120–AA66

Modification of Class D Airspace South of Abbotsford, British Columbia (BC), on the United States Side of the U.S./Canadian Border, and the Establishment of a Class C Airspace Area in the Vicinity of Point Roberts, Washington (WA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class C airspace area in the United States (U.S.), southeast of Vancouver, BC, in the vicinity of Point Roberts, WA. The Vancouver Class C airspace area will have a ceiling of 12,500 feet Mean Sea Level (MSL), and a floor of 2,500 feet MSL. In addition, this action extends the existing Abbotsford, BC, Class D airspace area west into airspace which is currently Class E airspace, and lowers the ceiling of the Class D airspace area from 3,000 to 2,500 feet MSL in U.S. airspace. The FAA is taking these actions pursuant to a proposal by Transport Canada, and to assist Transport Canada in its efforts to reduce the risk of midair collision, enhance safety, and improve air traffic flows within the Vancouver and Abbotsford, BC, International Airport areas.

EFFECTIVE DATE: 0901 UTC, November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

In July 1994, Transport Canada proposed to extend the Vancouver, BC, Class C airspace area across the United States/Canadian border into U.S. airspace in the vicinity of the San Juan Islands and Bellingham, WA. As proposed, the Class C airspace area would have extended from Abbotsford Airport, across Bellingham Airport, to a point south of San Juan Island. Transport Canada's proposal was part of its overall airspace plan for the Vancouver area, centering around efforts to mitigate near mid-air collision potential between instrument flight rule (IFR) and unknown visual flight rule (VFR) aircraft in U.S. airspace where Canada provides air traffic services.

Class C airspace consists of controlled airspace extending upward from the surface or higher to specified altitudes within which all aircraft are subject to the operating rules and equipment requirements specified in Federal Aviation Regulations. Two-way radio communication must be established with the air traffic control (ATC) facility providing ATC services prior to entry and thereafter maintained while operating within Class C airspace. The standard Class C airspace area consists of that airspace within 5 Nautical Miles (NM) of the primary airport, extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 NM from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

The Class C airspace area proposed by Transport Canada differed from most other Class C airspace areas in that it was to an extension of a foreign Class C airspace area serving a primary airport outside the U.S.; standard U.S. Class C airspace configurations and dimensions were therefore unsuitable.

Transport Canada's proposal also included a proposal to extend the western boundary of the Abbotsford, BC, Class D airspace area approximately 7 nautical miles (NM) west of its present location, and to lower the ceiling of the Class D airspace from 3,000 feet MSL to 2,500 feet MSL.

Class D airspace is, generally, that airspace from the surface to 2,500 feet above the airport elevation (charted in MSL) surrounding those airports that have an operational control tower. The configuration of each Class D airspace area is individually tailored and the airspace will normally be designed to contain any published instrument approach procedures. Two-way radio communication must be established with the ATC facility providing ATC services prior to entry and thereafter maintained while operating in the Class D airspace.

The Vancouver and Abbotsford Airports are both international and public-use airports located in Canada. Passenger enplanements reported at Vancouver in 1995 were 312,000, up from 301,000 in 1994. This volume of passenger enplanements and aircraft operations meets the FAA criteria for establishing a Class C airspace area to enhance safety.

Public Meetings

As announced in the **Federal Register** on March 22, 1995 (60 FR 15172), two pre-NPRM airspace meetings were held on May 9–10, 1995, in Friday Harbor and Bellingham, WA. The purpose of these meetings was to provide local airspace users with an opportunity to present input on the Transport Canada proposal prior to initiating any regulatory action. In the ensuing comment period, which closed on July 10, 1995, over 300 comments were received in overwhelming opposition to the proposal. The majority of the opposition centered around the significant amount of airspace affected by the original proposal. The original proposal would have required the reclassification of airspace in five contiguous areas from Abbotsford Airport, across Bellingham Airport, to a point south of San Juan Island. Subsequent meetings were held between

Transport Canada, FAA, and general aviation (GA) groups in an effort to address the public's concerns. These meetings resulted in an agreement to revise Transport Canada's July 1994 proposal. Of the original five airspace areas, only three would be recommended for inclusion in the revised proposal. This revision significantly reduced the amount of Class C airspace required.

On April 5, 1996, the FAA published a notice of public meeting (61 FR 15331) to announce another informal airspace meeting, which was held on May 6, 1996, in Friday Harbor, WA. This meeting provided local airspace users with an opportunity to present input on the revised proposal for the design of the Vancouver and Abbotsford, BC, Class C and D airspace areas.

On March 18, 1997, the FAA published an NPRM (62 FR 12892) proposing to designate a Class C airspace area in the vicinity of Point Roberts, WA, and to extend the Class D airspace area at Abbotsford, BC, on the United States side of the U.S./Canadian border. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. The comment period closed May 2, 1997. The FAA received one comment in support of the proposal and no comments objecting to the proposal.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes the Vancouver Class C airspace area in the vicinity of Point Roberts, WA, and modifies the existing Class D airspace at Abbotsford, BC. The Class C airspace designation applies to an area lying within U.S. airspace along the U.S./Canadian border. This action addresses only that airspace contained within the U.S. Implementation of the Class C airspace area and the modification of the Class D airspace area will promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area.

The effective date for this final rule does not correspond with a scheduled publication date for the appropriate aeronautical chart for this area. The Vancouver Class C airspace area and the modifications to the Abbotsford Class D airspace area will, therefore, be published on the Seattle Sectional Aeronautical Chart effective January 1, 1998. In the interim, the FAA will disseminate the information contained in this final rule in the notices to Airmen publication, and will publish a special notice in the Airport/Facility Directory. Additionally, the FAA's Northwest Mountain Regional Office will distribute Letters to Airmen that will advertise the implementation of this final rule.

The coordinates in this document are based on North American Datum 83. Class C and Class D airspace designations are published in paragraphs 4000 and 5000, respectively, of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class C and Class D airspace areas listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Final Rule: (1) Will generate benefits that justify its minimal costs and is not ''a significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate, and that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses are summarized here in the preamble and the full Regulatory Evaluation is in the docket.

Cost-Benefits Analysis

The FAA has determined that the establishment of a Class C airspace area in the vicinity of Point Roberts, WA, and Vancouver, BC, and a modification of the Class D airspace area south of Abbotsford, BC, will result in minimal, if any, cost to either the agency or aircraft operators. The FAA has determined, in conjunction with Transport Canada, that the establishment of Class C and modification of Class D airspace will promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area.

Upon implementation of this rule, pursuant to a letter of agreement between the Nav-Canada and FAA, Nav-Canada will provide a traffic control services, such as traffic advisories, and separation and sequencing services, to aircraft operating within the Vancouver Class C and Abbotsford Class D airspace areas.

The FAA, in supporting Transport Canada, has determined that the establishment of Class C and modification of Class D airspace areas in the vicinity of Point Roberts, WA, Vancouver, and Abbotsford, BC, will impose minimal, if any, cost to either aircraft operators or the FAA. Those potential cost components (navigational equipment for aircraft operators and operations support equipment for the FAA, including additional cost for air traffic controllers) that could be imposed by the rule are discussed as follows:

Establishment of Class C Airspace

Aircraft operators will incur minimal, if any, costs from compliance with the final rule. This assessment is based on the most recent General Aviation and Avionics Survey Report. The report indicates an estimated 82 percent of all GA aircraft operators are already equipped with the necessary equipment required to operate in a Class C airspace area (i.e., two-way radios and Mode C transponders). Further, the FAA has determined there will be insignificant cost to GA operators who utilize circumnavigation procedures to avoid the Class C and Class D airspace area, or who fly beneath the 2,500 feet MSL floor. Therefore, the FAA has determined that the final rule will impose minimal, if any, additional cost impact on circumnavigating operators.

Establishment of Class D Airspace

Aircraft operators will incur minimal, if any, costs from compliance with the rule. This assessment is based on the most recent General Aviation and Avionics Survey Report. The report indicates an estimated 85 percent of all GA aircraft operators are already equipped with the necessary equipment to operate in a Class D airspace area (i.e., two-way radios). The FAA has determined that nonparticipating operators will be able to circumnavigate the Class D airspace area by altering their current flight paths between 2 and 7 NM to avoid the newly designated airspace. Therefore, the FAA has determined that the final rule will impose minimal, if any, costs onto nonparticipating aircraft operators.

A letter of agreement between the FAA and Transport Canada was signed on May 1, 1995, which establishes standard procedures for coordinating air traffic operations between Seattle Air Route Traffic Control Center and Vancouver Air Control Centre. The Letter of Agreement establishes the ATC responsibilities for each of the centers. The U.S. has relinquished control of the Class C and Class D airspace areas to Canada. Canadian ATC currently provides radar service for the additional 10 NM radar area that the final rule will establish. In addition, NAV-Canada already provides VFR Advisory Service for the Class D airspace area.

The FAA will not incur any additional charting or pilot education expenses as a result of the modifications incurred from the final rule. The FAA currently revises sectional charts every six months. Changes of these types are required and made routinely to depict Class C and Class D airspace areas during these cycles, and are considered an ordinary operating cost. Further, pilots will not incur any additional costs obtaining current charts depicting Class C and Class D airspace areas because they use only the most current charts.

In order to advise the public of changes to airspace areas, the FAA holds informal public meetings at each location where Class C establishments or modifications are proposed. These meetings provide pilots with the best opportunity to learn about Class C airspace operating procedures in the areas. The routine expenses associated with these public meetings are incurred regardless of whether Class C is ultimately established. If either of the airspace changes occur, the FAA will distribute a Letter to Airmen to all pilots residing within 50 miles of the Class C airspace site which will explain modifications to aircraft operation and airspace configuration. In addition, FAA district offices conduct aviation safety seminars on a regular basis. These seminars are provided by the FAA to discuss a variety of aviation safety issues, including Class C airspace areas. The one-time incurred cost of the Letter to Airmen will be $550 (1996 dollars). This one-time negligible cost will be incurred upon the establishment of the Class C airspace.

In view of the benefits of enhanced aviation safety, operational efficiency, and the minimal, if any, cost of compliance, the FAA has determined that the final rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a final rule will have ''significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA.

The small entities that potentially may incur minimal, if any, cost with the implementation of this rule are operators of aircraft which do not meet Class C or Class D navigational equipment standards. The small entities potentially impacted by the rule (primarily parts 121 and 135 aircraft without two-way radios and Mode C transponders) will not incur any additional cost for navigational equipment because they routinely fly into airspace where those requirements are already in place. As the result of the previously implemented ''Mode C rule,'' all of these commercial operators are assumed to have Mode C transponders. Therefore, the FAA has determined that the final rule will not have a significant economic impact on a substantial number of small entities.

In view of the enhancement to aviation safety, and operational efficiency, and the minimal cost of compliance, the FAA has determined that this rule will be cost-beneficial.

International Trade Impact Assessment

This final rule will not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States. This assessment is based on the fact that the rule will not impose costs on aircraft operators or aircraft manufacturers (U.S. or foreign).

Unfunded Mandate Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more adjusted annually for inflation in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a final ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements Section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

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

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ANM BC C Vancouver, BC [New]

Vancouver International Airport, BC, Canada
(Lat. 49°11′38″N, long. 123°11′04″W)
Vancouver VORTAC
(Lat. 49°04′38″N, long. 123°08′57″W)

That airspace extending upward from 2,500 feet MSL to and including 12,500 feet MSL beginning at lat. 49°00′00″N, long. 123°19′20″W; thence east along the U.S./Canadian boundary to lat. 49°00′05″N, 122°33′50″W; thence south to lat. 48°57′59″N, long. 122°33′50″W; thence west to lat. 48°57′59″N, long. 122°47′12″W; thence southwestward via a 16 NM arc of the Vancouver VORTAC to lat. 48°49′52″N, long. 123°00′31″W; thence northwest along the U.S./Canadian boundary to the point of beginning, excluding the airspace overlying the territory of Canada.

* * * * *

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

ANM BC D Abbotsford, BC [Revised]

Abbotsford Airport, BC, Canada
(Lat. 49°01′31″N, long. 122°21′48″W)
Vancouver VORTAC
(Lat. 49°04′38″N, long. 123°08′57″W)

That airspace extending upward from the surface to 2,500 feet MSL beginning at lat. 48°57′59″N, long. 122°18′57″W, thence counterclockwise along the 4-mile radius of the Abbotsford Airport to lat. 49°00′05″N, 122°16′08″W; thence west along the US-Canadian border to lat. 49°00′05″N, long. 122°45′58″W, thence clockwise along the 16-mile ARC of the Vancouver VORTAC, to lat. 48°57′59″N, long. 122°47′12″W; thence east along lat. 48°57′59″N to the point of beginning; excluding the airspace within the Vancouver, BC, Class C airspace and the airspace west of long. 122°33′50″W below 1,500 feet MSL, and the airspace overlying the territory of Canada.

* * * * *

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

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–22972 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–9]

Establish Class E Airspace; Spencer, IA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E surface area airspace at Spencer, IA, to accommodate Part 135 air carrier operations at Spencer Municipal Airport. Additional controlled airspace extending upward from the surface is needed to contain these aircraft executing instrument approach procedures. The intended effect of this proposal is to provide segregation of aircraft operating under Instrument Flight Rules (IFR) from other aircraft operating under Visual Flight Rules (VFR). Minor editorial revisions have been made to this final rule. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor changes will not change the meaning of the action and will not add any additional burden on the public than was already proposed.

EFFECTIVE DATE: 0901 UTC November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Airspace Branch, Air Traffic Division, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On June 5, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E surface area airspace at Spencer, IA (62 FR 30784). The proposed action would provide additional controlled airspace to accommodate Part 135 air carrier operations at Spencer Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from the surface are published in paragraph 6002 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E surface area airspace at Spencer, IA, by providing additional controlled airspace for aircraft executing instrument approaches.

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

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace areas are designated as a surface area for an airport

* * * * *

ACE IA E2 Spencer Municipal Airport, Spencer, IA [NEW]

Spencer Municipal Airport, IA
(Lat. 43°09′56″ N., long. 95°12′10″ W.)

Within a 4.1-mile radius of the Spencer Municipal Airport.

* * * * *

Issued in Kansas City, MO, on August 11, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–22924 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–18]

Correction to Class E4 Airspace, Forbes Field, Topeka, KS

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in Federal Aviation Administration Order 7400.9D, Airspace Designation and Reporting Points, for a Class E surface area airspace extension at Forbes Field, Topeka, KS.

EFFECTIVE DATE: 0901 UTC November 11, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Forbes Field, Topeka, KS, has a part-time Class D airspace area reverting to Class G airspace at other times and a Class E surface area extension. Federal Aviation Administration Order 7400.9D does not indicate the Class E surface area extension is part time and reverts to Class G as published in the Airport/Facility Directory. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E surface area extension is designated as part time and reverts to Class G airspace at other times as indicated in the Airport/Facility Directory.

§ 71.71 [Corrected]

* * * * *

ACE KS E4 Topeka, Forbes Field, KS [Corrected]

Topeka, Forbes Field, KS

By adding

This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on August 11, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–22925 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–13–M

POSTAL RATE COMMISSION

39 CFR Parts 3001 and 3002

[Docket No. RM97–4; Order No. 1193]

Limited Editorial Revisions

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This rule amends the Commission's rules of practice and procedure and the general description of its organization by making several nomenclature changes. These changes reflect organizational changes that have occurred at the Commission and at the United States Postal Service. Their adoption will update the Commission's rules and organizational description.

DATES: Effective August 28, 1997.

ADDRESSES: Correspondence should be sent to Margaret Crenshaw, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001, (202) 789–6840.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001, (202) 789–6820.

SUPPLEMENTARY INFORMATION: Owing to changes in recent years in the internal organization of the Postal Rate Commission, and that of the United States Postal Service, some of the nomenclature in part 3002 of 39 CFR and some of the references in the Commission's rules of practice and procedure in part 3001, are no longer accurate. This final rule amends the Commission's rules of practice and the general description of its organization to reflect the changes in organization that have occurred. None of the amendments alters any current requirement or other substantive provision of the affected rules.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, the Commission certifies that this rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, regulatory flexibility analysis is not required.

List of Subjects

39 CFR Part 3001

Administrative practice and procedure, Confidential business information, Freedom of information, Postal Service, Sunshine act.

39 CFR Part 3002

Organization and functions (government agencies).

For the reasons stated in the preamble, the Commission amends 39 CFR parts 3001 and 3002 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662.

2. In § 3001.7(a)(1)(iii) remove the word ''Technical'' and add, in its place, the word ''Rates,''.

3. In § 3001.12(e) remove the words ''Office of the Assistant General Counsel, Office of Rate and Classification Law, U.S. Postal Service, Washington, DC 20260–1140'' and add, in their place, the words ''Chief Counsel, Rates and Classification, U.S. Postal Service, Washington, DC 20260–1137''.

4. In § 3001.43(f)(1) remove the words ''Assistant General Counsel'' and add, in their place, the words ''staff attorney''.

PART 3002—ORGANIZATION

5. The authority citation for part 3002 is revised to read as follows:

Authority: 39 U.S.C. 3603; 5 U.S.C. 552.

6. Revise the heading for § 3002.4 to read as follows:

§ 3002.4 Office of Rates, Analysis, and Planning.

7. In § 3002.4(a) remove the words ''Technical Analysis and Planning'', and add, in their place, the words ''Rates, Analysis, and Planning''.

8. Remove and reserve § 3002.5.

Dated: August 22, 1997.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 97–22836 Filed 8–27–97; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL—5883–7]

Final Rule Making a Finding of Failure to Submit a Required State Implementation Plan for Particulate Matter, California—Owens Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action in making a finding, under the Clean Air Act (CAA or Act), that California failed to make a particulate matter (PM–10) nonattainment area state implementation plan (SIP) submittal required for the Owens Valley Planning Area under the Act. Under certain provisions of the Act, states are required to submit SIPs providing for, among other things, reasonable further progress and attainment of the PM–10 national ambient air quality standards (NAAQS) in areas classified as serious. The deadline for submittal of this plan for the Owens Valley Planning Area was February 8, 1997.

This action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a federal implementation plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

EFFECTIVE DATE: This action is effective as of August 20, 1997.

FOR FURTHER INFORMATION CONTACT: Larry Biland, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9 (AIR–2), 75 Hawthorne Street, San Francisco, California, 94105–3901, telephone (415) 744–1227.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS.[1] Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C., 7401–7671q (1991). On the date of enactment of the Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. These areas included all former Group I areas identified in 52 FR 29383 (August 7, 1987) and clarified in 55 FR 45799 (October 31, 1980), and any other areas violating the PM–10 NAAQS prior to January 1, 1989. The Owens Valley Planning Area (Owens Valley) was identified in the August 7, 1987, **Federal Register** notice (52 FR 29384). A **Federal Register** notice announcing all areas designated nonattainment for PM–10 at enactment of the 1990 amendments was published on March 15, 1991 (56 FR 11101). The boundaries of the Owens Valley nonattainment area (Hydrologic Unit #18090103) were set forth in a November 6, 1991, **Federal Register** notice (56 FR 56694, codified for the State of California at 40 CFR 81.305).

Once an area is designated nonattainment, section 188 of the amended Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including Owens Valley, were initially classified as moderate by operation of law. Section 188(b)(1) of the Act further provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot ''practicably'' attain the PM–10 NAAQS by this attainment date.

Air monitoring of the Owens Valley during the past 18 years has measured the highest PM–10 pollution in the United States, the result of water-gathering activities by the City of Los Angeles. California submitted a moderate area PM–10 SIP for Owens Valley on January 9, 1992. Based on this submittal, EPA determined on January 8, 1993, that Owens Valley could not practicably attain by the applicable attainment deadline for moderate areas (December 31, 1994, per section 188(c)(1) of the Act), and reclassified Owens Valley as serious (58 FR 3334).[2] In accordance with section 189 (b)(2) of the Act, the applicable deadline for submittal of a SIP for Owens Valley addressing the requirements for serious PM–10 nonattainment areas in section 189 (b) and (c) of the Act (58 FR 3340) is February 8, 1997 (4 years after the effective date of the reclassification).

These requirements, as they pertain to the Owens Valley nonattainment area, include:

(a) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001, or an alternative demonstration that attainment by that date would be impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA Section 189(b)(1)(A) (i) and (ii); and

(b) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress toward attainment by December 31, 2001 (CAA section 189(c)).

Notwithstanding significant efforts by the Great Basin Unified Air Pollution Control District and the California Air Resources Board to work with the City of Los Angeles to reach a mutually acceptable solution, the State has failed to meet the February 8, 1997 deadline for the required SIP submission. EPA is therefore compelled to find that the State of California has failed to make the required SIP submission for the Owens Valley PM–10 nonattainment area.

The CAA establishes specific consequences if EPA finds that a state has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If California has not made the required complete submittal within 18 months of the effective date of today's

[1] EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m^3). The 24-hour PM–10 standard of 150 ug/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, Appendix K.

On July 18, 1997, EPA reaffirmed the annual PM–10 standard, and slightly revised the 24-hour PM–10 standard (62 FR 38651). The revised 24-hour PM–10 standard is attained if the 99th percentile of the distribution of the 24-hour results over 3 years does not exceed 150 ug/m^3 at each monitor within an area. On July 18, 1997, EPA also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5).

This finding applies to the outstanding obligation of the State to submit for the Owens Valley Planning Area a plan addressing the 24-hour and annual PM–10 standards, as originally promulgated.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

[2] In reclassifying the Owens area, EPA observed that: ''Ambient PM–10 levels in Owens Valley are among the highest in the country. In 1989, for instance, the highest 24-hour PM–10 concentration observed in the area was 1861 micrograms per cubic meter (ug/m^3) in contrast to the NAAQS of 150 ug/m^3. The PM–10 SIP for Owens Valley includes an analysis of wind direction and wind speed on days when PM–10 levels are high, which indicates that the major source causing violations of the PM–10 NAAQS in this area is Owens Dry Lake. Owens Dry Lake covers approximately 110 square miles near the south end of the planning area. Approximately 60 square miles of the lake is dry.'' (58 FR 3337)

rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submission 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[3] In addition, CAA section 110(c) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a).

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal of a plan addressing the serious area PM–10 requirements for Owens Valley. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittal and EPA takes final action to approve the submittal within 2 years of EPA's findings (section 110(c)(1) of the Act). EPA encourages the responsible parties to continue working together on a solution which can cancel out the potential sanctions and FIP.

II. Final Action

A. Rule

Today, EPA is making a finding of failure to submit for the Owens Valley PM–10 nonattainment area, due to failure of the State to submit a SIP revision addressing the serious area PM–10 requirements of the CAA.

B. Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because the Agency has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action in an informal adjudication, and is considering which administrative process—rulemaking or informal adjudication—is appropriate for future actions of this kind.

Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies.

Today's action will be effective on August 20, 1997. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue and the State has been aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a ''clock'' that will not result in sanctions for 18 months, and that the State may ''turn off'' through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This notice is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

D. Executive Order 12866

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

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 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 business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

As discussed in section II.F. below, findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that today's action does not have a significant impact on small entities.

F. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

In addition, under the Unfunded Mandates Act, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed, under section 203, a small government agency plan.

EPA has determined that today's action is not a Federal mandate. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides a finding that California has not met that requirement. This notice does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

G. SBREFA Notice

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

As noted above, EPA is issuing this action as rulemaking. There is a question as to whether this action is a rule of ''particular applicability,'' under section 804(3)(A) of the APA as amended by SBREFA—and thus exempt from the Congressional submission requirements—because this rule applies only to a named state. In this case, EPA has decided to submit this rule to Congress, but will continue to consider

[3] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.''

the issue of the scope of the exemption for rules of ''particular applicability.''

H. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

J. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the appropriate circuit by October 27, 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) of the Act.

Dated: August 20, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–22948 Filed 8–27–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5883–3]

RIN 2060–AH48

Regulation of Fuels and Fuel Additives: Baseline Requirements for Gasoline Produced by Foreign Refiners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises the requirements for imported conventional gasoline. The Agency has revised the rules for conventional gasoline (59 FR 7716, February 16, 1994) to allow a foreign refiner to choose to petition EPA to establish an individual baseline reflecting the quality and quantity of gasoline produced at a foreign refinery in 1990 that was shipped to the United States. The foreign refiner is required to meet the same requirements relating to the establishment and use of individual refinery baselines as are met by domestic refiners. This final action also includes additional requirements that address issues that are unique to refiners and refineries located outside the United States, namely those related to tracking the movement of gasoline from the refinery to the United States border, monitoring compliance with the requirements applicable to foreign refiners, and imposition of appropriate sanctions for violations. EPA will monitor the quality of imported conventional gasoline, and if it exceeds a specified benchmark, EPA will apply appropriate remedial action. Under this final action, the baseline for gasoline imported from refiners without an individual baseline would be adjusted to remedy the exceedance.

EPA believes this final rulemaking is consistent with the Agency's commitment to fully protect public health and the environment, and with the U.S. commitment to comply with its obligations under the World Trade Organization agreement.

DATES: This final rule is effective August 27, 1997.

ADDRESSES: Materials relevant to the final rule have been placed in Public Docket A–97–26 at the address below. Additional materials can be found in Public Dockets A–91–02 and A–92–12, A–94–25 and A–96–33 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The docket may be inspected from 8 a.m. until 5:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Karen Smith, Fuels and Energy Division, U.S. EPA (6406J), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 233–9674.

SUPPLEMENTARY INFORMATION:

Availability on the TTNBSS

Copies of this final rule are 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)

TTNBBS: The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PHι 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600, or 14400 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(T) Gateway to TTN Technical Areas (Bulletin Boards)

(M) OMS—Mobile Sources Information

(Alerts display a chronological list of recent documents)

(K) Rulemaking and 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 on 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.

Regulated Entities

Entities regulated by this action are those foreign refiners and importers which produce, import or distribute gasoline for sale in the United States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Foreign Refiners, Importers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be

regulated. To determine whether your company or facility may potentially be regulated by this action, you should carefully examine the applicability criteria of part 80, subpart D, of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The remainder of this final rulemaking is organized in the following sections:

I. Background
A. Current Requirements for Imported Gasoline
B. May 1994 Proposal
C. The WTO Dispute Settlement Proceeding
D. Invitation for Public Comment
E. Requiring Individual Baselines for Foreign Refiners
F. Summary of Comments from NPRM
II. Description of Final Rule
A. Introduction
B. Requirements for Foreign Refiners with Individual Refinery Baselines
1. Establish Refinery Baselines
2. Compliance with CG NO_X and Exhaust Toxics Requirements
3. Requirements for Tracking Refinery of Origin
4. Measures Related to Monitoring Compliance and Enforcement
C. Baseline Adjustment for Imported Gasoline that is Not FRGAS
1. Introduction
2. Monitoring
3. An Appropriate Benchmark
4. Remedial Action Upon an Exceedance
5. Imported Gasoline Subject to the Remedial Action
D. Requirements for U.S. Importers
1. Imported CG FRGAS
2. Imported CG that is not FRGAS
3. Imported RFG
E. Early Use of Individual Foreign Refinery Baselines
F. Requirements for RFG Before 1998
III. Summary of Changes from Proposal
IV. Response to Comments
A. Optional vs. Mandatory Baselines
B. Establishment of Individual Baselines
C. Liability: Party responsible for meeting the gasoline quality requirements for FRGAS
D. Compliance Related Requirements
1. Sovereign Immunity
2. Agent for Service of Process
3. Bond Requirement
4. Foreign Refiner Commitments
5. Gasoline Tracking Requirements
6. Option to Classify Gasoline as Non-FRGAS
7. Third Party Testing Requirements
8. Diversion of FRGAS to Non-U.S. Markets
9. Attest Requirements
10. Imports from Canada by Truck
E. Remedial Measures
F. Compliance with WTO Obligations
V. Administrative Designation and Regulatory Analysis
A. Public Participation
B. Executive Order 12866
C. Economic Impact and Impact on Small Entities
D. Paperwork Reduction Act
E. Unfunded Mandates
F. Submission to Congress and the General Accounting Office
G. Statutory Authority
Regulation of Fuels and Fuel Additives

I. Background

A. Current Requirements for Imported Gasoline

On December 15, 1993, EPA issued final regulations that establish requirements for reformulated gasoline (RFG) and conventional gasoline (CG) (together the Gasoline Rule), as prescribed by section 211(k) of the Clean Air Act (the Act). See 59 FR 7716 (February 16, 1994). Under the Gasoline Rule, compliance by refiners and importers with the CG requirements and certain RFG requirements is measured against baselines that are intended to reflect a refinery's or importer's 1990 gasoline quality. Domestic refiners are required to establish individual refinery baselines of the quality and quantity of the gasoline produced at each refinery in 1990. Domestic refinery baselines are calculated using, in hierarchical order based on the availability of data, 1990 gasoline test data (Method 1), 1990 blendstock test data (Method 2), or post-1990 blendstock and/or gasoline test data (Method 3). Under the Gasoline Rule domestic blenders of gasoline and importers of foreign-produced gasoline are treated differently than domestic refiners in that they are required to establish baselines of the quality and quantity of gasoline they produced or imported in 1990 using Method 1 data, if available. However, almost all blenders and importers lack the actual 1990 test data necessary to establish a baseline using Method 1 data. As a result, blenders and importers are assigned the statutory baseline, a baseline established by EPA in 1993 to approximate average gasoline quality in the United States in 1990,[1] with the consequence that almost all gasoline produced at foreign refineries is evaluated through the importer using the statutory baseline.[2] The baseline-setting scheme is specified in 40 CFR 80.91 through 80.93, and is discussed in the Preamble to the final rule at 59 FR 7791 (February 16, 1994).

In preparing the Gasoline Rule, EPA focused on three major issues regarding the use of individual baselines for foreign refiners in the RFG and CG programs. EPA's overriding consideration was the ultimate environmental consequences of the baseline-setting scheme. The three issues that EPA focused on were: (1) The technical difficulty of using baseline-setting Methods 2 and 3 to accurately predict the quality of the subset of a foreign refinery's gasoline that was exported to the U.S. in 1990; (2) the ability of the Agency to adequately verify and enforce the use of individual foreign refinery baselines, including problems identifying the refinery of origin of imported gasoline and enforcing gasoline content requirements against a foreign refiner; and (3) the risk of adverse environmental effects from providing refiners or importers with options in establishing baselines.

In developing the Gasoline Rule, EPA considered but did not go forward with allowing foreign refiners the option of petitioning EPA to establish individual baselines using Methods 1, 2, and 3, or defaulting to the statutory baseline. EPA's reasons for not adopting the option at that time are discussed at 59 FR 7785–7788 (February 16, 1994). When EPA issued the final rule on December 15, 1993, however, it was not fully satisfied that the baseline-setting scheme applicable to importers and foreign refiners was the optimum solution and continued to consider the issue.

B. May 1994 Proposal

In May 1994, EPA proposed to amend the Gasoline Rule to define criteria and procedures by which foreign refiners would be allowed to establish individual refinery baselines that reflected the properties and volume of the gasoline that was produced at a foreign refinery in 1990 and exported for use within the United States. Under this proposal, if a foreign refiner made the requisite showing through a petition process EPA would establish an individual foreign refinery baseline. U.S. importers of RFG produced at the foreign refinery would have used the individual foreign refinery baseline

[1] The statutory baseline is calculated pursuant to section 211(k)(10)(B) of the Act which specifies the properties of summertime statutory baseline gasoline, and instructs EPA to establish the average properties of 1990 wintertime gasoline. The Gasoline Rule specifies the properties of 1990 wintertime gasoline in § 80.45(b)(2), and the combined summer and winter, or annual, statutory baseline gasoline properties in § 80.91(c)(5).

Importers are required to meet various conventional gasoline requirements by comparing the annual average quality of the gasoline they import against the statutory baseline. An individual batch of imported conventional gasoline is not subject to any requirements, only the annual average of gasoline imported by the importer. Foreign refiners are not subject to the requirements of the current Gasoline Rule.

[2] Only one importer had the Method 1 data necessary to establish an individual baseline.

values to demonstrate compliance with the limited number of RFG requirements that are based on individual baselines. Importers would not have been allowed to use individual foreign refinery baselines for the CG requirements. Foreign refinery baselines would have been used only during the period 1995 through 1997[3] and only up to a volume of gasoline each year that equaled the foreign refinery's 1990 baseline volume. The proposal also included detailed enforcement and verification procedures.

Subsequent to the May 1994 proposal, Congress included restrictive language in the legislation on EPA's appropriations related to the May 1994 proposal. EPA took no further action on this proposal.

C. The WTO Dispute Settlement Proceeding

In 1995, the governments of Venezuela and Brazil initiated dispute settlement proceedings before the World Trade Organization (WTO), challenging as discriminatory the different treatment applied by the Gasoline Rule to imported gasoline and gasoline produced by U.S. refiners. Among other defenses, the United States argued that the rule was justified by the difficulties associated with implementing and enforcing individual baseline requirements with respect to foreign refiners and by the potential environmental impact resulting from providing foreign refiners the choice of employing individual baselines. The dispute settlement panel reviewing the matter found the regulation discriminatory under the General Agreement on Tariffs and Trade 1994 (GATT) and that the United States had not shown that the GATT's health, enforcement or conservation exceptions applied. The U.S. appealed, arguing that the measure is covered by the GATT conservation exception. The WTO Appellate Body recognized that the United States had legitimate concerns, and modified the findings of the dispute settlement panel accordingly, but concluded the rule did not satisfy all the requirements for this exception. The Appellate Body based this conclusion on its views that (1) the United States had not adequately explored options available to deal with its compliance assurance concerns, in particular international cooperative arrangements, and (2) the United States had been concerned about the costs of the various regulatory options to domestic refiners but there was no evidence demonstrating similar concern about the costs to foreign refiners. The Appellate Body recommended that the United States bring EPA's regulations into conformity with WTO obligations, leaving the United States to determine how it would comply.

On June 19, 1996 after the Administration had consulted with Congress, the United States advised the WTO that the United States intended to meet U.S. obligations with respect to the results of the WTO dispute settlement proceedings, that the EPA had initiated an open process to examine any and all options for compliance, and that a key criterion in evaluating options would be fully protecting public health and the environment. On June 28, 1996, EPA published an invitation for public comment in the **Federal Register** (61 FR 33703), seeking input and suggestions from all interested parties. The comment period closed on September 26, 1996.

D. Invitation for Public Comment

The invitation for public comment was an attempt to identify any and all options available to the Agency to meet U.S. international obligations in response to the WTO decision. EPA's goal was to identify all feasible options that are consistent with EPA's commitment to fully protect public health and the environment, and at the same time are consistent with the obligations of the United States under the WTO.

Specifically, EPA invited comment on: (1) How to accurately establish a reliable and verifiable individual baseline for a foreign refinery; (2) how EPA could adequately monitor compliance with and enforce any baseline requirements; (3) how EPA could effectively determine the refinery of origin of imported gasoline, so as to determine the appropriate baseline to apply to the imported gasoline; (4) the potential environmental impacts from implementing any suggested options; and (5) a method by which EPA could better quantify or characterize potential environmental impacts of any options proposed. EPA also requested that commenters provide information and analysis on the public health, environmental and economic impact associated with any option presented.

EPA received sixteen comments from various interested parties during the comment period. Additional comments were received subsequent to the comment period. To review the comments submitted during the invitation for public comment see Air Docket A–96–33 or 62 FR 24778 under Section D, Invitation for Public Comment.

E. Requiring Individual Baselines for Foreign Refiners

In preparing the earlier proposal and this final rule EPA attempted to identify any and all options available to the Agency to meet U.S. international obligations in response to the WTO decision. EPA's goal was to identify all feasible options that are consistent with EPA's commitment to fully protect public health and the environment, and at the same time are consistent with the obligations of the United States under the WTO. Comments submitted to EPA during and after the public comment period, and EPA's consideration of this issue, identified two broad approaches for consideration involving individual baselines for foreign refineries.[4]

One approach would require the use of individual baselines (IB) by foreign refiners. Use of individual baselines by foreign refiners would be mandatory, not optional. Under this approach, EPA would apply basically the same requirements that apply to domestic refiners to foreign refiners. For the reasons discussed in the proposal, and later in this notice, EPA is not adopting this approach. EPA is instead adopting the approach proposed, which allows foreign refiners to establish and use an IB but does not mandate it. EPA will monitor the emissions quality of imported gasoline and adjust the baselines for gasoline imported from refiners without an individual baseline if a specified benchmark is exceeded.

The mandatory approach would require all foreign refiners who market gasoline to the U.S. to submit petitions to establish an individual refinery baseline, using the same methods and procedures currently in the regulations. Once an IB was assigned for a refinery, that IB would be used in developing a volume weighted compliance baseline. Under one approach, the foreign refiner would meet the NO_X and exhaust toxics requirements for CG exported to the U.S. by that foreign refinery, in the same manner as domestic refiners. Under an alternative approach the domestic importer would establish a volume weighted compliance baseline reflecting the quantity and IBs of gasoline imported from various foreign

[3] Individual refinery baselines are used to set certain content requirements for RFG only through 1997. See 40 CFR 80.41.

[4] The discussion in the preamble will focus on imports of CG, as compared to imports of RFG. After January 1, 1998, individual baselines have no application in the RFG program. For CG, however, individual baselines will continue to be used in setting the compliance requirement for all CG. The application of the final rule to RFG prior to January 1, 1998 is discussed separately in this notice at section II.F.

refineries, and the domestic importer would meet the applicable CG requirements. In either case, the use of a foreign refinery IB would be subject to a volume cap, as for domestic refiners. Foreign refiners would be subject to audits and inspections to verify the IB and to verify the quantity and quality of gasoline sent to the U.S. from that foreign refinery.[5]

Significant additional requirements would also need to be imposed on gasoline imported under a foreign refiner's IB. For domestic refiners, almost all gasoline is produced for the U.S. market and the very small volume that is exported can be readily tracked and subtracted from the domestic refiner's compliance calculations. The domestic refiner then bases its CG compliance calculations on the quality and quantity of finished gasoline when it leaves the refinery. At that point it has entered the U.S. gasoline market, and there is no need to track the gasoline or to segregate it from gasoline produced by another refinery.

For a foreign refiner, only a portion of the refinery's total production is likely to be sent to the U.S., ranging from a very small percentage to a significant minority of production. The gasoline also may travel through a long and complicated distribution system from the point it leaves the refinery gate to the point it enters the U.S. market. However the IB for a specific foreign refinery would properly apply only to gasoline produced at that foreign refinery, and would not apply to gasoline produced at a different foreign refinery.

Several facts would therefore need to be clearly established to properly apply a foreign refinery's IB to a batch of imported gasoline. First, the refinery that produced the specific batch of imported gasoline must be identified. Second, it must be demonstrated that this batch of gasoline has not been mixed with gasoline produced by a different foreign refinery with a different IB, from the point it left the refinery-of-origin to the point it entered the U.S. market. Third, the total amount of CG and RFG produced by the foreign refinery and sent to the U.S. market must be determined, to establish when the volume cap is exceeded. As with domestic refiners, it would also be important to track blendstocks produced and sent to the U.S. from a foreign refinery, so a foreign refiner could not avoid a stringent IB by shipping blendstocks instead of finished gasoline. Tracking and segregation requirements would need to be adopted to implement this.

A certain amount of gasoline is imported from fungible gasoline supplies, where the refinery of origin is not known. This occurred in 1990, and would be expected to continue to occur in the future. It would be reasonable to allow the practice to continue, and gasoline imported from such sources would continue to be subject to the statutory baseline (SB). However a mechanism would need to be imposed so that this supply of fungible gasoline could not be used as a way to avoid a more stringent IB.

Under this approach, EPA would need to establish IBs for all foreign refineries, most of which sent only a small volume of gasoline to the U.S. in 1990. The methods used to set IBs for domestic refiners could still be used to establish the quality and quantity of gasoline sent to the U.S. by a foreign refiner in 1990. Given the large number of foreign refineries involved and the potential for widely varying technical and other ability to establish IBs, it is not clear that all foreign refiners would have the information necessary to establish an accurate IB for gasoline sent to the U.S. in 1990.

The Department of Energy (DOE) has advised EPA that this approach could seriously affect the supply and price of gasoline in the U.S. market. Currently gasoline is imported into the U.S. market from a free moving and fungible distribution system for imported gasoline. The volume of imported gasoline, while small compared to the total U.S. gasoline supply, can have a significant impact on gasoline prices. Imported gasoline tends to moderate price increases by increasing the sources of gasoline to meet U.S. demand, whether in response to a trend of increasing demand over time, or a short term supply problem based on local or temporary changes in domestic supply or demand.

The mandatory approach outlined above would significantly change the way gasoline is imported to the U.S. market, greatly increasing the complexity and making it more likely that gasoline could not be quickly and readily diverted to the U.S. market to meet demand. This would make it more likely that imported gasoline would not play the same role that it currently does in moderating price increases. The long term supply implications are harder to predict.

The increase in complexity from this approach is based on the need to ensure that the right IB is applied to a batch of imported gasoline, that an IB is only used up to the applicable volume cap, and that parties do not circumvent the appropriate IB by shifting gasoline or blendstocks through other parties. Modifying the tracking and monitoring restrictions described above to try and resolve the supply concerns would increase the risk of adverse environmental effects from this approach.

EPA is also concerned that this approach might produce incentives that would tend to reduce the average quality of imported CG. For example, gasoline from refiners with cleaner IBs would be measured against a more stringent baseline than under the current rules, while gasoline from refiners with dirtier IBs would be measured against a less stringent baseline than under the current rules. Additional costs would be associated with segregation, tracking, and other requirements described above. To the extent these changes put refiners with clean IBs at an economic disadvantage compared to refiners with either the SB or an IB dirtier than the SB, it could potentially push the supply of gasoline away from refiners with clean IBs.

After evaluating this approach, EPA did not propose it. While it appears generally neutral in requiring individual baselines for both domestic and foreign refiners, upon full consideration this approach presents too great a risk of adverse effects on gasoline supply and prices. EPA also has questions as to its potential environmental impact. The Agency instead proposed the optional use of individual baselines, with specific provisions for monitoring gasoline quality and remedying any adverse environmental effects. EPA's rationale (including the Department of Energy's analysis) for selecting this option is further outlined below in Section IV. Response to Comments: Mandatory vs. Optional Baselines.

F. Summary of Comments from NPRM

EPA received comments from nine associations representing various groups including domestic gasoline producers, domestic importers, and environmental organizations. Three domestic refiners individually submitted statements supporting the comments submitted by their representing associations. Three foreign refiners commented. One state environmental organization submitted favorable comments to the NPRM. EPA also received comments from the Commission of the European Communities.

[5] These and many other elements of a mandatory IB approach would also apply where foreign refiners are provided an option to establish and use an IB. As discussed later, it is the application of these factors across all imported gasoline that leads to the concerns raised by DOE relating to the supply and price of gasoline in the U.S. market.

The issues addressed in the public comments include: the question of mandatory versus optional baselines; EPA's use of cost considerations in the final rule; the consideration of seasonal impacts to prevent additional competitive advantages for foreign refiners; whether or not the Agency has established appropriate and adequate monitoring, compliance and enforcement requirements; the requirement for a waiver of sovereign immunity; and the implementation of the remedial action. This is not intended to be an exhaustive list of comments. A complete set of comments is available from the Air Docket (A–97–26). The major issues and comments are addressed in the Response to Comment section of this final rule.

II. Description of Final Rule

A. Introduction

Today's final action allows foreign refiners the option to establish and use IBs under the conventional gasoline program. Specific regulatory provisions will be implemented to ensure that the optional use of an IB will not lead to adverse environmental impacts. This involves monitoring the average quality of imported gasoline, and if a specified benchmark is exceeded, remedial action will be taken. The remedial action involves making the requirements for imported gasoline not subject to an IB more stringent. This will ensure the environmental neutrality of this approach.

Under this final rule, the procedures and methods for setting an IB, as well as the tracking, segregation and other compliance related provisions described below will all apply. However, they will only apply where a foreign refiner chooses to apply for an IB.

The volume of gasoline that can be imported under the IB for a foreign refinery is limited in the same manner as for domestic refiners, relative to a refinery's 1990 baseline volume. Since the foreign refiner seeks an IB in order to specifically produce gasoline for the U.S. market, the tracking and segregation requirements noted above should not have a significant impact on the ready availability of gasoline for import. The current requirements for imported gasoline will continue to apply for all of the other gasoline imported into the U.S.

There was some concern about the possible environmental impact of providing this option to foreign refiners. A foreign refiner may only have an economic incentive to seek an IB if it will be less stringent than the SB. Gasoline produced by this foreign refiner would then be measured against this less stringent IB. Other imported gasoline would be measured against the SB through the importer. As compared to the situation in 1990, there would be the potential for the quality of imported gasoline to degrade from an emissions perspective.

The size and amount of this impact, however, is difficult to quantify. It would depend on the number of foreign refiners that receive an IB, the specific emissions levels of the IBs assigned, and the volume of gasoline included in the IB. It would also depend on the source and amount of CG and RFG imported into the U.S. in a specific year. It is also hard to quantify to what extent, if any, foreign refiners who produced gasoline in 1990 that was cleaner than the SB would ship gasoline that is dirtier than what they shipped in 1990. These circumstances, as well as the existence of a volume cap on the use of IB's, and the large variation in the total levels of CG and RFG imports each year make it difficult to assess in advance the risk of an adverse environmental impact.

EPA is addressing these potential environmental concerns in the final rule by: (1) Establishing a benchmark for the quality of imported gasoline that will reasonably identify when the factors identified above have led to an adverse environmental impact; (2) monitoring imported gasoline to determine whether the benchmark has been exceeded; and (3) if the benchmark is exceeded, imposing a remedy that compensates for the adverse environmental impact.[6]

The benchmark for imported gasoline quality is the volume-weighted average of the IBs for domestic refiners. EPA is finalizing a benchmark for NO_X emissions performance set at the volume weighted average for domestic baselines. No benchmark is being set at this time for exhaust toxics emissions performance, as there does not appear to be the same potential for environmental degradation that there could be for NO_X.

EPA will monitor the quality of imported gasoline based on the annual compliance reports filed by importers and foreign refiners producing gasoline that is exported to the U.S. Each year EPA will evaluate the volume weighted annual average quality of the three prior years and compare it to the benchmark. If the average quality of imported gasoline exceeds the benchmark, NO_X requirements for gasoline imported from refiners without an IB (currently set at the SB) will increase in stringency the following year by an amount equivalent to the exceedance. This will occur each time the annual monitoring indicates that the benchmark is exceeded. If the amount of an exceedance either increases or decreases, the amount of the remedy will be correspondingly adjusted on an annual basis. If the annual monitoring shows that imported gasoline does not exceed the benchmark, the compliance requirements will be reduced to the SB for the following year. The more stringent requirements will apply to all imported gasoline except for gasoline produced by foreign refiners with an IB.

This approach meets the goals of environmental protection and compliance with international obligations, as announced in the June 1996 Invitation for Public Comment, and avoids the potential supply, price and environmental consequences of the alternative approaches considered by EPA.

The remainder of this section describes the contents of this final rule. The following sections describe the changes made from the proposal as well as the response to comments received by the Agency. The preamble to the proposal also provides additional information related to provisions that EPA is finalizing without change from the proposal.

B. Requirements for Foreign Refiners With Individual Refinery Baselines

1. Establish Refinery Baselines

Under this final action, a foreign refiner has the option of submitting an individual refinery baseline petition to EPA. The refinery baseline would reflect the quality and quantity of gasoline produced at the foreign refinery in 1990 that was exported to the U.S.

The procedures for establishing individual refinery baselines are located in sections 80.90 through 80.93. These same procedures were used by domestic refiners to develop their IBs based on their overall gasoline quantity and quality for 1990.

EPA is requiring that foreign refiners that elect to develop individual refinery baselines would also follow these procedures to determine the quality and quantity of gasoline they produced in 1990 that was exported to the U.S. As is the case for domestic refiners, under section 80.92 baseline petitions would have to be supported by the report of an EPA-approved baseline auditor.

i. *Required Information:* The requirements for establishing individual baselines for foreign refineries are essentially the same as the baseline establishment requirements for domestic refineries. EPA is adopting additional requirements for foreign

[6] EPA has adopted an analogous approach in the RFG program. See 40 CFR 80.41 and 80.68.

refineries that address the unique circumstances associated with establishing and enforcing the establishment and use of an individual baseline by a foreign refiner.

The procedures for developing individual refinery baselines, set forth in sections 80.90 through 80.93, are highlighted below and discussed with respect to foreign refineries.

- A foreign refinery's individual baseline (i.e., quality and quantity information) must be calculated using, in hierarchical order based on the availability of data, 1990 gasoline test data (Method 1), 1990 blendstock test data (Method 2), or post-1990 blendstock and/or gasoline test data (Method 3) to determine the quality and quantity of the subset of gasoline exported to the United States in 1990.
- All data collected beginning in 1990 and through the last date of any data collection under section 80.91(d)(1)(i)(B) must be used in the development of the foreign refineries baseline.
- Baseline petitions must be submitted in the same manner as is required of domestic refiners under section 80.93. Baseline petitions must be submitted before January 1, 2002. EPA is requiring the same type and quality of information and level of accuracy in establishing a baseline no matter when a foreign refiner applies for a baseline.
- EPA is requiring that in order for a refinery to receive an approved baseline, the refinery must commit to give EPA's auditors full access to the foreign refinery to conduct announced and unannounced inspections and audits related to the baseline development and submission. EPA baseline audits could occur at any time after a baseline petition has been submitted, either before or after EPA approves a refinery baseline.
- Under section 80.93(b)(1)(i) foreign refiners are required to provide any additional information requested by EPA to support a baseline submittal or petition, as is required for domestic refiners.
- Under section 80.93(c) a separate baseline will be established for each foreign refinery. However, as is the case of U.S. refiners a foreign refiner could petition EPA for a single refinery baseline for two closely integrated facilities under section 80.91(e)(1). In addition, as is the case for U.S. refiners, a foreign refiner who operates more than one refinery with individual baselines would be able to aggregate the baselines of some or all of its refineries under section 80.101(h).
- All documentation included in a baseline submission or petition must be in the English language or include an English language translation.

ii. *EPA Action on Baseline Submissions:* As for the domestic refiner baseline approval process, EPA will subject foreign refinery baseline submissions to an in-depth analysis and review. EPA also reserves the right to inspect, audit and review all records or facilities used to generate data submitted to the Agency prior to acting on a baseline submission or petition.

After conducting its review of the data and analysis in a baseline submission, EPA will assign an individual baseline that represents the quality and quantity of gasoline exported to the U.S. in 1990. EPA believes that individual refinery baselines can be established for foreign refineries for which individual baselines are sought to the same degree of confidence as the baselines established for domestic refineries. Further guidance on EPA's expectations for the petition submission and approval process is provided in the proposed rule at 62 FR 24781 (May 6, 1997).

2. Compliance With CG NO_X and Exhaust Toxics Requirements

The gasoline produced at a foreign refinery with an individual refinery baseline that is imported into the United States is called ''Foreign Refinery Gasoline,'' or ''FRGAS.'' Foreign refiners with individual baselines are required to designate all FRGAS into one of two categories: conventional gasoline FRGAS that is included in the foreign refiner's NO_X and exhaust toxics compliance calculations, which is called ''certified FRGAS,'' and all other FRGAS, which is called ''non-certified FRGAS.'' The non-certified FRGAS category includes gasoline that meets the quality requirements for RFG, as well as gasoline that is not RFG quality and has not been included in the foreign refiner's NO_X and exhaust toxics compliance calculations.

Foreign refiners who obtain individual foreign refinery baselines will have to meet the NO_X and exhaust toxics emissions performance requirements for all gasoline classified as certified FRGAS.[7]

In addition, foreign refiners with an individual refinery baseline will be required to meet all requirements used to demonstrate compliance with the CG emissions requirements. Certain adjustments to these provisions are specified in the regulations to apply them to foreign refiners. These are the same requirements that apply to domestic refiners, and include the following:

- To register with EPA, section 80.103.
- To designate each batch of FRGAS as certified or non-certified, section 80.65(d).
- To determine the volume and properties of each certified FRGAS batch through sampling and testing, section 80.101(i).
- To determine the volume of each batch of non-certified FRGAS in order to complete the compliance baseline calculation in section 80.101(f).
- To prepare product transfer documents for FRGAS, sections 80.77 and 80.106.
- To keep certain records for five years, sections 80.74 and 80.104.
- To submit reports to EPA on each batch of FRGAS, on the volume of non-certified FRGAS, and on the annual average quality of certified FRGAS, sections 80.75 and 80.105.
- To comply with an annual cap on the volume of specified blendstocks that are transferred to others and used to produce gasoline for the U.S., section 80.102.
- To have an independent audit performed of refinery operations each year to review certain activities related to the FRGAS requirements, sections 80.125 through 80.130. However, the audit procedures for non-certified FRGAS would be limited to the procedures that evaluate the quantity of non-certified FRGAS, and audits would not be required to include procedures intended to verify information about non-certified FRGAS that is unrelated to the compliance baseline calculation, such as the quality of non-certified FRGAS quality or VOC-control designations.

Under section 80.101(f) a compliance baseline for NO_X and exhaust toxics compliance is calculated for each calendar year averaging period based on a refinery's 1990 baseline volume and baseline NO_X and exhaust toxics values, and the total gasoline volume (CG and RFG) produced at the refinery and imported into the U.S. during the averaging period. As a result, a foreign refiner with an individual refinery baseline will be required to establish the volume of U.S. market gasoline that is non-certified FRGAS in order to calculate the refinery's compliance baseline for the NO_X and exhaust toxics CG requirements (see footnotes at 62 FR 24782 for further clarification).

[7] Non-certified FRGAS will be regulated through the importer. If the importer classifies it as RFG, it will have to meet the RFG requirements. If the importer classifies it as CG, it will have to meet the importers compliance baseline for CG, which in almost all cases is the statutory baseline.

Therefore, a foreign refiner with an individual refinery baseline will be required to designate each batch of U.S. market gasoline as certified FRGAS or non-certified FRGAS, to establish the volume and properties of gasoline designated as certified FRGAS, and to establish the volume of gasoline designated as non-certified FRGAS.

All foreign refiners with individual refinery baselines will be required to submit annual reports to EPA that demonstrate the average NO_X and exhaust toxics emissions for certified FRGAS meets the refinery's compliance baseline for the averaging period.

Under today's final action, certified FRGAS will be treated basically under the same rules as gasoline produced for the U.S. market at a domestic refinery. The certified FRGAS will be subject to the same conventional gasoline requirements as the conventional gasoline produced by domestic refiners. During 1997, under section 80.101(b)(1) a refinery's annual average for sulfur, T–90, olefins and exhaust benzene emissions may not exceed its individual baseline for these fuel characteristics. Starting in 1998 a refinery's annual average conventional gasoline NO_X and exhaust toxics emissions may not exceed its individual baseline for these fuel characteristics. In order to evaluate compliance, however, certified FRGAS must be designated as such at the point of production, and must be tracked to determine that it in fact is exported to the U.S.

In order to determine compliance with the NO_X and exhaust toxics requirements for certified FRGAS, the quality and quantity of each batch of certified FRGAS must be determined. The volume of non-certified FRGAS also will have to be determined, because the compliance baseline applicable to a refinery depends on the total volume of gasoline produced at a refinery and imported into the U.S. market, including both certified and non-certified FRGAS. To determine the quality and/or quantity of this gasoline, a foreign refiner will have to designate FRGAS when it is produced. It also is important that gasoline used in a foreign refinery's compliance calculation all be designated as FRGAS and actually imported into the U.S.

In the case of certified FRGAS the foreign refiner must include the gasoline in the refinery's NO_X and exhaust toxics compliance calculations, and meet the refinery tracking requirements, described below. Gasoline that is not classified as FRGAS and is not imported into the U.S. must be excluded from the refinery's compliance calculations, and the refiner is not required to meet the refinery tracking requirements for this gasoline.

However, the foreign refiner will continue to be required to include all non-certified FRGAS in the refinery's compliance baseline calculations and to meet the refinery tracking requirements for all non-certified FRGAS. This is necessary in order to prevent adverse environmental effects. As in the case of domestic refiners, all gasoline imported into the United States must be included in a refinery's compliance baseline calculation because a larger volume of non-certified FRGAS results in a more stringent compliance baseline applicable to the certified FRGAS.

3. Requirements for Tracking Refinery of Origin

EPA is finalizing a series of requirements to accurately identify both certified and non-certified FRGAS gasoline upon its arrival into the U.S. There is the potential for adverse environmental results if a foreign refiner includes gasoline in its CG NO_X and exhaust toxics compliance calculations that is not imported into the U.S. In addition, there is environmental risk if a foreign refiner fails to include in its compliance baseline calculations the volume of any gasoline that is imported into the U.S.

i. *Segregation of FRGAS:* EPA is requiring that certified FRGAS must remain physically segregated from non-certified FRGAS and from certified FRGAS produced at another refinery, from the foreign refinery to the U.S. port of entry. As a result of this requirement, when a foreign refiner loads FRGAS onto a ship for transport to the U.S. the foreign refiner must know the gasoline is exclusively FRGAS that is being included in the refinery compliance calculations (for certified FRGAS), or compliance baseline calculations (in the case of non-certified FRGAS).

This segregation requirement would not prohibit a foreign refiner from combining batches of certified FRGAS, or combining batches of non-certified FRGAS, that are produced at a single refinery into larger volumes for shipment. In addition, where multiple refineries have been aggregated under § 80.101(h), certified FRGAS produced at the aggregated refineries may be combined, and non-certified FRGAS produced at the aggregated refineries may be combined.

ii. *Foreign Refiner Certification of FRGAS:* EPA is requiring that foreign refiners of FRGAS prepare a certification, signed by an appropriate foreign refiner official, for FRGAS when it is loaded onto a ship for transport to the U.S. This certification must identify the gasoline as being FRGAS, whether the FRGAS is certified or non-certified, the foreign refinery where the FRGAS was produced, and the volume of the FRGAS being transported. In the case of certified FRGAS the certification must also include the properties of the gasoline being transported and a declaration that the gasoline is being included in the NO_X and exhaust toxics compliance calculations for the foreign refinery. A single declaration may apply to the entire contents of a vessel where the gasoline is only certified FRGAS or is only non-certified FRGAS.

The foreign refiner certification must be supported by an inspection by an independent, EPA-approved third party such as an independent laboratory. The independent party must confirm the refinery of origin, guarantee that no prohibited mixing occurred, and determine the volume and properties of the certified FRGAS, and the volume of non-certified FRGAS.

The independent party is required to prepare a report on these inspections that becomes a part of the foreign refiner's certification. The independent party also must submit an inspection report to EPA.

iii. *U.S. Importer Receipt of FRGAS:* Under this final rule, the U.S. importer must classify certified-FRGAS as such if the gasoline is accompanied by a foreign refiner certification that is properly supported by an independent party's report, and if test results from the load port are consistent with test results from the U.S. port of entry.

The regulations require the importer to test the FRGAS, and include criteria for comparing the load port and port of entry testing. The test results have to agree, for five specified parameters (sulfur, benzene, gravity, E200 and E300), within the reproducibility limits for the test procedures for these parameters. The two volume determinations, corrected for temperature, have to agree within one percent. EPA believes this level of volume correlation is appropriate because it is well within the level of correlation normally expected in commercial transactions. EPA understands that protests normally are initiated if ship volume determinations in commercial dealings differ by 0.5%.

Importers are required to include in their NO_X and exhaust toxics compliance calculations any FRGAS for which the importer does not obtain a certificate by the foreign refiner supported by a report prepared by an independent third party, or FRGAS where the load and entry port comparison is outside the range specified in the regulations.

In the case of FRGAS for which the importer obtains a properly supported foreign refiner certificate, but where the volume and/or parameter results from the load port and port of entry do not meet the range requirements, the gasoline must be imported as non-certified FRGAS.[8] In addition, the *foreign refiner* is required to remove the volume and properties of the FRGAS from its NO_X and exhaust toxics compliance calculations, because the gasoline now is classified as non-certified FRGAS. However, the foreign refiner must retain the volume of the FRGAS in its compliance baseline calculation, the same as any other non-certified FRGAS, unless the foreign refiner can demonstrate that the importer did not classify the gasoline or as RFG or use it to produce RFG.

In a case of load port and port of entry test results that are outside the specified range for certified FRGAS, the regulations also allow the gasoline to retain this classification if the NO_X and exhaust toxics emissions performance based upon port of entry test results is ''cleaner'' for both pollutants than the emissions performance based upon the load port test results.

U.S. importers are required to report to EPA on each batch of FRGAS imported, identifying the foreign refinery, whether the FRGAS is certified or non-certified, the volume and properties of certified FRGAS, and the volume of non-certified FRGAS.[9]

iv. *Attest Engagement Requirements:* Under today's final rule, foreign refiners of FRGAS must meet the independent attest engagement requirements in sections 80.125 through 80.130, the same as domestic refiners, although the attest requirements for non-certified FRGAS are limited to those related to the volume of non-certified FRGAS produced at a foreign refinery.[10] EPA is adopting additional attest requirements that relate to the FRGAS requirements. These attest requirements supplement the requirements regarding an independent party determination of the refinery that produced FRGAS loaded onto a ship. The focus of the attest requirements will be on the foreign refinery operations, while the requirements for certification by an independent party focus on the transportation and storage of gasoline from the refinery to the point of ship loading.

For further details on the procedures an auditor will be required to perform see 62 FR 24784 (May 6, 1997) ''Attest Engagement Requirements.''

v. *Requirements for Third Parties:* EPA is requiring that FRGAS sampling, volume and fuel quality determinations and determinations of refinery of origin at the loading port will have to be performed by an independent party. The criteria for independence are the same criteria that apply for the independent sampling and testing requirement for domestic refiners and importers, and that are specified at section 80.65(f)(2)(ii). In addition, persons performing this work must be EPA approved. EPA approval will be based on the ability to perform the required work as demonstrated through a petition process.

Independent parties will have to agree to allow EPA inspections and audits relative to their work under the Gasoline Rule for the foreign refiner that are similar to the commitments required by foreign refiners, described below.

Third party sampling and testing is a necessary part of the foreign refiner FRGAS program. However, in response to comments EPA is modifying these requirements in several ways for this final rule, as discussed below.

4. Measures Related to Monitoring Compliance and Enforcement

i. *Introduction:* The requirements for foreign refiners with individual refinery baselines must be subject to strong measures for monitoring compliance and enforcing violations, as are domestic refiners. However, there are a number of unique circumstances associated with monitoring compliance and enforcing requirements for foreign refiners. EPA is adopting a range of provisions designed to address these concerns in a comprehensive manner. These provisions will promote EPA's ability to monitor compliance with the requirements related to foreign refinery baselines, to conduct enforcement actions when violations of these requirements are found, and to impose sanctions that will constitute a deterrent to future violations.

The purpose of the provisions is to ensure that EPA's compliance and enforcement activities with regard to foreign refiners will be on a par with those for domestic refiners, in order to assure achievement of the environmental objectives of the gasoline programs.

ii. *Inspections and audits:* EPA intends to inspect and audit foreign refineries with individual baselines and other facilities located overseas to determine compliance with requirements related to establishing a baseline, identifying refineries or origin, and other requirements proposed today. Foreign refiner inspections and audits will be like domestic refiner inspections and audits with regard to types of facilities visited, types of information reviewed, and types of persons who conduct the inspections and audits. As with domestic inspections and audits, some of the inspections and audits may be announced while some will be unannounced.

With the exception of the limited waiver of sovereign immunity, all aspects of section (ii) inspections and audits (62 FR 24784–24785, May 6, 1997) outlined in the proposal are adopted by today's action. For a detailed list of the inspection and audit requirements refer to that section of the proposed rule. EPA's response to comment and final action on the limited waiver of sovereign immunity is addressed below in section D.

Where a foreign refiner fails to abide by the terms of the foreign refiner commitments, or a foreign government fails to allow entry for the purpose of EPA inspections and audits, EPA may withdraw or suspend the refiner's individual refinery baseline.

iii. *Administrative, civil, and criminal enforcement actions:* A foreign refiner with an individual refinery baseline who submits false documents to EPA or who fails to meet other requirements will be subject to civil, and in certain cases criminal, enforcement, and EPA is adopting requirements that will facilitate prosecution of such violations. These requirements consist of provisions relating to a waiver of sovereign immunity, and commitments the foreign refiner must include in a baseline petition submitted to EPA.

Each foreign refiner seeking an individual refinery baseline must identify an agent for service in the U.S. and agree that service on this agent constitutes service on the foreign refiner and its employees. This agent for service need not be a general agent for service; the agent need only be authorized to accept service by EPA, or otherwise by the U.S., for enforcement actions related to these regulatory provisions. The agent for service must be located in the District of Columbia.

Foreign refiners have to acknowledge that the forum for civil enforcement actions will be governed by Clean Air

[8] The importer may also treat as GTAB any gasoline classified as non-certified FRGAS.

[9] Non-certified FRGAS also must be included in the U.S. importer's compliance calculations for RFG or conventional gasoline. The importer must meet all current requirements for such gasoline, such as sampling, testing and reporting.

[10] ''Attest engagement'' is a term of art used by auditors to describe the conduct of specified audit procedures—the auditor attests to the conduct and results of the specified audit, or attest, procedures completed during the attest engagement. The requirements in sections 80.125 through 80.130 consist of specified attest procedures dealing with the Gasoline Rule and instructions for the conduct of these procedures.

Act (CAA) section 205. CAA section 205(b) specifies that the venue for district court actions is either the district where the violation occurred or where the defendant resides or in the Administrator's principal place of business. However, EPA believes that the U.S. district court for the District of Columbia would be the appropriate court for violations related to the requirements proposed today that are committed by defendants who reside outside the U.S. Administrative assessment of civil penalties is allowed under CAA section 205(c) where the penalty amount does not exceed $200,000, or where the EPA Administrator and the Attorney General jointly determine that a case involving a larger penalty is appropriate for administrative penalty assessment.

Foreign refiners of FRGAS must acknowledge that civil and criminal enforcement actions will use the same U.S. civil and criminal substantive and procedural laws that apply in enforcement actions against domestic refiners. All of these requirements are finalized in today's rulemaking.

iv. *Sanctions for civil and criminal violations:* The sanctions for civil and criminal violations committed by foreign refiners with individual refinery baselines or employees of such foreign refiners include the sanctions specified in the Clean Air Act. Under CAA section 211(d) the penalty for civil violations of the RFG and conventional gasoline requirements is up to $25,000 per day of violation plus the amount of economic benefit or savings resulting from the violation. Injunctive authority is included under section 211(d)(2) as well. CAA section 113(c) specifies that the criminal penalty for first violations of knowingly making false statements or reports is a fine pursuant to title 18 of the U.S. Code, or imprisonment for up to 5 years, or both. The period of maximum imprisonment and the maximum fine are doubled for repeat convictions.

Foreign refiners seeking and then operating under an individual refinery baseline must post a bond with the U.S. Treasury that will be available to satisfy any civil penalty or criminal fine that is imposed against the refiner or its employees, but only with regards to enforcement of the regulatory provisions adopted today. The amount of this bond is $0.01 per gallon of certified FRGAS imported from the refiner into the U.S. per year, based on the maximum annual volume of certified FRGAS imports during the most recent five year period during which the foreign refiner exported certified FRGAS to the U.S. using an individual refinery baseline. However, the initial bond amount will be based on the volume of conventional gasoline or certified FRGAS produced at a foreign refinery that was imported into the U.S. during the year immediately preceding the year the baseline petition is submitted.[11] The foreign refiner must submit with its baseline petition a bond to reflect this volume, and include with its baseline petition information necessary to accurately establish the conventional gasoline volume for the preceding year. The foreign refiner then each year would take into account in its bond amount calculation the certified FRGAS volume for an additional year until there is a five year history, at which time the certified FRGAS volume review would include only the most recent five years.

As an alternative to posting the bond with the U.S. Treasury, a foreign refiner may meet the bond requirement by obtaining a bond in the proper amount from a third party surety agent that would be payable to satisfy U.S. judicial judgments for civil or administrative penalties against the foreign refiner provided that EPA agrees in advance to the third party and the nature of the surety agreement. In addition, the bond requirement may be met by an alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided that EPA agrees in advance to the alternative.

As with domestic refiners, any violation of a regulatory requirement by a foreign refiner could result in the imposition of penalties. For foreign refiners with individual refinery baselines the assessment of a penalty could then result in the forfeiture of a bond to satisfy the penalty. This would, for example, include a failure to allow EPA inspections and audits; failure to submit required audit reports prepared by an independent auditor; or failure to properly identify the source refinery for FRGAS.

If a foreign refiner with an individual refinery baseline fails to meet any requirements, including those that apply to all refiners under the current regulations, and/or the additional requirements that would apply only to foreign refiners, then EPA may administratively withdraw or suspend its individual refinery baseline.

Withdrawal or suspension of an individual refinery baseline may be imposed for all of the refineries operated by a foreign refiner, or for a subset of a foreign refiner's refineries where appropriate. EPA will impose this sanction in a particular case only after evaluating the circumstances and exercising its discretion based on factors such as egregiousness, willfulness and prior violations. The withdrawal or suspension may be imposed for a limited time.

C. Baseline Adjustment for Imported Gasoline That Is Non-FRGAS or Non-Certified FRGAS

1. Introduction

Allowing foreign refiners to choose whether to establish an IB creates a potential for adverse environmental impact. This potential is addressed by monitoring the quality of imported gasoline, comparing it to a benchmark, and taking remedial action if the benchmark is exceeded. The details of this approach are described below.

2. Monitoring

Under the current regulations, importers submit an annual report concerning the quality of the CG they import. See 40 CFR 80.105. Importers submit an annual report after the end of the calendar year, comparing the quality of the gasoline they imported against the applicable annual average requirements. Starting in 1998, these requirements are for NO_X and exhaust toxics emission performance, determined under the Complex Model.

Under the current rules, the annual report is due by the last day of February following the end of the annual averaging period. An attest engagement report is due by May 30. The importer's report must include the total gallons of CG imported, the annual average compliance baseline, and the annual average for the gasoline imported that calendar year. The importer must also include the volume, grade and qualities for each batch of imported gasoline.

Under today's final rule, importers will continue to submit the reports described above for CG produced by foreign refiners without an IB. For gasoline produced by a foreign refiner with an IB, both the importer and the foreign refiner will submit reports to EPA. In combination these reports will contain all of the information submitted for gasoline produced by refiners without an IB.

These annual reports submitted by importers and foreign refiners provide EPA with batch by batch information for all CG imported during that year. From these, EPA will determine the volume weighted average quality for all imported CG. This will be a simple and straightforward way to monitor

[11] A foreign refinery's 1990 baseline volume would not be appropriate for setting the bond amount, because in 1990 the Gasoline Rule was not in effect, so there was no gasoline identified as conventional or RFG.

imported gasoline quality. Additional sampling and testing by EPA would be duplicative, as the importer must sample and test each batch of imported gasoline. 40 CFR 80.101(i).

3. An Appropriate Benchmark

The purpose of the benchmark is to reasonably determine when allowing foreign refiners the option to use an IB or to not use an IB has caused degradation of the quality of imported gasoline from 1990 quality of imported gasoline.

Ideally, EPA would use the volume weighted average of the quality of gasoline sent to the U.S. by foreign refineries in 1990. EPA does not have this information, but does have information on the volume weighted average baselines for domestic refineries. This average accounts for approximately 95% of the U.S. gasoline market in 1990, and reflects a wide diversity in types and kinds of refineries. There is no available data indicating that gasoline imported from foreign refineries was not consistent with this average, and absent evidence to the contrary it is not unreasonable to assume that average foreign gasoline quality in 1990 was generally equivalent to domestic gasoline quality. Also it would not be reasonable to measure overall quality for gasoline produced by foreign refiners using stricter criteria than that applied to domestic refiners, in the absence of evidence to support such an action.

The benchmark should be set at a point such that an exceedance of the benchmark reasonably indicates that the average quality of imported gasoline has degraded from 1990 levels because of the option provided to foreign refiners in using or not using an IB. Many additional factors also affect the average quality of imported gasoline. For example, there is a wide variety in the level of imports from year to year. The source and volume of imports from specific countries and refineries also varies significantly from year to year. Despite general trends in amount and source of imported gasoline, there remains a lot of year to year variability. A change in average gasoline quality during any particular year therefore might indicate the effects of allowing the option for IBs, or it might reflect the unique circumstances of that year, which may well change the next year.

Since the existence of an exceedance of the benchmark is designed to detect a multi-year trend, EPA will use a three year average for comparison against the benchmark. This will be a rolling average; e.g. the average for years 1 through 3 will be compared to the benchmark one year, the next year the average for years 2 through 4 will be compared, and so on.

EPA is setting this benchmark for NO_X at the volume weighted baseline average for domestic refiners: 1465 mg/mile for NO_X.[12]

For toxics, the evidence to date tends to show there would not likely be an adverse impact from allowing the option to use IBs. In 1995, the volume weighted annual average of imported gasoline for exhaust toxics was 86.64 mg/mile. This was cleaner than both the statutory baseline (104.5 mg/mile) and the volume weighted average for domestic baselines (97.34 mg/mile).[13] In addition, one foreign refiner that is a major supplier to the U.S. market has submitted detailed information to EPA on their expected IB, and the information submitted by the foreign refiner to date indicates that their IB for exhaust toxics would be cleaner than the SB.[14] Further information is discussed in the response to comments section. EPA believes the present circumstances do not indicate that there is a risk of adverse environmental impact, and a benchmark and provisions for remedial action are not needed for exhaust toxics at this time. Instead, EPA will monitor the average quality of imported gasoline for exhaust toxics as for NO_X, and if an adverse trend occurs EPA will develop a benchmark and remedial provisions analogous to that adopted for NO_X.

At the start of the program, the volume weighted average for 1998 and 1999 will be compared to the benchmark, and then the average for 1998, 1999 and 2000, to start the three year rolling average. A one year average for 1998 alone would not by itself appear adequate to detect a multi-year trend, while a two year average would be more effective in this regard. The effects of imports in 1998 would still be fully accounted for, in the two year average including 1999. Since an IB might start to be used in 1997, EPA will include with the 1998 imports all gasoline imported in 1997 after the date any gasoline subject to an IB is imported in 1997.

4. Remedial Action Upon an Exceedance

If a volume weighted three year annual average for imported CG exceeds the benchmark for NO_X then EPA will take remedial action. The remedial action will be an adjustment applied to the compliance baseline for CG not included in the CG compliance calculations of a foreign refiner with an IB. The adjustment to the baseline will equal the amount of the exceedance of the benchmark.

This will be reevaluated each year by comparing the average for the three prior years to the benchmark. If there is no exceedance, then a prior adjustment will be terminated. If there is an exceedance, then a new adjustment will be imposed that equals the amount of the current exceedance. For example, if the three year annual average exceeds the NO_X benchmark by 5 mg/mile, then the compliance baseline for NO_X will be adjusted by 5 mg/mile. If there is no exceedance in the next years comparison, then the adjustment will be dropped.[15]

5. Imported Gasoline Subject to the Remedial Action

A foreign refiner using an IB will follow the same procedures as a domestic refiner—the quality of its CG will be measured against the IB of the refiner that produced it. Foreign refiners without an IB would have chosen to have their gasoline measured against the SB instead of an IB, and reasonably could be expected to include refiners whose IB would have been more stringent than the SB. It is the use of IBs by some refiners, and the degradation below 1990 quality in CG produced by foreign refiners without an IB, that has the potential to cause the average CG quality to be adversely affected when other refiners are subject to an IB. Since the foreign refiner with an IB would be acting no differently than domestic refiners with an IB, the remedial action will be applied to CG imported from refiners without an IB.

D. Requirements for U.S. Importers

Under today's action U.S. importers must meet NO_X and exhaust toxics requirements for all imported CG that is not designated as certified FRGAS, and must exclude from importer CG compliance calculations all CG that is designated as certified FRGAS. A mechanism is provided by which U.S. importers would demonstrate that imported CG is certified FRGAS. The baseline that will apply to U.S. importers of non-FRGAS and non-

[12] This value is based on the Phase 2 Complex Model, and will be used prior to and after 2000.

[13] In 1995 the volume weighted average for NO_X for imported gasoline was 1415.9 mg/mile, while the SB was 1461 mg/mile, and the volume weighted average for domestic baselines was 1465 mg/mile.

[14] See 59 FR 22809 (May 3, 1994).

[15] For the initial years of the program, an exceedance for 1998 and 1999 will lead to a remedial adjustment that equals the exceedance, but no more than 1% of the SB for NO_X. The 1% cap is designed to avoid imposing an unnecessarily stringent adjustment that could result from the absence of data from a complete three year cycle.

certified FRGAS will be the statutory baseline or any adjusted baseline as discussed in section II.C above. EPA is not changing the current requirement that U.S. importers meet all requirements for imported RFG.

1. Imported Certified FRGAS

Certified FRGAS must be excluded from the U.S. importer's CG compliance calculations. This prevents the double counting that would result if certified FRGAS were included in the CG compliance calculations of both the foreign refiner and the U.S. importer. However, the U.S. importer must determine the quality and quantity of certified FRGAS at the U.S. port of entry, which the importer then reports to the foreign refiner and to EPA in order to be compared with the foreign load port testing.

A U.S. importer must classify an imported gasoline batch as certified FRGAS if the gasoline is accompanied by a certification prepared by the foreign refiner that identifies the gasoline as certified FRGAS to be included in the foreign refinery CG compliance calculations, and a report on the certified FRGAS batch prepared by an independent third party, and the load and entry port comparison is within the specified range. In this way the U.S. importer acts like a domestic distributor and would not be responsible for meeting the NO_X and exhaust toxics requirements for this gasoline. The U.S. importer is not responsible for whether the foreign refiner meets the annual NO_X and exhaust toxics requirements for certified FRGAS, including whether the foreign refiner properly calculates the refinery's compliance baseline each year.

However, the U.S. importer is responsible for ensuring the foreign refiner certification was in fact prepared by the foreign refiner named on the certificate, and that the foreign refinery has been assigned an individual refinery baseline by EPA. If a certified FRGAS certification was not prepared by the named foreign refiner, for example if it is a forgery, the U.S. importer will be required to classify the gasoline as non-FRGAS and include the gasoline in the importer's CG compliance calculations. Similarly, if the certificate accompanying a batch of certified FRGAS names a foreign refinery that has not been assigned an individual baseline, the U.S. importer will be required to classify the gasoline as non-FRGAS and include the gasoline in the importer's CG compliance calculations. It is necessary to make U.S. importers responsible for accounting for imported CG in these situations in order to enable EPA to enforce the CG requirements effectively. EPA would have great difficulty enforcing requirements against a foreign party who may have created fraudulent FRGAS certification documents, other than a foreign refiner who has established an individual refinery baseline.

EPA believes U.S. importers can easily protect themselves against this type of liability. EPA will publish on its computer bulletin board the identity of foreign refineries that have been assigned individual baselines, that may be used by importers to identify legitimate foreign refiners of FRGAS. Importers can avoid relying on false certificates by selecting reliable business partners, or by contacting the foreign refiner to ensure the authenticity of the certificate for any particular certified FRGAS batch.

The U.S. importer must use an independent third party to determine information about each certified FRGAS batch. The batch quality and quantity must be determined through sampling and testing prior to off loading the ship, and that will be compared with the quality and quantity determined at the load port after the ship was loaded. The independent party also must use the product transfer documents to determine the identity of the foreign refinery where the certified FRGAS was produced. The importer submits a report to the foreign refiner and to EPA containing the batch information.

U.S. importers may not classify certified FRGAS as ''gasoline treated as blendstock,'' (GTAB), because to do so would result in the same CG being included in two compliance calculations.[16] In addition, U.S. importers may not use GTAB procedures to convert certified FRGAS into RFG, for the same reason that domestic regulated parties are not allowed to convert CG into RFG. Conversion of CG into RFG is prohibited because of concern such conversions could result in degradation of the CG gasoline pool. For example, in the absence of this constraint a refiner could produce very clean CG that in fact meets the RFG requirements, include this gasoline in the refiner's CG compliance calculations to offset other dirty CG, and then convert this gasoline into RFG. The result of this would be degradation in the average quality of the refiner's CG. This same effect would be possible if importers could convert certified FRGAS into RFG.

2. Imported Non-FRGAS or Non-Certified FRGAS

U.S. importers must meet all current requirements for imported gasoline that is produced at a foreign refinery without an individual baseline (i.e., non-FRGAS), and for gasoline produced at a foreign refinery with an individual baseline where the gasoline is not included in the foreign refinery's NO_X and exhaust toxics compliance calculations (i.e., non-certified FRGAS). If the importer classifies the gasoline as conventional, the importer must include the gasoline in its NO_X and exhaust toxics compliance calculations. However, the baseline used by importers would be the baseline described in section II.C of this preamble. If the imported gasoline is classified as RFG, the importer must meet all RFG quality and other requirements for the gasoline.

Importers are allowed to use the current GTAB procedures to reblend or reclassify imported non-FRGAS and non-certified FRGAS.

In the case of non-FRGAS, importers have no requirements related to tracking the refinery of origin. In the case of non-certified FRGAS the importer must meet additional requirements related to tracking the refinery of origin. The importer must have an independent laboratory determine the volume of each non-certified FRGAS batch, and report this volume to the foreign refiner and to EPA to be compared with the load port volume. The volume of non-certified FRGAS produced at a foreign refinery with an individual baseline is used to calculate the refinery's CG compliance baseline, which constitutes a volume cap on use of an individual refinery baseline.

E. Early Use of Individual Foreign Refinery Baselines

A foreign refiner who submits a petition for an individual refinery baseline may begin using the individual baseline prior to EPA approval of the baseline petition, provided EPA makes a preliminary finding the baseline petition is complete, and the foreign refiner also has completed certain requirements proposed today. However, any gasoline imported under a requested IB will be subject to the actual IB assigned by EPA.

[16] EPA has issued guidance under the current regulations that allows importers to classify imported gasoline as blendstock, called GTAB, that the importer must use to produce gasoline at a refinery operated by the importer-company. The purpose of the GTAB procedures is to enable importers to conduct remedial blending of imported gasoline, or to reclassify gasoline with regard to RFG or CG, before imported gasoline is introduced into U.S. commerce. This puts importers on a more equal footing with refiners, who are able to reblend or reclassify gasoline prior to shipping gasoline from the refinery.

EPA will conduct a completeness evaluation as the first step in baseline review process, and will notify a foreign refiner of the results of the completeness review on request. However, the initial completeness review does not bar EPA from requiring a foreign refiner to submit additional information later in the baseline review process.

The additional requirements a foreign refiner will have to complete in order to use an individual baseline early are related to ensuring EPA's ability to monitor and enforce compliance by the foreign refiner with all applicable requirements during the early use period. The particular requirements that will have to be met are: (1) The commitments regarding EPA inspections and the forum for enforcement actions, and (2) the requirements related to posting of a bond.

If these conditions are met, the foreign refiner may begin classifying gasoline as certified and non-certified FRGAS, and may use the individual refinery baseline to demonstrate compliance with the NO_X and exhaust toxics requirements.[17] However, a foreign refiner will be required to meet the NO_X and exhaust toxics requirements for certified FRGAS using the refinery baseline values that ultimately are approved by EPA. Thus, if a foreign refiner elects to use an individual refinery baseline early, and uses baseline values that are less stringent than the baseline values ultimately approved by EPA, the refiner's compliance with the NO_X and exhaust toxics requirements will nevertheless be measured relative to the approved baseline values. If this evaluation results in a violation of the NO_X and exhaust toxics requirements, the foreign refiner will be held liable.

F. Requirements for RFG Before 1998

The scope of this final rule is limited to requirements for conventional gasoline. The CG requirements rely on refinery baselines both now and in the future. The RFG requirements for sulfur, T–90 and olefin content also rely on individual refinery baselines, but only until the Complex Model applies beginning in January, 1998. In the proposed rule EPA requested comments on whether the regulations should allow individual refinery baselines to be used for these RFG requirements if a foreign refiner obtains an individual baseline before January, 1998. The only comments on this issue stated that there would be insufficient time before January, 1998 to justify use of individual baselines for RFG and no commenters requested that this rule apply to RFG. This final rule is therefore limited to conventional gasoline.

III. Summary of Changes From Proposal

The following list identifies aspects of the proposed rule (62 FR 24776) that were modified in the final rule.

- The proposal would have required foreign refiners to submit baseline information on the foreign refinery's overall gasoline production for 1990. This requirement is deleted in the final rule. Baseline information must be submitted for the gasoline sent to the U.S. in 1990, however, EPA reserves the right to seek further information where appropriate.
- The proposal would have required that where a foreign refiner is owned or operated by a foreign government, the government would have to sign a waiver of sovereign immunity. The final rule instead includes a regulatory requirement that if a foreign refiner establishes and uses an individual baseline it will constitute a waiver of sovereign immunity for purposes of EPA or other U.S. enforcement actions based on violations of the requirements adopted today.
- The proposal would have required that the foreign refiner post a bond in order to receive an individual refinery baseline. In the final rule the bond requirement and bond amount are retained, however the foreign refiner many meet the bond requirement with other assets, subject to EPA approval.
- The proposal would have established various requirements relating to verifying the source of gasoline imported under an individual baseline—sampling and testing by independent third parties at the load port and discharge port, comparisons of the test results, and certifications as to identity and source of the gasoline. If the gasoline failed the load and entry port comparison it would still be included in the foreign refiner's compliance calculation. In addition, no gasoline classified by the foreign refiner as intended for the U.S. could be diverted to a non-U.S. market. Many of the details of those related provisions have been modified to increase the flexibility for importers and foreign refiners, to be consistent with the tracking purpose of the provisions, and to take into account any potential for adverse environmental impact.

IV. Response to Comments

A. Optional vs. Mandatory Baselines

1. EPA's Proposal

EPA proposed that foreign refiners would be allowed to establish and use individual baselines, but it would not be mandatory. If a refiner did not establish and use an IB, the gasoline they export to the U.S. would be regulated through the importer, and subject to the importer's baseline. Specific regulatory provisions would be implemented to ensure that the option to use an individual baseline would not lead to adverse environmental impacts. This would involve monitoring the average quality of imported gasoline, and if a specified benchmark is exceeded, remedial action would be taken by adjusting the requirements applicable to imported gasoline.

Under this approach, the volume of gasoline that could be imported under the individual baseline for a foreign refinery would be limited in the same manner as for domestic refiners, relative to a refinery's 1990 baseline volume.

2. Comments: Optional Versus Mandatory Individual Baseline Approach

Several parties from the domestic refining and distribution industry commented that EPA should not offer foreign refineries the opportunity to choose between either an individual baseline or the statutory baseline. The commenters suggested that offering the choice discriminates against domestic refiners who do not have the opportunity to choose, and offers the foreign refiners a competitive advantage.

These commenters argued that foreign refiners already have a competitive advantage because they are subject to fewer environmental costs at their refineries relative to U.S. refiners, and they are not subject to U.S. RFG or anti-dumping regulations on the majority of their production which is not for the U.S. market. These commenters urge EPA to avoid any final regulation which would further upset the competitive balance and concluded that foreign refiners should be treated in the same manner as domestic refiners.

These commenters argued that foreign refiners who would otherwise have individual baselines more stringent than the statutory baseline would not apply for an IB (their product would be regulated through the importer, who is subject to the statutory baseline), while those with baselines less stringent than the statutory baseline would choose to establish and use an individual baseline. The domestic industry also

[17] During 1997, under section 80.101(b)(1) the CG requirements are for sulfur, T–90, olefins and exhaust benzene emissions. Beginning in 1998 the CG requirements are for NO_X and exhaust toxics emissions performance.

noted that many U.S. refiners with baselines more stringent than average could significantly benefit if they were given the choice of choosing the statutory baseline.

To avoid this perceived inequity, domestic refiners maintain that if all foreign refiners are not held to the statutory baseline, then they must be required all to establish an individual baseline for product shipped to the U.S. in 1990, or domestic refiners should be offered the same option to operate at the statutory baseline if they choose to do so.

One commenter stated that EPA is obligated under the Clean Air Act to favor protecting the environment over energy and economic considerations. The commenter stated that in *American Petroleum Institute* v. *EPA* (52 F. 3d 113, 1120 (D.C. Cir. 1995), the court explicitly noted that these non-environmental factors are not to be used as an independent grant of authority for EPA rulemaking.

The same commenter suggested that EPA and DOE concerns regarding price and supply impacts were an inappropriate foundation for this rulemaking. The commenter stated that the structure of the Clean Air Act, with its emphasis on protecting public health, meant that supply or price concerns cannot provide the foundation for this rule. The commenter concluded that EPA has an overriding obligation to consider air quality before any other factors, and that obligation should lead EPA to a decision to require mandatory baselines for all foreign refiners.

Another commenter suggested that EPA's reliance on DOE's analysis was inadequate for selecting optional baselines over mandatory baselines. The commenter, an association representing certain domestic refiners, stated that they do not believe DOE or any other organization can credibly quantify the impact of foreign refiner baseline restrictions on the U.S. market just as DOE could not quantify the impact of baseline requirements on domestic refiners.

Another association representing the domestic refining and distribution industry commented that despite DOE's concerns, a more serious threat to U.S. gasoline supply is adopting a rule which discriminates against domestic refiners. The commenter suggested that domestic refiners' business is extremely sensitive to unequal treatment in the international marketplace. The commenter suggested that during a short term supply emergency, EPA could establish a temporary waiver procedure to provide limited relief from baseline requirements. This commenter also suggested that any waiver should apply to all suppliers in an affected region and not be limited to foreign suppliers.

Foreign refiners, domestic gasoline marketers and domestic importers and blenders and others commented that the optional individual baseline is appropriate.

3. EPA Response

Optional Baselines for Domestic Refiners

EPA analyzed two approaches to establishing individual baselines for foreign refiners. One involved mandating that all foreign refiners obtain and use an IB in order to market conventional gasoline in the United States, the other approach provided this as an option but did not mandate it. For the reasons described in the proposal, and in this notice, EPA believes there are serious problems with the mandatory approach based on the risk that it could significantly disrupt the marketing of foreign conventional gasoline to the United States and therefore have significant impacts on the cost of gasoline. The proposal also discussed the potential for degradation in emissions quality of gasoline from the mandatory baseline approach. Because of this, EPA proposed and is adopting an optional approach.

EPA does not agree that this discriminates against the domestic refining and distribution industry, or that domestic refiners should be provided the same option. While foreign refiners are provided a choice that domestic refiners are not provided, this is because the supply and price impacts from mandating the use of IBs for imported gasoline differ significantly from those for domestic gasoline. In addition, this choice can be provided to foreign refiners without adverse environmental impacts, through the use of the baseline adjustment mechanism to monitor and offset any potential degradation in the pool of imported gasoline. Providing the same choice to domestic refiners would very likely lead to a significant degradation of the much larger pool of domestically produced gasoline, that could only be remedied through an expensive and cost-ineffective adjustment mechanism.

In establishing the rules for conventional and reformulated gasoline, EPA determined that domestic refiners are all able to establish individual baselines. Under section 211(k)(8) of the Act, EPA therefore requires that domestic refiners establish and use IBs. This is a cost-effective way to ensure that domestically produced conventional gasoline does not degrade in emissions related quality below 1990 levels. It has been successfully implemented without significant disruptions to the supply or price of conventional gasoline. Continuing this approach for domestic refiners does not present a risk of significantly disrupting the gasoline supply and price market. This would be a much less cost effective way to keep conventional gasoline quality at 1990 levels than mandating the use of IBs for domestic refiners.

Providing domestic refiners the choice between use of an IB and use of the statutory baseline would likely lead, according to commenters, to many domestic refiners making this choice.[18] EPA would have to establish a benchmark and adjustment mechanism, similar to that proposed for imported gasoline, to monitor for and offset any degradation of the gasoline pool resulting from providing such an option. Given the large volume of gasoline involved, which is much larger than the volume of imported gasoline at issue here, and the expectation that exercising such a choice to use the SB would be based on the economic value of producing gasoline designed to meet a less stringent baseline with the resulting bias for a dirtier gasoline pool, EPA would almost assuredly be called on to impose an across the board adjustment to baselines for domestic refiners to offset degradation of the gasoline pool from 1990 levels. This would result in the kind of ''reformulation'' of conventional gasoline to stay at 1990 levels that the mandatory use of IBs was meant to avoid.

As compared to gasoline produced by domestic refiners, EPA has two potential parties whom it can regulate with respect to gasoline produced by foreign refiners. For imported gasoline EPA could regulate either the importer, or the foreign refiner. EPA therefore has discretion under section 211(k)(8) as to which party, and under what conditions, it imposes the requirements for conventional gasoline that is imported. For example, under the current regulations all foreign produced gasoline is regulated through the importer, and importers are not provided an option concerning establishment and use of an IB, while foreign refiners are not directly regulated.

For the reasons and circumstances described in section I.E. and in the proposal, EPA has rejected the approach of mandating that all foreign refiners establish and use an IB in order to

[18] Since domestic refiners have adequate data to establish an IB, this would not be consistent with the requirements of section 211(k)(8).

market conventional gasoline in the U.S. EPA has instead determined that it is appropriate to continue regulating imported conventional gasoline through the importer in all cases except those where a foreign refiner has adequate data and chooses to establish and use an IB. The concerns on price and supply which lead to rejecting the mandatory approach for foreign refiners do not apply to domestic refiners, and therefore do not provide a basis for changing the mandatory approach currently applied for domestic refiners. In addition, providing this option to foreign refiners is less likely to lead to a degradation of the average qualities of imported gasoline than the much more likely degradation that would occur to the much larger pool of domestically produced gasoline if the same option were provided to domestic refiners.

In sum, the mandatory use of IBs for domestic refiners has worked successfully, without significantly disrupting the supply and cost of conventional gasoline. Requiring the same approach for imported conventional gasoline, presents the risk of this kind of significant disruption. Providing domestic refiners with an option to establish and use IBs would very likely lead to a degradation in the emissions quality of conventional gasoline, over a very large percentage of the total volume of conventional gasoline. This degradation could be remedied by a baseline adjustment mechanism, however this would be a less-cost effective way to avoid such degradation than not providing such an option. Providing foreign refiners with the option to establish and use an IB presents a risk of environmental degradation, but this covers a much smaller pool of gasoline and it is unclear whether and to what extent there will in fact be a degradation in the pool of imported gasoline. If there is, it can be readily remedied consistent with the flexibility currently available to importers and foreign refiners to determine what gasoline is imported into the U.S., without the potential supply and price impacts from mandating the use of IBs for imported gasoline.

Consideration of Environmental Impact of Providing an Option for an Individual Baseline

Several commenters suggested that the Agency's proposal put trade and economic considerations over its concern for protecting the environment. On the contrary, the Agency believes that this final rule is fully consistent with the Agency's commitment to fully protect public health and the environment.

EPA considered two different approaches to the use of IBs by foreign refiners.[19] It is reasonable for EPA to consider the cost impacts of the two approaches and adopt the one that avoids the risks attendant with seriously disrupting the importation of conventional gasoline into the U.S. In this case, the provisions adopted concerning the option to establish and use an individual baseline will fully protect the public health and environment, and achieve the Clean Air Act goals for the conventional gasoline program. This will be achieved without risking significant disruption to the supply or price of conventional gasoline.

Impact of Mandatory Approach on Gasoline Supply/Price

Commenters objected that EPA did not have an adequate basis to reject the mandatory baseline approach based on supply and cost considerations.

Based on the information presented by DOE, EPA believes that requiring individual baselines for all foreign refiners presents too great a risk of adverse effects on gasoline supply and prices. To fully understand how mandatory baselines for imported conventional gasoline could impact the gasoline market it is first important to understand the role imports play in the domestic market. Foreign imports account for 6%–8% of total U.S. gasoline consumption. Almost all (over 95%) of imports come into Petroleum Administration for Defense Districts (PADD) I, the U.S. east coast, where they represent about 20% of total gasoline supply.

Imported gasoline plays a significant role in the domestic gasoline market. Imported gasoline augments the supply of gasoline on the east coast of the United States, an area with an already large demand. During the summer of 1996, U.S. east coast and gulf coast refinery operating utilization rates were in excess of 96%. Only about 150 thousand barrels a day of additional domestic gasoline production capacity was available. However, the market was demanding about 500 thousand barrels a day of additional gasoline. Imported gasoline made up the gap with over two-thirds of the imports meeting a need that could not be served by U.S. refineries.[20]

One commenter suggested that EPA's optional individual baseline approach discriminates against domestic refiners to such a degree that domestic refining capacity in the United States could contract as a result of this unequal treatment, which would have a more severe impact on the gasoline market in the United States. However, the current production rates of east coast and gulf coast refineries would indicate that this consequence is highly unlikely. It is clear that U.S. demand for gasoline will continue to increase at a rate surpassing U.S. production. The suggestion that domestic refineries will reduce their production in light of such a demand seems implausible.

One commenter suggested that EPA establish a temporary waiver procedure to provide limited relief from baseline requirements during short-term supply emergencies. Although EPA arguably may have the authority to establish such a waiver provision, it would be an impracticable solution in this instance. It is clear from the DOE's analysis outlined below that the disruption mandatory baselines would cause to the sale and importation of opportunistic gasoline could leave the U.S. market with a constant risk of short term supply and price disruptions, and the temporary waiver provision could not be implemented in a time frame that would eliminate this risk. Moreover it would require the U.S. government to arbitrarily determine the appropriate market price of gasoline.

Much of the gasoline imported into PADD I is shipped into the United States on an ad hoc basis. Currently gasoline is imported into the U.S. market from a free moving and fungible distribution system. This opportunistic sale of gasoline is an important element in the U.S., and particularly the east coast, gasoline supply system. The broad based use of tracking and monitoring restrictions which would be required by mandatory individual baselines would eliminate the flexibility necessary to quickly divert opportunistic gasoline to the U.S. should the market demand it. This would make it more likely that imported gasoline would not play the same role that it currently does in moderating price increases.

The amount of opportunistic gasoline imported into the United States is not inconsequential. DOE's analysis indicates that in 1996, a total of 25

[19] The potential for an adverse environmental impact from providing an option to foreign refiners, and EPA's mechanism to monitor for and fully offset any such adverse impact, is explained in detail in the proposal and elsewhere in this notice. The potential for an adverse environmental impact from the mandatory IB approach is described in the proposal at 62 FR 24779.

[20] Analysis provided in comments submitted by the Department of Energy, July 23, 1997 in response to the May 6, 1997, NPRM.

separate importers brought gasoline, of all types, to the U.S. east coast from about 40 refineries in 28 countries. Of this amount, over 40% was imported as opportunistic gasoline. The ability to quickly draw gasoline supplies from various parts of the world to the U.S. market is important in moderating price swings and meeting consumer demand.

While most imported gasoline enters the U.S. market on the east coast it impacts gasoline prices nationwide. Imported gasoline tends to moderate price increases by increasing the sources of gasoline to meet U.S. demand. DOE examined New York harbor, Chicago and Gulf Coast spot prices for conventional gasoline which showed highly correlated movements throughout 1996. The pipelines linkages between PADD III and PADDs I and II are the key mechanism for linking the prices.

The DOE analysis concluded that a 1 cent per gallon change in New York spot prices, driven by a shortage of imports, could affect the over 4 million B/D of conventional gasoline being used in PADD's I, II and III. A 1 cent/gallon price change, lasting as little as one week (typical of the time required to get additional gasoline shipments to the U.S. east coast from Europe or from the gulf coast by water), could cost or save gasoline consumers over $10 million.[21]

While a number of factors are at work in market fluctuations it is clear that the volume of imported gasoline is price responsive. By rapidly providing additional supply, consumer demand is met without the large price increases that would be necessary to control gasoline demand.

EPA disagrees with the comment that an option to establish an individual baseline should not be provided because it would give foreign refiners a competitive advantage over domestic refiners. Foreign refiners who establish an individual baseline will be subject to the same requirements as domestic refiners, with additional requirements dictated by their unique circumstances. Foreign refiners will be required to fulfill the additional burden of tracking and segregating their imported gasoline to ensure that the correct individual baseline is being used for the purposes of the compliance calculation.

Gasoline from foreign refiners who do not establish an individual baseline would be subject, through the importer, to an adjustment to the importer baseline needed to offset any adverse environmental impact from a foreign refiner's choice not to seek an individual baseline.

As described above, this option is provided to foreign refiners based on the significant difference in circumstances between applying the mandatory use of individual baselines to domestic or foreign refiners, and the significant difference in potential adverse impact on the environment and gasoline supply and prices.

Role of Consideration of Costs

One commenter argued that EPA's obligation under the Clean Air Act to protect the environment take priority over costs and economic concerns in this rulemaking.

EPA's authority to take costs and economic factors into consideration when establishing rules protective of the environment depends on the terms of the specific statutory provision at issue. As in prior rulemakings establishing the conventional gasoline program, EPA's authority is based on sections 211(k)(8) and 211(c)(1) of the Act. Each of these provisions gives EPA discretion to take cost and other relevant factors into consideration when establishing requirements that meet the air quality goals of the conventional gasoline program. In the prior rulemakings for the conventional gasoline program, EPA has taken these factors into consideration when establishing the requirements needed to meet the air quality requirements of this program. For example, EPA's CG requirements include the ability to obtain an adjustment to the IB under certain circumstances related to economics; establish testing, recordkeeping and reporting requirements which reasonably take into account the burden of the measures, and reflect the decision in the 1993 rulemaking to not establish specific emissions requirements for VOCs, CO, and non-exhaust toxics, based in part on economic considerations. In this case it is also reasonable to consider adverse supply and cost impacts when determining the appropriate approach. The statutory provisions noted above provide EPA with the discretion to consider these factors.

B. Establishment of an Individual Baseline (IB)

1. Overview

Comments were submitted on a number of issues with regard to establishment of individual baselines by foreign refiners. These issues included the proposed requirement to submit baseline information on the foreign refinery's overall gasoline production as well as the subset of gasoline which was sent to the U.S. in 1990; the proposed January 1, 2002 deadline for submittal of foreign refinery baseline petitions; and foreign refinery aggregation for compliance purposes.

In summary, EPA is not requiring foreign refiners to submit baseline information on the foreign refinery's overall gasoline production. EPA reserves the right to require such information in a specific case if it is needed to reasonably evaluate a baseline submission. EPA is retaining the proposed January 1, 2002 deadline for baseline petition submittals. In general, with regard to other baseline issues, such as aggregation, baseline volumes, and baseline review, audit and approval, EPA is maintaining the same requirements for foreign refiners as for domestic refiners, as proposed.

2. Use of Total 1990 Product Data

EPA proposed that a foreign refinery would have to submit information regarding its total 1990 gasoline production as well as information regarding the subset of the refinery's gasoline production which was sent to the U.S. in 1990. EPA believed that information on the total refinery gasoline production would be useful in the calculation and verification of the quality of the subset of gasoline sent to the U.S. in 1990.

Commenters indicated that requiring an individual baseline calculation for the total gasoline production was burdensome, costly, and, in general, of little additional value. Commenters indicated that the quality of the subset of gasoline sent to the U.S. in 1990 could be accurately determined without the additional information on the refinery's total gasoline production. One commenter also stated that EPA previously concluded that the overall quality from a foreign refinery might bear scant resemblance to the quality of the portion going to the U.S. market. This commenter also stated that requiring information on a foreign refiner's overall gasoline production is wholly unnecessary.

In general, EPA agrees with the commenters that requiring information in all cases on the overall 1990 gasoline production of a foreign refinery may be costly and may provide little additional value. Thus, EPA will only require that a foreign refiner's baseline petition contain information relevant to the calculation of the baseline for the subset of gasoline sent to the U.S. in 1990. Nonetheless, the calculation of a refinery baseline per these regulations is complex, with wide variances in the types and amounts of data available on

[21] Comments from DOE on EPA's May 6, 1997 NPRM, page 2.

the subset of 1990 gasoline which came to the U.S. As with domestic refiners, EPA reserves the right to request additional information to evaluate a petition for an IB, where such information is needed to reasonably determine an accurate IB. In specific cases this might include much or all of the information pertaining to the refinery's 1990 total gasoline production.

3. January 2002 Deadline

EPA proposed that baseline submissions would have to be submitted to the Agency by January 1, 2002. EPA proposed this date in order to allow for the collection of both summer and winter data and the preparation of a baseline petition subsequent to June 1, 2000, the scheduled date EPA would announce the average quality of imported gasoline for the first monitoring period of 1998 and 1999. Domestic refiners had approximately one year following issuance of the final regulations in December 1993 to prepare (including completion of sampling, testing and analysis) and submit their individual baselines to EPA prior to the start of the program on January 1, 1995.

EPA received comments indicating that the proposed deadline was appropriate, and others indicating that such a deadline was unnecessary, and perhaps arbitrary. Commenters opposing a deadline thought that foreign refiners should be allowed to apply for an individual baseline when they desire to, for example, when export volumes to the U.S. increase and/or pricing conditions are favorable. One commenter questioned whether baseline petitions would be accepted prior to January 1, 2000, and suggested that EPA specify a reasonable period of time in which it will act on a baseline submission, as the commenter indicated EPA did with domestic refiners.

EPA continues to believe that a deadline for the receipt of foreign refiner baselines is appropriate in order to avoid the increased uncertainty in determining an individual baseline too many years after the 1990 time period that an IB is based upon. A reasonable deadline such as January 1, 2002 provides foreign refiners several years to exercise the option provided here, and will assure that EPA has a reasonable factual basis to determine an accurate IB regarding 1990 gasoline volume and quality. It will also maintain requirements similar to those imposed on domestic refiners. While a foreign refiner would not have the right under the regulations to seek an IB after January 1, 2002, after this date a foreign refiner could still petition EPA to revise this rule and establish an IB, for example, where the refiner could demonstrate that it is able to establish an accurate and verifiable IB.

Foreign refiners may submit a baseline petition to EPA at any time prior to January 1, 2002. However, if gasoline is imported using an IB while a petition for an IB is pending, the foreign refiner will be subject to the ultimate approved baseline, which may change significantly (to their benefit or detriment) from the original submission due to errors or omissions uncovered during EPA review. In general, baselines are reviewed in the order received, but a well prepared and ultimately correct baseline may be approved prior to a baseline submitted earlier which was less well prepared or incorrect.

EPA is not establishing a specific time frame to act upon baselines, due to the many uncertainties, discussed above, regarding the completeness of the original submittals and the number of questions EPA may have for a refiner before determining that a submittal is complete, accurate, and appropriate for approval. The Agency's review of submissions by domestic refiners took between a few months and two years, depending on the quality and completeness of the original submission. EPA will review foreign refiner baseline submissions in an expeditious and timely manner but cannot specify a time frame in which a foreign refiner baseline will be acted upon. Foreign refiners can export conventional gasoline to the U.S. using an IB under the program requirements finalized today without an approved baseline. Foreign refiners should note that once a baseline petition is submitted and a refiner begins to use an IB, the refiner will be held to compliance with the ultimately approved baseline.

4. Aggregation

As stated in the proposal, a foreign refiner who operates more than one refinery with an individual baseline would be able to aggregate the baselines of some or all of its refineries, as allowed for domestic refiners.

Commenters said that allowing a foreign refiner to aggregate refineries with both unique individual baselines and statutory baselines gave additional flexibility to foreign refiners who would already have the option of having or not having an individual baseline. One commenter also stated that foreign refiners should be subject to the same one-time decision regarding aggregation as domestic refiners. Commenters also said that foreign refiners should not be allowed to game the system by electing either an individual baseline (for refineries dirtier than the statutory baseline) or the statutory baseline (for refineries cleaner than the statutory baseline) on a refinery-by-refinery basis for facilities owned by a single entity. These commenters claimed that allowing some individual baseline refineries and some statutory baseline refineries under a single owner would ''aggravate the competitive discrimination against domestic refiners.'' According to these commenters, all refineries owned by a single entity should all have either an individual baseline or all have the statutory baseline, and if a baseline for one of the refineries could not be established, then no individual baseline should be given to any of the refineries of a single entity.

EPA did not propose that all or none of the refineries of a foreign refiner would have to have an individual baseline, because a central element of the proposal was to provide foreign refiners an option: either obtain an individual baseline and fulfill all of the requirements accompanying the use of an individual baseline by a foreign refinery, or continue with the current requirements with respect to gasoline produced for the U.S., subject to any remedial baseline adjustment.

Many of the comments above focused on foreign refineries with statutory baselines. In fact, under today's rule, no foreign refinery which does not apply for an individual baseline will have the statutory baseline. Foreign refineries which apply for and receive an individual baseline will either have a unique individual baseline or will have the statutory baseline (with a zero baseline volume) e.g., where the refinery was not in operation in 1990 or produced no gasoline for the U.S. in 1990. All other foreign refineries will have no baseline, and their gasoline will be regulated through the importer's baseline, typically the statutory baseline. Thus, under this rule, it is possible that some refineries of a foreign refiner would have an approved individual baseline and some would have no baseline. An aggregate baseline (or baselines) of a foreign refiner could only be composed of the baselines of its facilities with approved individual baselines. Foreign refineries without an individual baseline cannot be included in an aggregate baseline.

A foreign refiner may choose to obtain an individual baseline for one, some, all or none of its refineries. Limiting the option to cases where all of a refiner's refineries receive IBs is counter to the reasons for providing an option. For

example, it would lead to cases where a foreign refiner wanted to establish an IB for a refinery and had adequate data to do so, but was precluded from this because it could not establish an IB for a different refinery, or to situations where EPA or the foreign refiner would have to prove a negative in order to establish an IB, i.e., that no IB could be developed for one refinery as a condition of allowing an IB for a different refinery where the data was available. These results would be inconsistent with the general approach of giving foreign refiners an option to establish individual baselines where they want, and have adequate data to do so.

In summary, the requirements for aggregating baselines for foreign refiners are the same as those for domestic refiners, namely, all facilities in an aggregate baseline must have an assigned individual baseline, either a unique individual baseline or the statutory baseline. Aggregate baselines may be composed of some or all of a refiner's refineries with assigned individual baselines, and a refiner may have more than one aggregate baseline. Each refinery, though, can only be part of one aggregation. As with domestic refiners, the decision to form an aggregate baseline is a one-time decision.

5. Baseline Volumes

Several commenters indicated that foreign refiners should be subject to the same baseline volume constraints as domestic refiners, namely, that the individual baseline applies up to their baseline volume limit, and the statutory baseline applies to all volume in excess of the baseline volume per the calculation of compliance baseline values in 80.101(f), namely, a volume-weighted average of the individual baseline value and the corresponding statutory baseline value. EPA agrees. EPA proposed and is finalizing a requirement that foreign refiners would be subject to the same restrictions for individual baseline volumes as are domestic refiners, per 80.101(f).

One commenter suggested, that where it is difficult to quantify volumes exported to the U.S. by a refiner, that Energy Information Administration (EIA) reported country totals be used to verify and cap quantities reported by foreign refiners. The commenter suggested that the sum of all baseline volumes reported to EPA from a country cannot exceed the total country volume reported by EIA in 1990. According to the commenter, this should be done on a seasonal basis to assure that complex model winter/summer differences are properly accounted for.

EPA proposed and is finalizing that those foreign refiners which petition the Agency for an individual baseline will have to adequately account for the volumes of gasoline they sent to the U.S. in 1990. EPA agrees that EIA data would be a useful tool for checking that the sum of the baseline volumes of each facility did not exceed the 1990 country levels reported in EIA.

16. Baseline Audits

Several commenters indicated their concern that foreign refiners submitting baseline petitions should be subject to the same requirements with regard to review by an EPA-approved independent baseline auditor, and EPA audits and approval of baselines. EPA proposed and is finalizing requirements that all foreign refinery individual baseline petitions be reviewed by an EPA-approved independent baseline auditor. Once submitted to the Agency, they will undergo the same comprehensive and detailed review process used to evaluate baseline submissions by domestic refiners.

7. Miscellaneous

Several commenters indicated that foreign refiners would have a competitive advantage vis-a-vis the proposed regulations in a number of areas, including the fact that they are not subject to conventional gasoline and other environmental requirements for all of the non-U.S. bound gasoline they produce. Commenters claimed that clean gasoline for the U.S. could be made less expensively because foreign refiners could ''dump'' dirty components into the gasoline destined for their home markets and other non-U.S. markets which have fewer restrictions on gasoline quality than the U.S. One commenter suggested that a foreign refiner seeking an individual baseline should be required to demonstrate that it is not, in fact, dumping dirty components into gasoline sold in its home market.

EPA acknowledges that foreign refiners may have additional flexibility, as indicated by commenters. However, as EPA has indicated previously, section 211(k) of the Clean Air Act is not aimed at regulating the quality of gasoline used in other countries, nor at regulating foreign refiners except with regard to the gasoline they send to the U.S.

C. Type of Requirement for FRGAS

1. Summer vs. Winter Averaging

A few commenters suggested that foreign refiners with individual baselines would have additional flexibility over domestic refiners because of seasonal differences in the complex model. They stated that the same gasoline evaluated under the winter model produces significantly higher emissions than gasoline evaluated under the summer model, and because of this, foreign refiners could meet their emission requirements with poorer quality gasoline by increasing imports of summer gasoline (or importing a lower portion of winter gasoline). Commenters also stated that gasoline imports have traditionally been higher in the summer. According to commenters, domestic refiners are essentially limited to domestic markets and fixed seasonal demand, and do not have the opportunity to systematically control their summer/winter production. Commenters suggested that EPA require foreign refiner compliance on a seasonal basis, or offer the seasonal basis option to domestic refiners. One commenter also suggested that the benchmark be based on the last 3 year running average of imported summer gasoline.

Starting in 1998, compliance with IBs only applies to conventional gasoline for which only certain exhaust emissions are of concern. The winter complex model does produce higher exhaust emissions for a given fuel than the summer version of the model. However, EPA disagrees that foreign refiners could take advantage of this by systematically producing more summer than winter gasoline. First, U.S. gasoline demand increases nationwide during the summer. Domestic refiners produce more gasoline in the summer, and it would seem logical that imports would also increase during the summer. EPA agrees that domestic refiners are essentially limited to domestic markets, however, EPA believes that both foreign and domestic refiners are limited to the seasonal demand. It would not be prudent for a foreign or domestic refiner to market additional volumes of summer gasoline beyond what it could reasonably expect to be used, because of storage issues and the fact that, for foreign refiner's with an individual baseline, gasoline in excess of their baseline volume is evaluated at the statutory baseline, just as for domestic refiners.[22]

[22] On a related matter, EPA recently proposed a requirement that conventional gasoline will be classified as summer gasoline only where the gasoline both meets A federal RVP requirements under section 80.27, and is intended for use in an area subject to the RVP requirements during the period these requirements are in effect. If adopted this would limit inappropriate classification of

Continued

Providing different averaging periods for foreign and domestic refiners of CG would not be consistent with EPA's basic approach of applying the same requirements to foreign and domestic refiners except where clear and convincing reasons call for different requirements (such as providing an option to establish and use an IB to foreign refiners as compared to mandating an IB, imposing additional requirements related to tracking of gasoline and compliance assurance, and establishing a mechanism to offset any adverse environmental impact from providing the option to establish and use and IB). In addition, providing domestic but not foreign refiners with an option to average seasonally would clearly lead to adverse environmental impacts, as domestic refiners would choose the averaging period that required less control of gasoline quality. For these reasons EPA is not adopting the suggested approach.

2. Other

One commenter suggested that foreign refiners have yet another advantage because they can blend components such as MTBE into their gasoline prior to entry into the U.S. at the tariff rate for motor fuels while domestic refiners must pay a significantly higher chemical duty on MTBE imported for gasoline blending. While the tariff situation described by the commenter could provide an advantage to foreign refiners, this tariff differential already exists, and is not a result of, nor will it necessarily be exacerbated by, today's rule.

D. Liability

1. Party Responsible for Meeting the Gasoline Quality Requirements for FRGAS

a. EPA's Proposal: EPA proposed that a foreign refiner who obtains an individual refinery baseline would be responsible for meeting the NO_X and exhaust toxics requirements for the conventional gasoline produced at the foreign refinery and imported into the United States. This is like the requirements that apply to a domestic refiner, who must meet the NO_X and exhaust toxics and requirements for conventional gasoline produced at the domestic refinery and used in the United States. EPA also requested comments on an alternative option, where the U.S. importer would be responsible for meeting the NO_X and exhaust toxics requirements for imported conventional gasoline produced by a foreign refiner with an individual refinery baseline, but using the baseline that applies to the foreign refinery.

b. Comments: EPA received comments from two foreign refiners who supported the alternative option of making the U.S. importer responsible for meeting the conventional gasoline NO_X and exhaust toxics requirements. EPA also received comments from a group of U.S. importers who opposed placing this responsibility on U.S. importers if the importer would have liability for violations that result if a foreign refiner specifies incorrect baseline values for specific FRGAS batches.

One foreign refiner suggested an approach they believe would allow U.S. importers to meet the NO_X and exhaust toxics requirements for imported FRGAS without risk of incorrect baseline values, by removing any uncertainty regarding the baseline values that apply to each individual batch of imported FRGAS. This foreign refiner suggested that for a foreign refiner with an individual baseline, the annual compliance baseline for an upcoming year would be established at the beginning of that year, using an assumption for the total volume of gasoline (conventional gasoline plus RFG) that will be produced and shipped to the U.S. during the upcoming year.[23]

The foreign refiner suggested that this assumed volume would be the refinery's prior year volume or the refinery's volume projections for the upcoming year, and that EPA would approve each foreign refiner's volume assumption in advance of each year. In this way the foreign refiner and U.S. importers of that refiner's gasoline would have certainty at the beginning of each year of the compliance baseline that applies to gasoline produced at the foreign refinery during the year. This foreign refiner also suggested that if the refinery's actual gasoline volume during the year is different than the assumed volume a correction would be applied to the refinery's compliance baseline in a subsequent year.

The foreign refiner stated that this approach, as compared to the approach where the foreign refiner would meet the NO_X and exhaust toxics requirements, would be simpler, more feasible, and would require fewer resources to implement, largely because U.S. importers would be responsible for demonstrating compliance with the NO_X and exhaust toxics requirements.

Another foreign refiner commented that in a case where the gasoline produced by a foreign refiner with an individual refinery baseline is imported into the U.S. by a single importer, the U.S. importer could take all compliance responsibility for this gasoline.

c. EPA's Response: EPA is finalizing this foreign refiner requirement as proposed for the following reasons.

Requiring U.S. importers to meet the NO_X and exhaust toxics requirements for FRGAS presents an inherent difficulty, in that the compliance baseline that applies to conventional gasoline is not known until the end of each year. Domestic refiners are able to operate with this uncertainty, because the refiner can update a refinery's projected compliance baseline throughout the year based on gasoline volumes, and the refiner has the ability to adjust conventional gasoline quality to meet these projections. In contrast, U.S. importers of FRGAS would have to rely on the foreign refiner to estimate the compliance baseline that applies to each FRGAS batch, and the U.S. importer would be liable if imported conventional gasoline quality failed to meet these projections. U.S. importers have commented that it is this uncertainty that most hampers their operations—that an importer could rely in good faith on the foreign refiner's compliance baseline estimate, yet the importer would be liable if the estimate ultimately is incorrect.

winter gasoline as summer gasoline. If the agency adopts this proposal, all gasoline produced for use in the continental United States between May 1 and September 15 each year would be classified as summer gasoline. This proposal was created to reduce the amount of gasoline that was being accounted for as summer gasoline which really only had summer RVP but was intended for use outside the summer time period. (See 62 FR 37338).

[23] Under section 80.101(f) a compliance baseline for NO_X and exhaust toxics compliance is calculated for each calendar year averaging period based on a refinery's 1990 baseline volume and baseline NO_X and exhaust toxics values, and the total U.S. gasoline volume (conventional gasoline and RFG) produced at the refinery during the year. The compliance baseline equation caps use of a refinery's individual baseline values at the refinery's baseline volume, and any additional gasoline volume (conventional gasoline and RFG) for a year moves the refinery's compliance baseline values in the direction of the statutory baseline. Thus, a refinery's annual compliance baseline, and as a result the refinery's NO_X and exhaust toxics requirements for the year, are not finally established until the end of the year when the refinery's total gasoline volume for the year is known.

Section 80.101(b) requires use of compliance baselines only for the simple model requirements that apply before 1998. However, in another rulemaking EPA has proposed to require use of compliance baselines for the complex model requirements that apply beginning in 1998. See 62 FR 37363 (July 11, 1997). EPA believes this proposed change will be final before the beginning of 1998. In any case, the same provision will apply to both domestic and foreign refiners.

While the alternative suggested by one foreign refiner (using EPA-approved volume projections each year to specify a foreign refinery's compliance baseline at the beginning of the year) would remove this uncertainty, it has the disadvantage of constantly requiring corrections in a subsequent year. It is unlikely a foreign refiner's annual volume projections will ever exactly match the refinery's actual annual volume. As a result, if this approach were adopted EPA probably would be required to calculate and implement corrections each year for each foreign refinery with an individual baseline. In addition, these corrections could not be applied immediately, because a foreign refinery's annual volume will not be established until reports could be filed, and the correction calculated, which would necessarily occur in the subsequent year. As a result, it is likely there would be a one year lag in applying corrections, e.g., if a foreign refiner's volume projection for 1998 were incorrect the details of this error would not be known until some time in 1999, and the correction could not occur until 2000. It is preferable that NO_X and exhaust toxics requirements be met each year without the expectation of constant subsequent correction, if other considerations are equal. This also avoids any risk of adverse environmental consequences that could result if the foreign refiner ceased supplying gasoline to the United States before the correction could be completed.

In addition, domestic refiners do not have the option of using an incorrect compliance baseline each year and correcting for the error in a subsequent year, and there are no compelling reasons to treat foreign refiners differently in this regard.

EPA agrees that, in general, it is easier to monitor and enforce requirements that apply to parties present in the United States such as U.S. importers, as compared to parties located outside the United States such as foreign refiners. However, even if EPA were to adopt the suggested approach of requiring U.S. importers to meet the NO_X and exhaust toxics requirements for FRGAS, foreign refiners of FRGAS would continue to have significant responsibilities under the regulations that EPA would monitor and enforce. The foreign refiner would have to establish individual refinery baselines; submit supported volume projections to EPA; and meet a range of requirements associated with establishing the refinery's actual volume of FRGAS each year, including designation of FRGAS, load port sampling and testing, record keeping and reporting, and attest requirements. EPA would have to monitor compliance with these requirements even if U.S. importers met the NO_X and exhaust toxics requirements.

EPA disagrees with the comment by one foreign refiner that the U.S. importer could be responsible for meeting all requirements associated with FRGAS where a foreign refiner's FRGAS is imported by a single U.S. importer. A foreign refinery's annual compliance baseline is based on the refinery's volume of conventional gasoline and RFG FRGAS, and this volume can most properly be established using information available only at the foreign refinery. As a result, regardless of the responsibilities assumed by the U.S. importer the foreign refiner still must, *inter alia,* keep records, file reports, commission an attest engagement, and agree to allow EPA inspections and audits.

On balance, EPA believes the proposed approach of requiring foreign refiners of FRGAS to meet the NO_X and exhaust toxics requirements is the best approach in that it does not impose unwarranted uncertainties on importers, avoids the uncertainty of subsequent corrections on a yearly basis, and is consistent with the requirements on domestic refiners.

2. Sovereign Immunity and Agent for Service of Process

a. EPA's Proposal: EPA proposed that where a foreign refiner is owned or operated by a foreign government, the government would have to issue a waiver of sovereign immunity before the refiner could obtain an individual refinery baseline. As proposed, this waiver would have to be signed by an official of the foreign government at the cabinet secretary level or higher who has responsibility for the foreign refinery, and would have to specify the waiver would apply in any case of prosecution by the United States for civil or criminal violations related to FRGAS requirements including requirements in relevant Clean Air Act sections and Title 18 United States Code.

b. Comments: EPA received comments addressing the sovereign immunity waiver proposal from several foreign government-owned refiners and from a domestic association that represents independent gasoline marketers. In addition, EPA received comments from associations representing domestic refiners that generally addressed EPA's proposed enforcement requirements without specifically discussing the proposed sovereign immunity waiver requirement.

The foreign government-owned refiners and the association of domestic marketers commented that the proposed waiver of sovereign immunity is unnecessary. One of these foreign refiners commented that in the antitrust context the U.S. Department of Justice has taken the position that foreign government-owned corporations operating in the commercial marketplace are subject to U.S. antitrust laws to the same extent as foreign private-owned firms. This commenter concluded that waivers of sovereign immunity are unnecessary to enforce the antitrust laws, and that this same conclusion also should apply to enforcement under the Clean Air Act.

Two other foreign refiners referred to 28 U.S.C. 1605(a)(2) of the Foreign Sovereign Immunities Act (FSIA), which provides that a foreign sovereign is not entitled to immunity in an action based on certain ''commercial activity.'' These commenters further stated or implied that a foreign refiner, by engaging in the production and sale of gasoline for export to the U.S., would be covered by the provisions of this section and, hence, would not be entitled to sovereign immunity under the FSIA with respect to matters covered by this regulation. These commenters concluded, as a result, that the proposed sovereign immunity waiver requirement is unnecessary. One foreign refiner commenter said the proposed sovereign immunity waiver requirement is particularly objectionable if the waiver must be signed by a cabinet secretary.

One foreign refiner said the proposed scope of the waiver is too broad, because EPA had proposed that the waiver would need to apply to all provisions of Title 18, United States Code. This foreign refiner said, in addition, that sovereign immunity cannot be a condition for according national treatment under Article III of GATT 1994.

The association of domestic marketers commented that the proposed requirement to waive sovereign immunity is inflammatory, and that other proposed enforcement mechanisms are sufficient for appropriate EPA enforcement, including the possibility of revoking an individual refinery baseline, and the required foreign refiner commitments regarding EPA inspections and audits, naming an agent for service, and bond posting.

The associations representing domestic refiners did not specifically address the proposed sovereign immunity waiver requirement, but did support EPA's proposed enforcement

requirements in general. In addition, one of these associations commented that EPA also should require there be an extradition treaty in place with a foreign government before allowing a refiner in that country to obtain an individual refinery baseline. This commenter stated that in the absence of an extradition treaty there could not be adequate enforcement of criminal violations.

c. EPA's Response: EPA continues to believe that to provide adequate enforcement mechanisms related to the establishment and use of individual baselines by foreign refiners, the issue of sovereign immunity needs to be addressed for foreign government-owned refiners. Therefore, EPA has retained a specific provision in the final rule addressing sovereign immunity. However, the form of this sovereign immunity provision is being revised based on EPA's evaluation of the comments and prior U.S. administrative practice in this area.

Under the FSIA a foreign refiner who obtains an individual refinery baseline from EPA, exports FRGAS to the United States, and violates requirements applicable to the foreign refiner under this rule has engaged in the kind of activity that falls within an exception to sovereign immunity under 28 U.S.C. 1605(a)(2), (commonly referred to as the ''commercial activity'' exception) as asserted by the commenters. However, EPA is aware of no judicial precedent directly addressing these issues in the context of a regulatory enforcement action by an agency of the United States. As a result, a degree of uncertainty remains on the issue of whether United States courts would rule in all cases that a foreign refiner who obtains and uses an individual refinery baseline automatically is ineligible to claim sovereign immunity in the context of an EPA enforcement action for violations of the FRGAS requirements.

Under 28 U.S.C. 1605(a)(1) the issue of sovereign immunity can be resolved where the foreign government waives sovereign immunity. EPA has evaluated and adopted an approach to a sovereign immunity waiver that provides EPA with the ability to effectively enforce the requirements applicable to a foreign refiner, in combination with other provisions adopted today. This is similar to the approach used by the U.S. Department of Transportation in the context of economic licenses issued to foreign air carriers that are necessary for those carriers to conduct commercial operations in foreign air transportation to and from the United States. The DOT approach does not require an official of the foreign government to sign a separate document waiving sovereign immunity. Rather, DOT licenses for foreign air carriers, whether government or privately owned, include a condition that states, in essence, that operation under the license by a foreign air carrier constitutes a waiver of sovereign immunity under the FSIA.[24]

DOT has included this type of waiver of sovereign immunity clause in its foreign air carrier licenses for several decades, and sovereign immunity has not been raised as an issue in DOT enforcement of its requirements against foreign government-owned air carriers. Foreign government-owned air carriers have willingly operated under this waiver of sovereign immunity license term, indicating that this approach for addressing the issue of sovereign immunity has been acceptable to all foreign governments concerned.

Based on the success of this administrative approach by another U.S. agency, EPA is including a similar provision in the foreign refiner final rule that is like the DOT approach, but uses regulatory language that is somewhat different from the language used by DOT. The regulatory language used by EPA acts to preclude a defense of sovereign immunity for purposes of the FSIA as well as for any enforcement actions that may be taken which may not be subject to the provisions of the FSIA. The sole purpose and effect of the regulatory language is limited to precluding the use of sovereign immunity as a defense to an otherwise valid EPA or other U.S. enforcement action based on a violation of the requirements that apply to a foreign refiner as a result of obtaining and using an individual refinery baseline.

Under this regulatory provision, when a foreign government-owned refiner submits a petition to EPA for an individual refinery baseline, the baseline submission constitutes a waiver of sovereign immunity for purposes of 28 U.S.C. 1605(a)(1) of the FSIA, e.g., for an enforcement action based on incorrect or fraudulent submissions. In addition, when a foreign government-owned refiner operates under an individual refinery baseline by supplying FRGAS to the U.S., this constitutes an additional waiver of sovereign immunity under the FSIA, e.g., for enforcement actions based on failure to comply with the exhaust toxics or NO_X emissions requirements, failure to submit reports, or failure to provide access to inspectors. This waiver of sovereign immunity would also apply for any enforcement action not otherwise subject to the FSIA.

If a foreign government-owned refiner states that it reserves the right to or will assert a sovereign immunity defense in the context of any EPA enforcement action for violations of the requirements under these regulations, or in fact raises such a claim, then EPA may, in addition to other remedies in law, take action to deny or withdraw all individual refinery baselines that have been issued to the foreign refiner.

3. Agent for Service of Process

a. EPA Proposal: EPA proposed that in order to obtain an individual refinery baseline a foreign refiner would be required to name an agent for service of process located in Washington, D.C.

b. Comments: One foreign government-owned refiner objected to the proposed requirement to name an agent for service of process located in Washington, D.C. as being unnecessary for a foreign government-owned refiner. This commenter stated that the FSIA specifies procedures for achieving service of process that do not involve a named agent. In addition, the commenter said the requirement for an agent for service of process should be limited to service of process in EPA enforcement actions and should not cover service of process in non-related actions, such as private commercial claims raised by other parties.

c. EPA's Response: EPA remains convinced that the final rule should include a provision as proposed for all foreign refiners acting under an individual baseline, including foreign refiners that are foreign government-owned, to name an agent for service of process in Washington, D.C. While it is true the FSIA includes procedures for service of process on foreign government-owned firms, the FSIA procedures are cumbersome at best.[25] In

[24] The Department of Transportation's Conditions of Authority that applies to foreign air carriers includes the following provision:

In the conduct of the operations authorized, the holder shall:

* * * * *

(7) Agree that operations under this authority constitute a waiver of sovereign immunity, for purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place

* * * * *

DOT Order 87–8–8 (issued July 31, 1987).

[25] For example, 28 U.S.C. 1608(b)(2) provides that service on an agency or instrumentality of a foreign state must be accomplished by delivery of copies of the summons and complaint to an officer, general agent, or other agent authorized by appointment or law to receive service of process in the United States, or in accordance with applicable

addition, 28 U.S.C. 1608(b)(1) of the FSIA states that service of process on an agency or instrumentality of a foreign government may be by delivery of a copy of the summons and complaint in accordance with any ''special arrangement'' for service between the plaintiff and the agency or instrumentality of the foreign government. EPA believes a foreign government-owned refiner naming an agent for service of process, as proposed, would constitute a ''special arrangement'' for service under 28 U.S.C. 1608(b)(1), and service on such an agent by EPA would resolve any question regarding whether service has been accomplished.

Commenters have not described any reason why it would be difficult or expensive for a foreign government-owned refiner to name an agent for service of process in Washington, D.C., but only that there is an alternative under the FSIA. EPA believes that, on balance, it is more appropriate to require all foreign refiners seeking an individual refinery baseline, including foreign government-owned refiners, to name an agent for service, instead of relying on the alternative under 28 U.S.C. 1608(b) (2) and (3) of the FSIA. It will reduce the administrative burden on EPA and will not add any significant burden on the foreign refiner.

Finally, EPA agrees that the agent for service of process need not be authorized to receive process from parties other than EPA or others in the United States government, or for enforcement actions other than those that result from a foreign refiner having petitioned for and used an individual refinery baseline.

4. Bond Requirement

a. EPA Proposal: EPA proposed that a foreign refiner would be required to post a bond in order to receive an individual refinery baseline. The amount proposed for this bond would be calculated by multiplying the annual volume of conventional gasoline exported to the U.S. by the foreign refiner, in gallons, times $0.01. The bond amount that applies each year would be calculated using the annual volume for the single year that had the greatest volume among the immediately preceding five years. EPA also proposed that the bond requirement could be met if a bond is obtained from a third party surety agent, provided that EPA approves the surety agreement.

b. Comments: EPA received comments on the bond proposal from two foreign refiners who opposed requiring bonds or believed them to be unnecessary, and from an association of domestic refiners who supported the bond proposal.

One foreign refiner commented that although it could accept a bond requirement, such a requirement is not necessary. This commenter also stated that the amount proposed for the bond is too large, and that the bond amount required for any particular foreign refiner should be reduced over time based on the refiner's compliance record. This commenter stated that bonds need not be for the full amount of any possible liability, because a lesser, but significant, bond amount would create an incentive for good conduct, which serves one purpose of a bond. However, this commenter did not suggest any alternative bond amount.

The other foreign refiner, who also objected to the proposed bond requirement, interpreted the proposal as requiring that bond amounts be calculated based on the cumulative volume of FRGAS exported to the U.S. by a refiner over the prior five years, and stated that the bond amount that would result raises questions under Article II and Article III of the GATT. This commenter also stated it is aware of no surety agent who would issue a bond to cover judgments against a foreign refiner for Clean Air Act violations. Further, this commenter stated that EPA should rely on penalties other than bonds, such as imposing a sanction of prohibiting the sale in the U.S. of gasoline produced by a foreign refiner who has violated the Clean Air Act.

The association representing certain domestic refiners commented in support of the bond proposal, stating that posting of bonds by foreign refiners is critical for effective enforcement.

c. EPA's Response: A bond requirement was proposed because of concern that collecting a judgment against a refiner located outside the United States for an enforcement action related to the requirements of this rule is more difficult than collecting a judgment against a domestic refiner. None of the comments refuted this basic concern. The bond requirement has the effect of enabling EPA to collect penalties against foreign refiners in a straightforward manner, analogous to penalty collections against domestic refiners.

The bond amount EPA proposed, annual conventional gasoline gallons times $0.01, was based on an estimate of the penalty that could result if a foreign refiner violated the exhaust toxics or NO_X requirements. These requirements are met based on average conventional gasoline quality over a calendar year averaging period, and penalty amounts are calculated, in part, based on the volume of gasoline in violation. As a result, it is appropriate to use a foreign refiners's annual conventional gasoline volume as the yardstick for calculating bond amounts. Penalty amounts also are based on the amount the exhaust toxics and/or NO_X requirements are exceeded, and for egregious violations penalty amounts may well exceed $0.01 per gallon. As a result, the proposed penalty amount does not cover the maximum possible penalty. Nevertheless, EPA believes the proposed amount is appropriate because it ensures that a penalty up to this amount may be collected, which constitutes a significant incentive for a foreign refiner to avoid violations.

The comments of one foreign refiner, that bond amounts would be calculated using the foreign refiner's five year cumulative gasoline volume, were based on an apparent misunderstanding of the bond proposal. EPA intends that bond amounts be calculated using the annual conventional gasoline volume for a single year, that year which has the highest volume for the preceding five years. EPA is slightly revising the language in the bond provision to make this intent clear. The bond amount applicable each year is calculated using the single year, among the past five years, when the largest volume of conventional gasoline was exported to the U.S.

EPA's review indicates that these concerns appear to be unfounded. Surety agents will be available to issue bonds to cover judgments for violations of the FRGAS requirements. Representatives of two national associations of surety agents, the Surety Association of America and the American Surety Association, told EPA there is nothing inherent in the FRGAS requirements that would prevent surety agents from writing bonds for foreign refiners as contemplated. The representatives said the proposed FRGAS bond requirement is analogous to the bonds required by the U.S. Customs Service, which routinely are issued by third party surety agents. These representatives concluded that foreign refiners can locate third party surety agents who would issue bonds to

international conventions on service of judicial documents; and section 1608(b)(3) provides that if service cannot be made under section 1608(b)(2), by delivering copies of the summons and complaint, with translations into the official language of the foreign state, if reasonably calculated to give actual notice, as directed by an authority of the foreign state or political subdivision in response to a letter rogatory, by return receipt mail from the clerk of the court to the agency or instrumentality to be served, or as directed by the court consistent with the law of the foreign state.

meet the FRGAS requirement, and that the annual fee probably would be between one-half and two percent of the bond amount depending on company-specific factors such as the general business strength and reputation of the foreign refiner and the type and amount of collateral offered.

However, EPA now believes it is possible for a foreign refiner to meet the purpose and intent of the bond requirement through means other than posting the requisite bond amount with the Treasurer of the United States or a bond issued by a third party surety. For example, if a foreign refiner owns assets that are located in the United States it may be possible for the foreign refiner to pledge these assets in a way that would be equivalent to posting a cash bond. As a result, EPA has modified the bond requirement to allow a foreign refiner to petition EPA to be allowed to satisfy the bond requirement through an alternative means. EPA will rule on any such petition based on whether there is certainty as to the ready availability of liquid assets, or easily liquidated assets, that are equal in value to the bond requirement.

For the foregoing reasons, EPA is finalizing the proposed bond requirement modified to allow petitions for alternative bonding mechanisms.

EPA has included in the final rule a provision that specifies that a foreign refiner's bond may only be used to satisfy judgments against the foreign refiner that result from violations of the FRGAS requirements.

EPA also is adopting a requirement that the bond may be used to satisfy judgments that result from violations by the foreign refiner for causing another person to violate the regulations.[26] For example, the regulations include a prohibition against combining certified FRGAS with non-certified FRGAS that applies to any person. If a foreign refiner causes a third party to violate this prohibition, this would be a violation by the foreign refiner, and the bond could be used to satisfy a judgment resulting from this violation.

EPA intends to reevaluate the amount required for bonds after the FRGAS program has been in place for approximately two years. Based on EPA's experience in implementing and enforcing the FRGAS program up to that time EPA will evaluate whether it should revise the regulations to allow a foreign refiner to submit a petition to EPA to reduce the required bond amount, based on factors such as its history of compliance and the strength of quality assurance programs in place at the refinery to ensure violations will not occur. EPA invites all parties to consider any modifications of the bond requirement they believe would be appropriate based on their experience with the FRGAS program, and to submit these suggestions to EPA at that time.

5. Foreign Refiner Commitments

a. EPA's Proposal: EPA proposed that a foreign refiner would have to submit as part of their baseline petition a commitment to allow EPA inspections and audits related to the FRGAS requirements, and its acceptance of United States courts or administrative tribunals acting under United States law as the forum for any enforcement action, in order to receive an individual refinery baseline. EPA also proposed that this commitment would have to be signed by the owner or president of the foreign refiner business, or by the relevant government official in the case of government-owned foreign refiners.

EPA proposed that the scope of EPA inspections and audits may include information related to baseline establishment, the quality and quantity of FRGAS, transfers of FRGAS, sampling and testing of FRGAS, and reports submitted to EPA.

b. Comments: EPA received a comment from a foreign refiner on the proposed commitments related to allowing EPA inspections and audits. This commenter stated that while it is willing to allow EPA inspections and audits, these should relate solely to establishment and use of an individual refinery baseline. EPA also received a comment from a domestic environmental non-governmental organization, expressing the view that the proposed foreign refiner commitments will be less effective than the authorities available in the United States for ensuring EPA's ability to conduct an effective enforcement program.

c. EPA's Response: EPA agrees the scope of any EPA inspection or audit to which a foreign refiner would consent would be limited to matters relevant to compliance with the FRGAS requirements. The commitment requirement is limited in this manner.

The scope of EPA audits of a foreign refiner clearly could include a review of all information related to baseline establishment, and the quality and quantity of all gasoline identified by the foreign refiner as FRGAS. However, EPA auditors also must be able to verify that gasoline and blendstock not identified as FRGAS by the foreign refiner in fact went to non-U.S. markets. If a foreign refiner were able to exclude from its compliance baseline calculations the volume of any gasoline or blendstock delivered to the U.S., the compliance baseline values would be inappropriately lenient. This concern is discussed more fully, below. EPA auditors must be able to review documents and other information related to gasoline not classified as FRGAS by the foreign refiner in order to verify this gasoline was used in non-U.S. markets and, hence, to guard against this possible form of cheating. As a result, the effective scope of EPA audits must include all gasoline and blendstock produced at a foreign refinery with an individual baseline, and not just the gasoline classified by the foreign refiner as FRGAS.

The final regulations are being revised to clarify that the foreign refiner commitment must be to allow EPA inspections and audits with this scope.

EPA generally agrees that the required foreign refiner commitments do not give EPA enforcement authorities that are exactly equivalent in all respects to the authorities available in the United States, such as the availability of search warrants, injunctions, and subpoenas. However, EPA believes the proposed commitments, when honored by the foreign refiner, will give EPA the ability to effectively enforce the requirements, as is done domestically. In addition, EPA has the recourse of withdrawing the individual refinery baseline of any foreign refiner who fails to honor these commitments.

6. Gasoline Tracking Requirements

a. EPA's Proposal: EPA proposed a series of requirements intended to allow EPA to ensure that gasoline, identified on arrival in the U.S. as FRGAS that was produced at a specific foreign refinery, in fact was produced at that foreign refinery. These proposed requirements include the following.

- Foreign refiners with individual baselines would designate all gasoline to be imported into the United States as FRGAS when produced.
- A foreign refinery's certified FRGAS would remain segregated from its non-certified FRGAS, and from gasoline produced at a different foreign refinery until entry into the U.S., except that FRGAS produced at refineries that have been aggregated could be combined.
- An independent third party would sample each certified FRGAS batch subsequent to loading onboard a vessel, and test for all complex model parameters.
- An independent third party would review gasoline transfer documents to verify the gasoline loaded onboard a

[26] EPA also has included language in Section 80.94(n) that prohibits foreign refiners from causing violations by other parties.

vessel was produced at the foreign refinery.

• The foreign refiner would prepare a certification to accompany the vessel identifying the gasoline as FRGAS, which would include a report prepared by the independent third party.

• U.S. importers would sample and test certified FRGAS on arrival at the U.S. port of entry. The foreign refiner would compare the volume and property results from the port of entry testing, with the volume and property results from the load port testing. If the test results differ by more than the ranges allowed in section 80.65(e)(1), or if the volume measurements differ by more than one percent, the foreign refiner would have to adjust its compliance calculations to reflect the discrepancy.

• The U.S. importer would treat the gasoline as certified FRGAS if it received the proper certification and third party report, and the load port and port of entry test results are consistent.

b. Comments and EPA's Responses:

(1) Option to Classify Gasoline as Non-FRGAS

(a) Comment

One foreign refiner and a group of independent U.S. importers commented that foreign refiners with individual refinery baselines should have the option of designating gasoline for the U.S. market as FRGAS or as non-FRGAS.[27] The conventional gasoline designated as FRGAS would be subject to the foreign refiner's individual baseline, and the conventional gasoline designated as non-FRGAS would be treated as any other gasoline regulated through the U.S. importer, subject to the assigned statutory baseline.

The U.S. importers stated that this flexibility is desirable in order to increase the volume of imported conventional gasoline that could be classified as ''gasoline treated as blendstock,'' or GTAB.[28] Non-FRGAS then could be blended with other GTAB or blendstocks where desired, and classified by the importer either as conventional or reformulated gasoline. The importer then would account for it in its compliance calculations.

(b) EPA's Response

In the case of non-certified FRGAS produced by a foreign refiner with an individual baseline, it is important that the volume of all such gasoline be included in the compliance baseline calculation of the foreign refiner for conventional gasoline. Even though a refinery's annual compliance baseline applies only to the NO_X and exhaust toxics requirements for conventional gasoline, the equation used to calculate the compliance baseline includes the volume of *all* gasoline produced at a refinery that is used in the United States including RFG.[29] If a foreign refiner were allowed to exclude the volume of non-certified FRGAS from compliance baseline calculations, the compliance baseline would be less stringent than if the volume of all certified and non-certified FRGAS were included.

The effect of the compliance baseline equation, in the case of a refiner whose overall gasoline volume exceeds its individual baseline volume, is to move the NO_X and exhaust toxics compliance baseline in the direction of the statutory baseline values. EPA assumes that any foreign refiner who obtains an individual refinery baseline will likely have an individual baseline value for at least one complex model requirement (NO_X or exhaust toxics emissions performance) that is less stringent than the statutory baseline values. Hence, the effect of the compliance baseline equation for such a refiner is more stringent for the NO_X or exhaust toxics, or for both requirements, and the magnitude of this effect increases as the volume of the refinery's U.S. export-gasoline increases.

In the case of conventional gasoline produced by a foreign refiner with an individual baseline, the reason given by commenters for allowing the foreign refiner to classify this gasoline as non-FRGAS is to give additional flexibility to the U.S. importer. This flexibility results from the option of classifying imported conventional gasoline as GTAB, which under the proposal would only be available if the imported conventional gasoline is non-FRGAS.[30] This flexibility is lost if conventional gasoline was classified as conventional FRGAS because it would have been previously certified by the foreign refiner and included in the foreign refiner's compliance calculations.

EPA is concerned that if foreign refiners had the option of classifying conventional gasoline as FRGAS or as non-FRGAS, a foreign refiner could classify very ''clean'' conventional gasoline as non-FRGAS, including gasoline that in fact meets the quality requirements for reformulated gasoline. This ''clean'' conventional gasoline then could be classified as GTAB by the U.S. importer and reclassified as reformulated gasoline. In this way a foreign refiner could avoid including all RFG in its compliance baseline calculations, which would result in adverse environmental consequences.

However, this result would not be possible if the foreign refiner includes in its compliance baseline calculations *all* gasoline imported into the United States (i.e., all FRGAS), whether or not the gasoline is included in the foreign refiner's NO_X and exhaust toxics compliance calculations.

Assuming the foreign refiners counts the volume in its compliance baseline equation, there is no adverse environmental consequence if the importer can treat the foreign refiner's gasoline, whether RFG or CG, as GTAB. If the gasoline is treated as GTAB, it will be imported subject to the requirements applicable to the importer for either RFG or CG, depending on how the importer classifies the gasoline. In both cases the importer would include the gasoline in it's compliance calculations, and the importer's compliance requirement would in all cases be more stringent than the CG compliance baseline for the foreign refiner.

As a result the final rules establish two categories of FRGAS—''certified FRGAS'' and ''non-certified FRGAS.'' The foreign refiner designates all gasoline that it produces and that is sent to the US as FRGAS, and FRGAS is further classified as either certified or non-certified FRGAS. The foreign refiner can include gasoline of any quality in the non-certified FRGAS category, including gasoline that meets the quality requirements for RFG or CG.

Gasoline classified as certified FRGAS will be subject to the compliance baseline for NO_X and exhaust toxics applicable for the foreign refiner. The volume of all FRGAS, certified and non-certified, must be included in the foreign refiner's compliance baseline calculation.

The importer may not include certified FRGAS in the importer's NO_X and exhaust toxics compliance calculations. However, importers must meet requirements for all non-certified FRGAS the same as for non-FRGAS, i.e.,

[27] EPA proposed to define ''FRGAS'' as gasoline produced at a foreign refinery that has been assigned an individual refinery baseline, and that is included in the foreign refinery's conventional gasoline compliance calculations, or compliance baseline calculations.

[28] See description of GTAB, above.

[29] The compliance baseline equation at section 80.101(f) requires a refiner to include the volumes of all gasoline used in the U.S., including conventional gasoline, RFG, RFG blendstock for oxygenate blending (RBOB), and California gasoline under section 80.81. In addition, where a refiner is required to include blendstocks in its compliance calculations under section 80.102 the volume of blendstocks also would be included in compliance baseline calculations. These requirements apply equally to domestic and to foreign refiners.

[30] In the case of conventional gasoline classified by the importer as GTAB, the importer is able to add blendstocks to the gasoline if the gasoline is ''cleaner'' than required, or to reclassify the gasoline as RFG.

non-certified FRGAS must be classified by the importer as CG or RFG and meet the applicable quality requirements, or must be classified as GTAB and subsequently meet the CG or RFG requirements. The importer may treat any non-certified FRGAS as GTAB.[31]

As described above, there will be no adverse environmental impact from this. It will also increase flexibility under the regulations for both importers and foreign refiners.

To implement this change, EPA is revising the regulations so that the appropriate classification, tracking, record-keeping and reporting occurs for non-certified FRGAS. To accomplish this, the provisions proposed for ''RFG FRGAS'' would basically be applied for all non-certified FRGAS, whether RFG or CG.

In addition, EPA is adopting an additional flexibility regarding FRGAS classification that was not proposed. A foreign refiner who has obtained an individual refinery baseline may elect each calendar year to not participate in the FRGAS program at all, provided notice is provided to EPA before the beginning of the calendar year. If such a foreign refiner gives timely non-participation notice to EPA, the foreign refiner could not classify any gasoline, conventional gasoline or RFG, as FRGAS during the calendar year, and the individual refinery baseline would have no effect for that year. In this situation the foreign refiner would not have to meet the gasoline tracking requirements during the year (designation, independent sampling and testing, attest engagements, etc.), and the refiner would not have to submit reports to EPA. However, such a non-participating foreign refiner would remain subject to EPA audits and enforcement that focus on prior years when the refiner did participate in the FRGAS program. As a result, enforcement-related requirements, such as the refiner commitments and bond, would remain in effect during any period of non-participation.

A foreign refiner who has elected the non-participation status could begin participating again at the beginning of any subsequent year by giving notice to EPA before the beginning of the year when participation is to begin.

Also, where a foreign refiner operates multiple refineries with individual baselines that have been aggregated under section 80.101(h), the foreign refiner is required to make the same FRGAS election for all refineries in the aggregation. This consistency requirement for aggregated refineries is similar to the requirement that aggregation decisions cannot be modified from year-to-year, that applies to domestic and foreign refiners. If a foreign refiner of aggregated refineries could elect non-participation FRGAS status for only one refinery in the aggregation while electing for the remaining refineries to participate in the FRGAS program, this would have the effect of changing the aggregation for the participating refinery or refineries.

EPA believes the additional flexibility of allowing an annual FRGAS election is appropriate because there would be no adverse environmental effect if a foreign refiner with a relatively ''dirty'' individual baseline elected to not use that baseline. In that case, the conventional gasoline would be regulated through the importer, who is subject to the statutory baseline.

As a result, EPA is finalizing the regulations to require a foreign refiner with an individual refinery baseline to classify all gasoline exported to the United States as FRGAS, or, at the foreign refiner's election, to classify no gasoline as FRGAS. A foreign refiner with an individual refinery baseline would not be allowed to classify part of its gasoline as FRGAS and part as non-FRGAS during a calendar year.

EPA also is including a provision in the final rule to specifically prohibit a foreign refiner with an individual baseline from failing to include in the refinery compliance baseline calculations all gasoline produced at the foreign refinery that is used in the U.S., and including any blendstock produced at the foreign refinery that is used to produce RFG used in the U.S. If EPA discovers that a foreign refiner with an individual baseline has produced gasoline that was used in the U.S., but that was not included in the refinery's compliance baseline calculations, this would be a violation of the prohibition. In addition, this also would result in a recalculation of the refinery's compliance baseline for the relevant year, *ab initio,* which could result in the foreign refiner violating the revised NO_X and exhaust toxics requirements for that year. It would be no defense if the gasoline or blendstock had been transferred to a third party who was responsible for exporting the gasoline or blendstock to the U.S., even if the foreign refiner had no actual knowledge of the subsequent U.S. export or if the foreign refiner had a good faith belief the gasoline or blendstocks would be used only in non-U.S. markets.

This is similar to the requirement at section 80.67(h)(3) that prohibits domestic refiners from using improperly created oxygen or benzene credits regardless of any good faith belief the credits were valid, and if invalid credits are used results in EPA recalculating the refiner's compliance calculations, *ab initio,* with the invalid credits being removed.

As a result, EPA believes it would be prudent for foreign refiners of FRGAS to take appropriate commercial steps to ensure they are informed if gasoline or blendstock transferred to third parties ultimately is exported to the U.S. If a foreign refiner fails to take reasonable steps in this regard, and EPA determines that the refiner's gasoline or blendstock is exported to the U.S. by a third party without being included in the refiner's compliance baseline calculations, EPA will consider this an aggravating factor in determining the amount of any penalty imposed against the foreign refiner for the violation.

(2) Third Party Testing Requirements

(a) Comments

EPA received several comments related to the proposed third party testing requirements and the comparison of load port test results with port of entry test results. One foreign refiner and an association of domestic gasoline marketers commented that load port testing is not necessary, and the foreign refiner stated their comment is based on the view that EPA should require U.S. importers to meet NO_X and exhaust toxics requirements based on testing only at the U.S. port of entry and EPA audits of refinery records.

A number of comments were related to factors intended to reduce the costs associated with third party testing. Two foreign refiners commented that if third party testing is required, the load port testing requirement should require analysis only of vessel composite samples instead of separate analyses for each vessel compartment. One foreign refiner commented that the parameters required to be analyzed should be limited to gravity, T50, T90, benzene and sulfur, or in the alternative, for NO_X and exhaust toxics emissions performance. Two foreign refiners commented that the third party tester should not be required to use an independent laboratory, and instead should be allowed to observe the testing

[31] In another rulemaking EPA has proposed giving refiners and importers additional flexibility for reclassifying previously certified gasoline, called the PCG option. See 62 FR 37349 (July 11, 1997). The proposed PCG option would allow a refiner or importer to reclassify previously certified conventional gasoline as RFG, provided the refiner or importer replaces the reclassified conventional gasoline during the same averaging period. EPA believes the PCG option, if adopted, would give U.S. importers flexibility regarding conventional gasoline classified by the foreign refiner as certified FRGAS.

in the foreign refiner's laboratory or use the foreign refiner's laboratory equipment, because at present there are no independent laboratory facilities located near their foreign refineries.

Two foreign refiners commented that comparisons of load port testing with port of entry testing should be on the basis of ASTM reproducibility,[32] instead of the comparison criteria proposed by EPA.

One foreign refiner also commented that in the case of inconsistent load port—port of entry test results, the U.S. importer should be responsible for meeting the NO_X and exhaust toxics requirements for the gasoline.

An association of domestic refiners commented that the proposed requirements for third party testing are necessary for an effective enforcement program.

(b) EPA's Response

EPA continues to believe third party sampling and testing is a necessary part of the foreign refiner FRGAS program. However, in response to comments EPA is modifying these requirements in several ways in the final rule.

The primary purpose served by the third party sampling and testing requirements is to provide information useful in evaluating whether any event has occurred since the gasoline was loaded into the vessel that would cast doubt on the identification of the source refinery of FRGAS. The NO_X and exhaust toxics requirements are met on the basis of sampling and testing conducted by the foreign refiner at the foreign refinery (not necessarily at the load port), and is largely unrelated to the third party load port sampling and testing. The tracking purpose of the third party testing requirements provides the focus for evaluating the comments received on this issue.

In the case of gasoline classified as non-certified FRGAS, EPA now believes that no third party load port sampling or testing to determine gasoline properties is necessary. There is no adverse environmental effect if a foreign refiner includes FRGAS in its compliance baseline calculations even if this gasoline was produced by a different refiner. As a result, there is little need for third party testing intended to verify gasoline was produced at the specified foreign refinery, and, hence, EPA is dropping the requirement for third parties to determine properties of non-certified FRGAS. However, EPA has retained the requirement for third party determination of volume for non-certified FRGAS, because the volume of all FRGAS is important to the accuracy of the compliance baseline calculation.

In addition, the foreign refiner is required to prepare a certification to accompany shipments of non-certified FRGAS that identify the foreign refinery and the volume, supported by the report of the independent third party. The requirement also remains that the U.S. importer must report the volume of non-certified FRGAS to EPA and to the foreign refiner. EPA intends to monitor the volumes of non-certified FRGAS used by foreign refiners in their compliance baseline calculations. If EPA discovers that the volume of non-certified FRGAS included in a foreign refiner's compliance baseline calculation is incorrect (for example, discovers this violation during an audit of the foreign refinery), EPA will recalculate the refinery's compliance baseline and evaluate the refinery's compliance with the NO_X and exhaust toxics requirements on this basis.

In the case of gasoline classified as certified FRGAS, EPA believes third party testing is needed in order to verify the imported gasoline was produced at the named foreign refinery and subsequent to loading was not mixed with gasoline from a different foreign refinery. Only conventional gasoline that is produced at the foreign refinery with an individual baseline is entitled to use that baseline, and it would be inappropriate for the foreign refiner or anyone else to substitute conventional gasoline produced at another refinery.[33] However, the purpose of third party sampling and testing of certified FRGAS is limited to identifying the source refinery. As a result, and in response to comments received, EPA has revised the parameters that must be tested by the third party, the manner in which the third party may determine the property values, and the criteria that are used to compare load port and port of entry test results to more reasonably reflect the purpose of this sampling and testing.

The purpose of comparing load port and port of entry test results is to verify the gasoline on board a vessel on arrival at the U.S. port of entry is the same gasoline that was loaded by the refiner at the load port, i.e., to verify that the vessel has not stopped en route to the U.S. to discharge or take on gasoline. EPA had proposed that this comparison must be of all complex model parameters.[34] A foreign refiner commented that a comparison based on test results for a subset of the complex model parameters would also meet the purpose of this provision, i.e., test results for sulfur, benzene, T50, T90, and gravity. EPA agrees the vessel tracking purpose is served by comparing results for the suggested parameters, although the distillation terms E200 and E300 that are used in the complex model are being substituted for the distillation terms T50 and T90 recommended by the commenter. It is highly likely the gasoline on board a vessel has not been altered if the values for these five parameters plus the gasoline volume are unchanged.

However, it nevertheless is necessary for the foreign refiner to have the third party determine values for all complex model parameters for certified FRGAS loaded onto the vessel, so the foreign refiner can correct its NO_X compliance and exhaust toxics calculations in the event the results from load port and port of entry testing are inconsistent, or the vessel is diverted to a non-U.S. market, as discussed below. The additional parameters that must be established for the vessel are aromatics, olefins, oxygenate and RVP. These additional parameters may be established by the third party testing the ship composite sample for them. In addition, if a vessel is loaded from shore tanks containing gasoline that has been tested for the additional parameters and the volume from each shore tank that was loaded is known, the third party may calculate the additional parameter values for the gasoline that was loaded onto the vessel.

Thus, the load port testing must be for all complex model parameters, but the comparison of load port and port of entry samples must be only for the subset of parameters.

EPA also now believes the appropriate basis for comparison of load port and port of entry testing is ASTM reproducibility, as recommended in the comments. EPA proposed requiring these comparisons be based on the ranges specified at 40 CFR 80.65(e)(2)(i). However, these proposed ranges currently are used under the regulations to compare a refiner's internal test results for RFG with the test results obtained by the refiner's independent

[32] The American Society of Testing and Materials, ASTM, is a non-governmental body that describes test methods, including test methods for gasoline parameters, that are generally recognized as industry-standard test methods. ASTM includes precision measures for each test method in the form of repeatability and reproducibility statistics. In general, repeatability reflects intra-laboratory variability, while reproducibility reflects inter-laboratory variability.

[33] As discussed elsewhere in this preamble, foreign refiners of FRGAS who have aggregated refineries may mix or substitute gasoline produced at any refinery within the aggregation.

[34] The parameters that are used in the complex model are sulfur, aromatics, olefins, benzene, oxygenate, distillation (E200 and E300), and gravity. See 40 CFR 80.65(e)(2)(i).

laboratory. The purpose is to verify the actual quality of the gasoline, not the source refinery. A relatively high degree of correlation in test results would be expected between a refiner and the single independent laboratory selected and used by the refiner on an ongoing basis. In contrast, a foreign refiner's load port test results for FRGAS normally will be compared with port of entry testing conducted by multiple importers, where unusually high correlation in test results would not be expected. EPA believes ASTM reproducibility is an appropriate correlation criteria in this situation in light of the tracking purpose of load port and port of entry test comparisons. ASTM reproducibility for most parameters is calculated using the test result obtained in each test, and the reproducibility value that must be used for each load port-port of entry comparison must be calculated using the port of entry test result.[35] The final regulations are being revised accordingly.

Also in light of the limited purpose of load port testing, EPA now believes this testing need not be conducted in an independent laboratory. This is in contrast to independent sampling and testing of RFG, which must be conducted at an independent laboratory. EPA believes the purpose of load port testing may be achieved if the independent chemist observes the foreign refiner chemist conduct the required tests or if the independent chemist uses the foreign refiner's laboratory equipment. In addition, load port testing of certified FRGAS could be conducted by the independent third party at an independent laboratory. The final regulations are being revised accordingly.

EPA proposed that load port testing would be conducted separately for each quantity of gasoline that is not homogeneous with regard to the properties being tested, i.e., that separate testing would be conducted for each batch.[36] Commenters stated that EPA instead should allow parties to conduct load port-port of entry test comparisons on the basis of vessel composite samples. Based on the tracking purpose of load port-port of entry test comparisons, EPA agrees with the commenters' suggestion. The point of comparing load port with port of entry test results is to establish that a vessel has not stopped en route to the United States to add new gasoline. The gasoline quality and quantity changes that would result from such a mid-journey stop would be revealed by comparing the analysis results of vessel composite samples, and EPA now believes there is no need to require separate comparisons for each gasoline batch being transported on a vessel.

EPA proposed that if port of entry test results for certified FRGAS differ from load port test results by more than the specified ranges, the foreign refiner would be required to correct its compliance calculations to reflect the port of entry results. Foreign refiners objected, stating they sell their gasoline ''free on board'' (FOB) the foreign load port, and, hence, have no control and are not responsible for what happens to it afterwards.

EPA now believes the proposed approach is not the most appropriate consequence when port of entry test results are inconsistent with load port test results. Instead, EPA believes the U.S. importer should simply treat the gasoline as non-certified FRGAS. In the case of inconsistent results from load port and port of entry testing, the implication is the gasoline was not produced by the foreign refiner or has been mixed with gasoline not produced by the foreign refiner, and is not entitled to the foreign refinery's individual baseline. In addition, the U.S. importer must inform the foreign refiner of the inconsistent results, and the foreign refiner must adjust its compliance calculations to remove the qualities and volume of the conventional gasoline from the refinery NO_X and exhaust toxics compliance calculations.

However, the foreign refiner may not remove the volume from its compliance baseline calculations. This is necessary in order to prevent the adverse impacts, described above, that could occur if foreign refiners of FRGAS or their importers have the option of classifying conventional gasoline as ''non-FRGAS.'' Requiring the named foreign refiner to retain the volume of the non-certified FRGAS in its compliance baseline calculations even where load port and port of entry test results are inconsistent removes any incentive for the foreign refiner or its U.S. importer to manipulate test results in order to make them inconsistent, and in this way to ship to the United States gasoline that could be treated as ''non-FRGAS.''

EPA is providing an exception to this requirement. In the case of test results outside the specified ranges the foreign refiner need not retain the volume of the gasoline in its compliance baseline calculations, where the foreign refiner can demonstrate that the U.S. importer does not classify the imported gasoline as reformulated gasoline, or use the imported gasoline to produce reformulated gasoline through the GTAB protocol. This exception is appropriate because the potential for adverse environmental effects only exists where the gasoline is used as reformulated gasoline in the U.S.[37] EPA intends to review compliance with this exception when it conducts audits of foreign refiners and U.S. importers. If EPA discovers that a foreign refiner excluded the volume of certified FRGAS from its compliance baseline calculations based on inconsistent load port—port of entry testing, but the gasoline was classified as reformulated gasoline by the U.S. importer, the foreign refiner's compliance baseline calculation will be adjusted, *ab initio,* which could result in a violation of the NO_X and exhaust toxics requirements by the foreign refiner. This would be true in a case where only a portion of the gasoline at issue has been classified as reformulated gasoline using the GTAB protocol. Moreover, the foreign refiner could not avoid this result even if it had a good faith belief the U.S. importer would not use the gasoline at issue to produce reformulated gasoline. The burden is on the foreign refiner to demonstrate that the gasoline was not classified as reformulated.

EPA is adopting an additional basis for retaining the certified FRGAS classification of conventional gasoline, even if the load port and port of entry test results are outside the specified ranges. This is based on a comparison of the NO_X and exhaust toxics emissions performance of the FRGAS calculated using load port test results, with the emissions performance calculated using port of entry test results. If the port of entry emissions performance for both NO_X and exhaust toxics, in milligrams per mile, is smaller than the load port emissions performance (i.e., cleaner),

[35] For example, under the ASTM test for benzene, ASTM D 3606–92, reproducibility is calculated as 0.28 times the measured value. If the benzene tests for a particular vessel are 2.50 vol% from the load port composite sample, and 1.80 vol% from the port of entry composite sample, the reproducibility calculated as 1.80 vol% ± 0.50 vol% based on the 1.80 vol% port of entry result, i.e., the load port result would be consistent with the port of entry result if it is between 1.30 vol% and 2.30 vol%. In this example the benzene test results are inconsistent because the load port result is larger than 2.30 vol%.

[36] 40 CFR 80.2(gg) defines an RFG batch as a quantity that is homogeneous with regard to the RFG parameters. In another rulemaking, EPA has proposed that this definition also would apply to conventional gasoline. See 62 FR 37339 (July 11, 1997).

[37] If the gasoline is included in the importer's CG compliance calculations, it will be subject to the statutory baseline, which is more stringent than the applicable compliance baseline where the foreign refiner includes the volume in its compliance baseline equation.

the gasoline remains classified as certified FRGAS regardless of the parameter test results comparisons. This exception is appropriate because there is no adverse environmental effect if the quality of the conventional gasoline *improves* in terms of NO_X and exhaust toxics emissions performance. However, this exception would not apply if EPA is able to establish that the vessel in fact stopped en route to the United States and took on additional gasoline produced at a different foreign refinery.

7. Diversion of FRGAS to Non-U.S. Markets

a. EPA Proposal: EPA proposed that all gasoline produced at a foreign refinery with an individual baseline that is exported to the U.S. must be classified as FRGAS. However, EPA left open and requested comment on the issue of whether the regulations should allow FRGAS to be diverted to a non-U.S. market after production, for example, whether a vessel containing FRGAS could be diverted to a non-U.S. market.

b. Comments: EPA received comments from two foreign refiners and an association representing domestic marketers that recommended foreign refiners be given the option of diverting FRGAS to non-U.S. markets. The two foreign refiners stated that foreign refiners could implement commercial procedures that would allow them to know when FRGAS has been diverted to a non-U.S. market, and the foreign refiner could correct their compliance calculations accordingly.

c. EPA's Response: EPA now agrees that foreign refiners of FRGAS should be allowed to divert certified and non-certified FRGAS to non-U.S. markets, provided the foreign refiner corrects its compliance baseline calculations, and in the case of certified FRGAS its NO_X and exhaust toxics compliance calculations, to reflect the diversion. In the case of diverted certified FRGAS, the foreign refiner must use the load port test results, and the load port volume, as the basis for correcting the NO_X and exhaust toxics compliance calculations. A foreign refiner may treat FRGAS as having been diverted only if the foreign refiner is able to demonstrate the gasoline in fact was used outside the U.S. This demonstration must be in the form of documents obtained from the recipient of the gasoline that certify where the gasoline will be used, and that the gasoline will not be imported into the United States. Provisions have been included in the final rule to reflect these requirements.

8. Attest Requirements

a. EPA Proposal: Under the Gasoline Rule foreign refiners of FRGAS, like domestic refiners, are required to commission an attest engagement each year.[38] EPA proposed additional attest procedures dealing with the FRGAS requirements, that would have to be completed by foreign refiners of FRGAS.

b. Comments: EPA received comments on the proposed FRGAS attest procedures from a domestic firm of Certified Public Accountants. These comments included specific suggestions regarding the wording used in certain proposed FRGAS attest provisions.

c. EPA's Response: EPA has modified the attest procedures to address the comments received. In particular, EPA has included additional details in the attest procedure that requires the auditor to determine whether FRGAS was produced at the foreign refinery in question, and whether FRGAS was produced at any non-FRGAS or FRGAS produced at a different refinery.

9. Truck Imports

a. EPA Proposal: EPA did not distinguish gasoline that is imported into the U.S. by truck, from gasoline that is transported by vessel, in the foreign refiner proposed rule. However, in implementing the current regulations EPA has allowed an additional option for meeting the conventional gasoline requirements where the gasoline is imported into the U.S. by truck, because of the costs associated with every-batch sampling that is required for imported gasoline. Under this option truck importers are allowed to demonstrate compliance with the conventional gasoline requirements based on the quality of gasoline at the terminal located outside the U.S. where the trucks are loaded. This quality must meet the statutory baseline on an every-gallon basis, and not an annual average basis. The foreign terminal operator provides the U.S. importer with documents for each truck loaded at the terminal, that demonstrate the gasoline meets these quality requirements. These documents must be based on complete sampling and testing by the foreign terminal operator. In addition, the U.S. importer must conduct a program of periodic quality assurance testing of the gasoline dispensed at the foreign terminal to verify the accuracy of the foreign refiner's documents. This option was allowed in guidance issued by EPA in *Reformulated Gasoline and Anti-Dumping Questions and Answers* (October 29, 1994), and has been proposed for inclusion in the Gasoline Rule in another rulemaking, 62 FR 37367 (July 11, 1997).

b. Comments: EPA received comments from a coalition of companies who import gasoline into the United States by truck. These commenters stated that EPA should structure the foreign refiner requirements in a manner that allows truck importers to continue using the testing option described above.

In particular, these commenters expressed the view that the foreign refiner FRGAS requirements would affect truck importers only if an individual refinery baseline is sought by the foreign refiner supplying gasoline to the terminal used by truck importers. If an individual refinery baseline is obtained by such a foreign refiner, the commenters suggested the foreign refinery should be considered analogous to the load port, and the truck loading terminal should be considered analogous to the U.S. port of entry. In this way the gasoline dispensed at the truck loading terminal would have no additional testing requirements that would be met by the U.S. importer.

c. EPA's Response: Where the foreign refiner has not obtained an individual refinery baseline the testing option available to truck importers, described above, is unaffected by the foreign refiner requirements being promulgated. However, if conventional gasoline imported by a truck importer is produced at a foreign refinery with an individual baseline the current importer testing option is not available. This is true because the truck testing option does not allow any gasoline to meet NO_X and exhaust toxics quality requirements other than statutory baseline-based requirements.

EPA believes it may be possible to modify the testing option available to truck importers for application with gasoline produced at a foreign refinery with an individual refinery baseline. However, this is not the most appropriate rulemaking for such a modification. As described above, EPA has proposed in a separate rulemaking to include this truck importer testing option in the regulations, which EPA hopes to complete by the end of December 1997. EPA believes it would be most appropriate to address all issues related to testing by truck importers in that separate rulemaking, including

[38] ''Attest engagement'' is a term of art used by auditors to describe the conduct of audit procedures that have been agreed upon in advance by the auditor and the subject of the audit—the auditor attests to the conduct and results of the specified audit, or attest, procedures completed during the attest engagement. The requirements in sections 80.125 through 80.130 consist of specified attest procedures dealing with the Gasoline Rule and instructions for the conduct of these procedures.

where the foreign refiner has obtained an individual refinery baseline. In the meantime, if EPA receives an individual refinery baseline petition from a foreign refiner that supplies truck importers, EPA will attempt to address the issue of the truck testing option through modifying the Question and Answer guidance.

E. Remedial Measures

1. EPA's Proposal

Allowing foreign refiners to choose whether to establish an individual baseline creates a potential for adverse environmental impact. This would be addressed by monitoring the quality of imported gasoline, comparing it to a benchmark, and taking remedial action if the benchmark is exceeded.

EPA would monitor the entire pool of imported gasoline, and determine the volume weighted average quality of the gasoline. This average would be compared to a benchmark. The purpose of the benchmark is to reasonably determine when allowing foreign refiners the option to use or not use an IB has caused degradation of the quality of imported gasoline from the 1990 quality of imported gasoline. The best measure of this, given the absence of actual data on the average quality of gasoline imported in 1990, would be the volume weighted average baseline for domestic refiners.

Since the use of a benchmark is designed to detect a multi-year trend stemming from providing foreign refiners the option to use or not use an IB, as compared to short term changes in gasoline quality attributable to the many other factors that can affect the quality of imported gasoline on a year to year basis, EPA proposed to use a three year rolling average of the quality of imported gasoline. Thus each year the average quality of the imported CG for the prior three years would be compared to the benchmark.

If the benchmark was exceeded, EPA would take remedial action by adjusting the requirement applicable to imported CG that is not subject to an IB. The adjustment would be equal to the amount of the exceedance. The existence and level of the adjustment would be evaluated each year by comparing the benchmark to the most recent 3 year average. The adjusted requirement would apply to CG imported from refiners without an IB.

Under the proposal, a benchmark would be set for NO_X emissions but not for exhaust toxics, as the evidence prior to the proposal indicated that there would not likely be an adverse impact on toxics from allowing the option to use an IB. Instead, EPA would monitor the quality of imported CG for toxics, and if an adverse trend were to occur EPA would develop at that time an appropriate benchmark and adjustment mechanism, analogous to that proposed for NO_X.

2. Comments

Comments were received from various associations and members of the refining and distribution industry, importers, gasoline marketers, foreign refiners, a state environmental office and an environmental group. Several of the commenters supported the proposed approach in general, suggesting changes to specific parts of the proposal. One commenter suggested extending the approach to include all imported and domestic conventional gasoline, using this mechanism to improve the average quality of fuel in areas with poor fuel quality. One commenter from the gasoline refining and distribution industry opposed the general approach of the proposal arguing that the after-the-fact approach of the proposal was inappropriate as it would allow air quality to degrade before remedial action was taken.

Several commenters suggested changes to the benchmark. One commenter suggested that a three year running average of the quality of domestic CG would be a better way to ensure that imported gasoline was no dirtier than domestic gasoline on average. Another commenter suggested that a benchmark based on a one year average instead of a three year average would be more protective of air quality and therefore more appropriate. Another commenter suggested using the statutory baseline as the benchmark instead of the volume weighted average of domestic refiner IBs. One commenter suggested that remedial action should be triggered when the benchmark was exceeded by an amount reflecting the reproducibility of the test results for NO_X emissions. Finally, one commenter suggested using a national average as the benchmark, done by individual metropolitan areas.

While one commenter supported limiting the benchmark to NO_X, two commenters recommended adding a benchmark for toxics. One commenter questioned EPA's lack of a benchmark for toxics, given the difficulty in analyzing import data and enforcing requirements against foreign refiners and the importance of the toxics reductions from the RFG and CG programs. Another commenter suggested monitoring exhaust toxics as well as NO_X as domestic refiners are subject to requirements for both, the prior history of the toxics qualities of imported CG does not assure the quality of future imports of CG, and the additional monitoring and reporting would not impose significant effort for either EPA or the affected industry. This commenter also expressed the view that gasoline produced outside the U.S. would be likely to have higher toxics on average than that produced in the U.S., based on the on-going phase out of lead, the summer to winter ratio of imports, and the results of a 1993 National Petroleum Council study on gasoline quality. In addition, EPA was cautioned to exclude data from the U.S. Virgin Islands in determining the toxics qualities of imported CG.

One commenter objected that the adjustment mechanism did not comply with the legal requirements spelled out by the WTO Appellate Body and Panel, in that it could lead to subjecting imported gasoline to stricter requirements than identical domestic gasoline. The commenter argues that even though domestic refiners were required to use an IB, there could still be changes in the average quality of domestic gasoline yet no adjustment mechanism was employed in that case.

3. EPA's Response

For the reasons decribed below, EPA is finalizing these provisions as proposed.

The ''after-the-fact'' approach of these provisions is based on EPA's inability to accurately quantify ahead of time the actual adverse impact, if any, from allowing foreign refiners the option to use or not use an IB. EPA does believe providing such an option clearly creates the potential for such an adverse impact, but the size and amount of the impact is difficult to quantify with any degree of certainty ahead of time, as well as whether or not it will occur. It would depend on a variety of factors, some of which would change from year to year—the number of foreign refiners that receive an IB, the actual IBs assigned to them, the volume of gasoline included in the IB, the source and amount of CG and RFG imported each year, and the extent, if any, to which foreign refiners whose 1990 exports to the U.S. were cleaner on average than the SB would now ship gasoline that is dirtier than what they exported to the U.S. in 1990.

No commenter disputed the above, or suggested a way for EPA to fairly quantify ahead of time the potential risk of an adverse environmental impact. Given this uncertainty, EPA continues to believe that the better course is to monitor imported CG, measure it against a benchmark designed to reflect a multi-

year trend in gasoline quality, and if the benchmark is exceeded adjust the gasoline quality requirement for imported CG by an amount that offsets this adverse impact. EPA also does not believe it is appropriate to extend this monitoring and adjustment approach to include all CG, both domestic and imported. All domestic refiners and blenders of CG have been assigned an IB, and do not have the option to choose between the SB and an IB. As a result, for domestic refiners there is not the same ability to choose a less stringent requirement, based on economic reasons, with the resulting potential for an adverse environmental impact, as there is for foreign refiners. Therefore, there is not the same need to protect against such an adverse impact for domestically produced gasoline.

EPA proposed a three year rolling average in the comparison to the benchmark as it is a better mechanism to detect a multi-year trend. A one year average was rejected in the proposal as it might only reflect the year to year volatility in the source and quantities of imported CG which occur for a variety of reasons independent of the option to use an IB. The commenter suggesting the use of a one year average did not provide any evidence to rebut this view, but argued instead that a one year average would be more protective of air quality. EPA is finalizing the three year rolling average as it is a better mechanism to determine when air quality has been adversely impacted from providing the option to use an IB, and therefore needs to be protected by an adjustment.

EPA proposed comparing the average quality of imported CG to the volume weighted average of the IBs for domestic refiners. This reflects the central purpose of the CG program as applied to imported gasoline—to avoid degradation in the quality of imported gasoline from the quality of gasoline imported in 1990. As noted in the proposal, we do not have actual data on the quality of gasoline imported in 1990 and it is not unreasonable to assume that the average quality of imported gasoline was generally equivalent to the volume weighted average of IBs for domestic refiners, absent evidence to the contrary. The proposed benchmark is based on this view, and no commenter contested these assumptions or presented evidence to the contrary. One commenter suggested comparing imported CG to the average quality of CG currently produced by domestic refiners, another suggested using a national average done by metropolitan area, and another suggested comparing it to the SB. EPA is not adopting these methods because each of them is a less direct way to meet the purpose identified above. These alternatives would be a less certain way to meet the objectives as they are less directly related to the quality of gasoline imported in 1990.

EPA disagrees with the suggestion that the remedial action should be triggered when the benchmark is exceeded by an amount reflecting the reproducibility of the test results for NO_X emissions. The reproducibility of test results addresses comparisons of individual test results conducted for example in different labs. It is not relevant when comparing averages that are based on numerous data points. A multi-year rolling average is an adequate benchmark to determine the existence of an adverse trend, and an additional element for reproducibility of individual test results is not needed.

EPA's proposal to establish a benchmark for NO_X at this time but not for exhaust toxics was based on a review of the annual reports submitted by importers for calendar year 1995. Those reports showed that the average level of exhaust toxics for gasoline imported in 1995 was significantly cleaner than either the statutory baseline or the volume weighted average of individual baselines for domestic refiners. In addition, information previously submitted by one foreign refiner indicated that the IB they would seek would be cleaner than the SB for exhaust toxics. Based on this, EPA did not believe there was enough indication that there would be an adverse impact on toxics to warrant establishing a benchmark and adjustment mechanism at this time. Instead, EPA would monitor the toxics qualities of imported gasoline and adopt a benchmark and adjustment mechanism in the future if appropriate.

None of the commenters provided information or reasons that warrant a different conclusion. The claim that data on imported gasoline is hard to analyze is unfounded, as it is relatively easy to determine the volume weighted average quality of imported gasoline from the batch reports submitted by importers. The same information will still be available under the regulations finalized today; the fact that some of the information may now be submitted by foreign refiners does not change the availability and quality of the data submitted. Since the regulatory changes adopted today will only affect conventional gasoline, there will be no impact at all on the important toxics reductions obtained in the RFG program. The fact that domestic refiners are subject to requirements for both NO_X and exhaust toxics is not a reason to set a benchmark for toxics now, as both importers and foreign refiners with an approved IB will also be subject to requirements for NO_X and exhaust toxics. While the prior history of the toxics quality of imported gasoline does not assure that the future quality will be the same, it does indicate that it is much less likely that a toxics problem will develop from allowing foreign refiners to use an IB. Since the proposal was published, EPA has been able to evaluate the batch reports submitted by importers for calendar year 1996. The results follow the same pattern as in 1995—the average toxics quality of imported gasoline is significantly cleaner than either the SB or the volume weighted average of the IBs for domestic refiners. Data from the Virgin Islands was not included in either the 1995 or 1996 calculations, as this is not considered imported gasoline for purposes of the CG or RFG regulations. Data on the actual toxics quality of imported gasoline in 1995 and 1996 provides concrete evidence for evaluating the risk of an adverse impact on toxics from allowing foreign refiners an option to use IBs. This data is more probative on this issue than the potential but unspecified impacts of lead-phase down on foreign produced gasoline and the overall quality of gasoline produced overseas in 1993, which would be dominated by gasoline produced and used overseas as compared to gasoline exported to the U.S. EPA is therefore not adopting a benchmark for exhaust toxics at this time, and instead will continue to monitor the average toxics quality of imported gasoline and will take appropriate action to adopt a benchmark and adjustment mechanism for exhaust toxics if circumstances develop which warrant such action.

F. Compliance With WTO Obligations

Some commenters claimed that certain provisions related to enforcing compliance with the requirements for establishment and use of an individual baseline, and the mechanism for remedial measures, were not consistent with the obligations of the United States under the World Trade Organization agreement.

This rule meets the commitment of the United States to comply with its obligations under the World Trade Organization agreement with respect to this matter. This rule provides all foreign refiners with the opportunity to apply for and use an individual baseline. To the limited extent that foreign refiners with individual baselines are to be subject to different

requirements than domestic refiners, great care has been taken to ensure that these requirements are limited to those that are essential to address issues that are unique to refiners exporting gasoline to the United States.

V. Administrative Designation and Regulatory Analysis

A. Public Participation

The agency held a public hearing on May 20, 1997, to hear comments on the Notice of Proposed Rulemaking (62 FR 24776) published on May 6, 1997. Comments were provided at the hearing by the National Petroleum Refiner's Association and the Independent Refiners Coalition. EPA reviewed and considered written comments on the proposal submitted by the same groups as well as written comments from various other commenters. These comments have been presented and addressed in the preamble above. (See Response to Comments, Section IV) All comments received by the Agency are located in the EPA Air Docket A–97–26.

B. 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 Office of Management and Budget (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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action,'' as such, this action was submitted to OMB for review.

C. Economic Impact and Impact on Small Entities

EPA has determined that this final rule will not have a significant impact on a substantial number of small entities because only a limited number of domestic entities would be affected by this rule and would be small entities. In addition, today's action will not significantly change the requirements applicable to importers of gasoline produced by foreign refineries. A regulatory flexibility analysis has therefore not been prepared.

Of the entire population of importers currently reporting to the EPA, somewhat less than 100 importers that would be subject to today's proposed rule are small entities. Under 40 CFR. 80.65 and 80.101 the requirements for imported CG must currently be met by the importer. The current requirements are based on the statutory baseline while today's final rule would require either foreign refiners or importers to meet the CG requirements using the baselines of the various foreign refineries. Other importers would continue to meet the CG requirements using the statutory baseline or an adjusted baseline. This will not, however, have a significant impact on the importer, as the importer will continue to only import gasoline that allows it to meet the annual average requirements, and such gasoline would continue to be available from the foreign refineries. The provision generally corresponds with existing requirements. This final rule will continue the requirement that importers be responsible for sampling and testing for foreign gasoline imported into the U.S. Importers will be responsible for this activity at the port of entry in the U.S. Importers will rely on the foreign refiners and the independent party's to establish refinery of origin. Importers can accomplish this by making private arrangements with the importing foreign refiner and the independent party. The Agency believes that, in general, exercising good business practices with reputable foreign refiners will tend to eliminate any impact on the importer. The impact of today's final rule will therefore either not increase an importers cost, or would do so only marginally.

The issue of baselines for imported gasoline is discussed generally in section VII–C of the Regulatory Impact Analysis that was prepared to support the Final Rule for gasoline. A copy of this document may be found in the RFG docket, number A–92–12, at the location identified in the **ADDRESSES** section of this document.

D. The Paperwork Reduction Act

The information collection requirements in this final 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. 1591.08) and a copy may be obtained from Sandy Farmer, Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

This final rule will allow foreign refiners to establish individual baselines to demonstrate compliance with the Agency's gasoline rule. The information collected will enable EPA to evaluate imported gasoline in a manner similar to gasoline produced at domestic refineries. Section 211(k) specifically recognizes the need for recordkeeping, reporting and sampling/testing requirements for enforcement of this program. Because of the complex nature of the gasoline rule, EPA cannot determine compliance merely by taking samples of gasoline at various facilities.

Estimated labor and cost burdens for this rule are:

No. Of Respondents, 32.

Total Annual Response, 90.

Average labor burden per response, 2.1 hours.

Average cost burden per response, $1,408.

Total annual hours requested, 192 hours.

Total annual capital costs, $126,700.00.

Capital cost are those cost associated with testing of gasoline by independent laboratories.

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.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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

F. 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).

G. Statutory Authority

The statutory authority for the rules 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 Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: August 19, 1997.

Carol M. Browner,

Administrator.

40 CFR Part 80 is amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.94 is added to subpart E to read as follows:

§ 80.94 Requirements for gasoline produced at foreign refineries.

(a) *Definitions.* (1) A *foreign refinery* is a refinery that is located outside the United States, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as ''the United States'').

(2) A *foreign refiner* is a person who meets the definition of refiner under § 80.2(i) for foreign refinery.

(3) *FRGAS* means gasoline produced at a foreign refinery that has been assigned an individual refinery baseline and that is imported into the United States.

(4) *Non-FRGAS* means gasoline that is produced at a foreign refinery that has not been assigned an individual refinery baseline, gasoline produced at a foreign refinery with an individual refinery baseline that is not imported into the United States, and gasoline produced at a foreign refinery with an individual baseline during a year when the foreign refiner has opted to not participate in the FRGAS program under paragraph (c)(3) of this section.

(5) *Certified FRGAS* means FRGAS the foreign refiner intends to include in the foreign refinery's NO_X and exhaust toxics compliance calculations under § 80.101(g), and does include in these compliance calculations when reported to EPA.

(6) *Non-certified FRGAS* means FRGAS that is not certified FRGAS.

(b) *Baseline establishment.* Any foreign refiner may submit to EPA a petition for an individual refinery baseline, under §§ 80.90 through 80.93.

(1) The provisions for baselines as specified in §§ 80.90 through 80.93 shall apply to a foreign refinery, except where provided otherwise in this section.

(2) The baseline for a foreign refinery shall reflect only the volume and properties of gasoline produced in 1990 that was imported into the United States.

(3) A baseline petition shall establish the volume of conventional gasoline produced at a foreign refinery and imported into the United States during the calendar year immediately preceding the year the baseline petition is submitted.

(4) In making determinations for foreign refinery baselines EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such a determination.

(5) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to cure this defect after a request for more information, then EPA shall not assign an individual refinery baseline.

(6) Baseline petitions under this paragraph (b) of this section must be submitted before January 1, 2002.

(c) *General requirements for foreign refiners with individual refinery baselines.* Any foreign refiner of a refinery that has been assigned an individual baseline under paragraph (b) of this section shall designate all gasoline produced at the foreign refinery that is exported to the United States as either certified FRGAS or as non-

certified FRGAS, except as provided in paragraph (c)(3) of this section.

(1)(i) In the case of certified FRGAS, the foreign refiner shall meet all requirements that apply to refiners under 40 CFR part 80, subparts D, E and F.

(ii) If the foreign refinery baseline is assigned, or a foreign refiner begins early use of a refinery baseline under paragraph (r) of this section, on a date other than January 1, the compliance baseline for the initial year shall be calculated under § 80.101(f) using an adjusted baseline volume, as follows:

$AV_{1990} = (D/365) \times V_{1990}$

where:

AV_{1990} = Adjusted 1990 baseline volume

D = Number of days remaining in the year, beginning with the day the foreign refinery baseline is approved or the day the foreign refiner begins early use of a refinery baseline, whichever is later

V_{1990} = Foreign refinery's 1990 baseline volume.

(2) In the case of non-certified FRGAS, the foreign refiner shall meet the following requirements, except the foreign refiner shall substitute the name ''non-certified FRGAS'' for the names ''reformulated gasoline'' or ''RBOB'' wherever they appear in the following requirements:

(i) The designation requirements in § 80.65(d)(1);

(ii) The recordkeeping requirements in § 80.74 (a), and (b)(3);

(iii) The reporting requirements in § 80.75 (a), (m), and (n);

(iv) The registration requirements in § 80.76;

(v) The product transfer document requirements in § 80.77 (a) through (f), and (j);

(vi) The prohibition in § 80.78(a)(10), (b) and (c); and

(vii) The independent audit requirements in §§ 80.125 through 80.127, 80.128 (a) through (c), and (g) through (i), and 80.130.

(3)(i) Any foreign refiner that has been assigned an individual baseline for a foreign refinery under paragraph (b) of this section may elect to classify no gasoline imported into the United States as FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(ii) An election under paragraph (c)(3)(i) of this section shall:

(A) Be for an entire calendar year averaging period and apply to all gasoline produced during the calendar year at the foreign refinery that is imported into the United States; and

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election shall take effect at the beginning of the next calendar year.

(iii) A foreign refiner who has aggregated refineries under § 80.101(h) shall make the same election under paragraph (c)(3)(i) of this section for all refineries in the aggregation.

(d) *Designation, product transfer documents, and foreign refiner certification.* (1) Any foreign refiner of a foreign refinery that has been assigned an individual baseline shall designate each batch of FRGAS as such at the time the gasoline is produced, unless the foreign refiner has elected to classify no gasoline exported to the United States as FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any FRGAS prior to its being imported into the United States, the following information shall be included as part of the product transfer document information in §§ 80.77 and 80.106:

(i) Identification of the gasoline as certified FRGAS or as non-certified FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the FRGAS was produced.

(3) On each occasion when FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of the FRGAS that meets the following requirements:

(i) The certification shall include the report of the independent third party under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the FRGAS;

(B) The identification of the gasoline as certified FRGAS or non-certified FRGAS;

(C) The volume of FRGAS being transported, in gallons;

(D) A declaration that the FRGAS is being included in the compliance baseline calculations under § 80.101(f) for the refinery that produced the FRGAS; and

(E) In the case of certified FRGAS:

(*1*) The values for each parameter required to calculate NO_X and exhaust toxics emissions performance as determined under paragraph (f) of this section; and

(*2*) A declaration that the FRGAS is being included in the compliance calculations under § 80.101(g) for the refinery that produced the FRGAS.

(ii) The certification shall be made part of the product transfer documents for the FRGAS.

(e) *Transfers of FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as FRGAS is imported into the United States. A foreign refiner may remove the FRGAS classification, and the gasoline need not be imported into the United States, but only if:

(1)(i) The foreign refiner excludes:

(A) The volume of gasoline from the refinery's compliance baseline calculations under § 80.101(h); and

(B) In the case of certified FRGAS, the volume and parameter values of the gasoline from the compliance calculations under § 80.101(g);

(ii) The exclusions under paragraph (e)(1)(i) of this section shall be on the basis of the parameter and volumes determined under paragraph (f) of this section; and

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;

(ii) Determine the volume of FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading);

(iii) Obtain the EPA-assigned registration number of the foreign refinery;

(iv) Determine the name and country of registration of the vessel used to transport the FRGAS to the United States; and

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion certified FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Collect a representative sample of the certified FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the values for sulfur, benzene, gravity, E200 and E300 using the methodologies specified in § 80.46, by:

(A) The third party analyzing the sample; or

(B) The third party observing the foreign refiner analyze the sample;

(iii) Determine the values for aromatics, olefins, RVP and each oxygenate specified in § 80.65(e)(2) for the gasoline loaded onto the vessel, by:

(A) Completing the analysis procedures under paragraph (f)(2)(ii) of this section for the additional parameters; or

(B) Obtaining from the foreign refiner the test results of samples collected from each shore tank containing gasoline that was loaded onto the vessel, and calculating the parameter values for the gasoline loaded onto the vessel from the tank parameter values and the gasoline volume from each such shore tank that was loaded;

(iv) Review original documents that reflect movement and storage of the certified FRGAS from the refinery to the load port, and from this review determine:

(A) The refinery at which the FRGAS was produced; and

(B) That the FRGAS remained segregated from:

(*1*) Non-FRGAS and non-certified FRGAS; and

(*2*) Other certified FRGAS produced at a different refinery, except that certified FRGAS may be combined with other certified FRGAS produced at refineries that are aggregated under § 80.101(h);

(3) The independent third party shall submit a report:

(i) To the foreign refiner containing the information required under paragraphs (f) (1) and (2) of this section, to accompany the product transfer documents for the vessel; and

(ii) To the Administrator containing the information required under paragraphs (f) (1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.

(4) A person may be used to meet the third party requirements in this paragraph (f) only if:

(i) The person is approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);

(ii) The person is independent under the criteria specified in § 80.65(f)(2)(iii); and

(iii) The person signs a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1)(i) Any foreign refiner and any United States importer of certified FRGAS shall compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline, for the parameter values for sulfur, benzene, gravity, E200 and E300, and for the NO_X and exhaust toxics emissions performance; except that

(ii) Where a vessel transporting certified FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of paragraph (g)(2)(i) of this section are not met at the first United States port of entry, the requirements of paragraph (g)(1) and (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner or his immediate designee that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.

(2)(i) The requirements of paragraph (g)(2)(ii) apply if:

(A)(*1*) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or

(*2*) For any parameter specified in paragraph (f)(2)(ii) of this section, the values determined at the port of entry and at the load port differ by more than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM); unless

(B) The NO_X and exhaust toxics emissions performance, in grams per mile, calculated using the port of entry test results, are each equal to or less than the NO_X and exhaust toxics emissions performance calculated using the load port test results;

(ii) The United States importer and the foreign refiner shall treat the gasoline as non-certified FRGAS, and the foreign refiner shall:

(A) Exclude the gasoline volume and properties from its conventional gasoline NO_X and exhaust toxics compliance calculations under § 80.101(g); and

(B) Include the gasoline volume in its compliance baseline calculation under § 80.101(f), unless the foreign refiner establishes that the United States importer classified the gasoline only as conventional gasoline and not as reformulated gasoline.

(h) *Attest requirements.* The following additional procedures shall be carried out by any foreign refiner of FRGAS as part of the attest engagement for each foreign refinery under 40 CFR part 80, subpart F.

(1) Include in the inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) non-FRGAS in addition to the gasoline types listed in § 80.128 (b) and (c).

(2) Obtain separate listings of all tenders of certified FRGAS, and of non-certified FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport certified FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the certified FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the certified FRGAS is stored, and pipeline activity records for any pipeline used to transport the certified FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the certified FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the certified FRGAS was mixed with any non-certified FRGAS, non-FRGAS, or any certified FRGAS produced at a different

refinery that was not aggregated under § 80.101(h).

(5)(i) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport certified and non-certified FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(ii) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel. Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of non-FRGAS, and perform the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under paragraph (h)(6) of this section where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor shall:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.130 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner shall commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery baseline.

(1) Any United States Environmental Protection Agency inspector or auditor will be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the volume and parameters, and transfers of title or custody, of any gasoline or blendstocks, whether FRGAS or non-FRGAS, produced at the foreign refinery during the period January 1, 1990 through the date of the refinery baseline petition or through the date of the inspection or audit if a baseline petition has not been approved, and any work papers related to refinery baseline establishment;

(B) The parameters and volume of FRGAS;

(C) The proper classification of gasoline as being FRGAS or as not being FRGAS, or as certified FRGAS or as non-certified FRGAS;

(D) Transfers of title or custody to FRGAS;

(E) Sampling and testing of FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner will be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents will be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters will be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia will be named, and service on this agent constitutes service on the foreign refiner or any officer, or employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of 40 CFR part 80, subparts D, E and F.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for an individual refinery baseline, producing and exporting gasoline under an individual refinery baseline, and all other actions to comply with the requirements of 40 CFR part 80, subparts D, E and F relating to the establishment and use of an individual refinery baseline constitute actions or activities covered by and within the meaning of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents, officers, and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under 40 CFR part 80, subparts D, E and F, including such conduct that violates Title 18 U.S.C. section 1001, Clean Air Act section 113(c)(2), or other applicable provisions of the Clean Air Act.

(6) The foreign refiner, or its agents, officers, or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) shall be signed by the owner or president of the foreign refiner business.

(8) In any case where FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the FRGAS to the United States, the foreign refiner shall obtain from each such other company a commitment that meets the

requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments shall be included in the foreign refiner's baseline petition.

(j) *Sovereign immunity.* By submitting a petition for an individual foreign refinery baseline under this section, or by producing and exporting gasoline to the United States under an individual refinery baseline under this section, the foreign refiner, its agents, officers, and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents, officers, and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under 40 CFR part 80, subparts D, E and F, including such conduct that violates Title 18 U.S.C. section 1001, Clean Air Act section 113(c)(2), or other applicable provisions of the Clean Air Act.

(k) *Bond posting.* Any foreign refiner shall meet the requirements of this paragraph (k) as a condition to being assigned an individual refinery baseline.

(1) The foreign refiner shall post a bond of the amount calculated using the following equation:

$$Bond = G \times \$0.01$$

where:

Bond=amount of the bond in U.S. dollars

G=the largest volume of conventional gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the most recent of the following calendar years, up to a maximum of five calendar years: the calendar year immediately preceding the date the baseline petition is submitted, the calendar year the baseline petition is submitted, and each succeeding calendar year

(2) Bonds shall be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) shall be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of 40 CFR part 80, subparts D, E and F, including such conduct that violates Title 18 U.S.C. section 1001, Clean Air Act section 113(c)(2), or other applicable provisions of the Clean Air Act.

(5) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(l) *Blendstock tracking.* For purposes of blendstock tracking by any foreign refiner under § 80.102 by a foreign refiner with an individual refinery baseline, the foreign refiner may exclude from the calculations required in § 80.102(d) the volume of applicable blendstocks for which the foreign refiner has sufficient evidence in the form of documentation that the blendstocks were used to produce gasoline used outside the United States.

(m) *English language reports.* Any report or other document submitted to EPA by any foreign refiner shall be in the English language, or shall include an English language translation.

(n) *Prohibitions.* (1) No person may combine certified FRGAS with any non-certified FRGAS or non-FRGAS, and no person may combine certified FRGAS with any certified FRGAS produced at a different refinery that is not aggregated under § 80.101(h), except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) *United States importer requirements.* Any United States importer shall meet the following requirements.

(1) Each batch of imported gasoline shall be classified by the importer as being FRGAS or as non-FRGAS, and each batch classified as FRGAS shall be further classified as certified FRGAS or as non-certified FRGAS.

(2) Gasoline shall be classified as certified FRGAS or as non-certified FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as non-certified FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as FRGAS, any United States importer shall perform the following procedures.

(i) In the case of both certified and non-certified FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the FRGAS;

(C) Determine the name and country of registration of the vessel used to transport the FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of certified FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Prepare a volume-weighted vessel composite sample from the compartment samples; and

(C) Determine the values for sulfur, benzene, gravity, E200 and E300 using the methodologies specified in § 80.46, by:

(*1*) The third party analyzing the sample; or

(*2*) The third party observing the importer analyze the sample

(4) Any importer shall submit reports within thirty days following the date any vessel transporting FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section.

(5)(i) Any United States importer shall meet the requirements specified for conventional gasoline in § 80.101 for any imported conventional gasoline that is not classified as certified FRGAS under paragraph (o)(2) of this section.

(ii) The baseline applicable to a United States importer who has not been assigned an individual importer baseline under § 80.91(b)(4) shall be the baseline specified in paragraph (p) of this section.

(p) *Importer Baseline.* (1) Each calendar year starting in 2000, the Administrator shall calculate the

volume weighted average NO_X emissions of imported conventional gasoline for a multi-year period (MYA_{NOx}). This calculation:

(i) Shall use the Phase II Complex Model;

(ii) Shall include all conventional gasoline in the following categories:

(A) Imported conventional gasoline that is classified as conventional gasoline, and included in the conventional gasoline compliance calculations of importers for each year; and

(B) Imported conventional gasoline that is classified as certified FRGAS, and included in the conventional gasoline compliance calculations of foreign refiners for each year;

(iii)(A) In 2000 only, shall be for the 1998 and 1999 averaging periods and also shall include all conventional gasoline classified as FRGAS and included in the conventional gasoline compliance calculations of a foreign refiner for 1997, and all conventional gasoline batches not classified as FRGAS that are imported during 1997 beginning on the date the first batch of FRGAS arrives at a United States port of entry; and

(B) Starting in 2001, shall include imported conventional gasoline during the prior three calendar year averaging periods.

(2)(i) If the volume-weighted average NO_X emissions (MYA_{NOx}), calculated in paragraph (p)(1) of this section, is greater than 1,465 mg/mile, the Administrator shall calculate an adjusted baseline for NO_X according to the following equation:

$$AB_{NOx} = 1{,}465 \text{ mg/mile} - (MYA_{NOx} - 1{,}465 \text{ mg/mile})$$

where:

AB_{NOx} = Adjusted NO_X baseline, in mg/mile

MYA_{NOx} = Multi-year average NO_X emissions, in mg/mile

(ii) For the 1998 and 1999 multi-year averaging period only the value of AB_{NOx} shall not be larger than 1,480 mg/mile regardless of the calculation under paragraph (p)(2)(i) of this section.

(3)(i) Notwithstanding the provisions of § 80.91(b)(4)(iii), the baseline NO_X emissions values applicable to any United States importer who has not been assigned an individual importer baseline under § 80.91(b)(4) shall be the more stringent of the statutory baseline value for NO_X under § 80.91(c)(5), or the adjusted NO_X baseline calculated in paragraph (p)(2) of this section.

(ii) On or before June 1 of each calendar year, the Administrator shall announce the NO_X baseline that applies to importers under this paragraph (p). If the baseline is an adjusted baseline, it shall be effective for any conventional gasoline imported beginning 60 days following the Administrator's announcement. If the baseline is the statutory baseline, it shall be effective upon announcement. A baseline shall remain in effect until the effective date of a subsequent change to the baseline pursuant to this paragraph (p).

(q) *Withdrawal or suspension of a foreign refinery's baseline.* EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in 40 CFR part 80, subparts D, E and F; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) *Early use of a foreign refinery baseline.* (1) A foreign refiner may begin using an individual refinery baseline before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;

(ii) EPA has made a provisional finding that the baseline petition is complete;

(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(3)(iii) and (h)(7)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (k) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline before final approval under paragraph (r)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, *ab initio,* using the baseline values approved by EPA, and the foreign refiner shall be liable for any resulting violation of the conventional gasoline requirements.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under paragraph (b) of this section, any report or other submission required by paragraphs (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) or (g)(1)(ii) of this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may specified by the Administrator.

(2) Be signed by the president or owner of the foreign refiner company, or in the case of (g)(1)(ii) the vessel owner, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) that I have actual authority to sign on behalf of and to bind [insert name of foreign refiner or vessel owner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subparts D, E and F and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand that the provisions of 40 CFR part 80, subparts D, E and F, including 40 CFR 80.94 (i), (j) and (k), apply to [insert name of foreign refiner or vessel owner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000, and/or imprisonment for up to five years.

[FR Doc. 97–22803 Filed 8–27–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268 and 271

[FRL–5884–2]

RIN 2050–AD38

Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production

AGENCY: Environmental Protection Agency (EPA, the Agency).

ACTION: Immediate final rule.

SUMMARY: This second emergency revision extends the time that the alternative carbamate treatment

standards are in place by one additional year. The Agency is taking this action because analytical problems associated with the measurement of constituent levels in carbamate waste residues have not yet been resolved.

EFFECTIVE DATES: This action becomes effective on August 21, 1997.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The Docket Identification Number is F–96–P32F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 (toll-free) or 703–412–9810 locally. For technical information on the carbamate treatment standards, contact Shaun McGarvey, phone 703–308–8603. For information on analytic problems associated with carbamate wastes, contact John Austin on 703–308–0436. For information on State Authorization, contact Wayne Roepe on 703–308–8630. For specific information about this rule, contact Rhonda Minnick on 703–308–8771.

SUPPLEMENTARY INFORMATION:

Availability of rule on Internet

This **Federal Register** notice is available on the Internet System through the EPA Public Web Page at: http://www.epa.gov/EPA–WASTE/. For the text of the notice, choose: Year/Month/Day.

I. Background

The Phase III final rule established treatment standards for hazardous wastes associated with carbamate pesticide production (61 FR 15583; see appendix for a list of regulated constituents). The treatment standards were expressed as concentration levels that had to be monitored in the treatment residue. All constituents were placed on the Universal Treatment Standard (UTS) list. These regulations were issued on April 8, 1996 (61 FR 15663), and corrected June 28, 1996 (61 FR 33683). The prohibition on land disposal of carbamate wastes was effective July 8, 1996 and the prohibition on radioactive waste mixed with newly listed or identified wastes, including soil and debris, was effective April 8, 1998.

On November 1, 1996, the United States Court of Appeals for the District of Columbia Circuit, in *Dithiocarbamate Task Force* v. *EPA* (98 F.3d 1394), vacated certain of the listings of carbamate wastes. Accordingly, EPA removed from the Code of Federal Regulations those listings vacated by the court and all references to those listings. EPA notes that substantial portions of the decisions made in the carbamate listing rule remain in effect and are not changed by the court's ruling. See 62 FR 32973, June 17, 1997.

The court vacated the listings of 24 U wastes, one K-waste (K160), and three of the K-wastes (K156, K157 and K158) only to the extent they apply to the chemical, 3-iodo-2-propynyl n-butylcarbamate (IPBC). Twenty-three of the vacated U wastes consisted of all the dithiocarbamates and thiocarbamates. The other vacated U waste was IPBC, a carbamate.

This notice applies only to the carbamate wastes that remain listed as hazardous wastes. Carbamates that were regulated as UHCs were unaffected by the courts decision, because the decision didn't deal with adding carbamates as underlying hazardous constituents.

After promulgation of the Phase III rule on April 8, 1996, but shortly before the treatment standards took effect on July 8, 1996, several companies in the waste management industry contacted EPA, reporting that laboratory standards were not available for some of the carbamate waste constituents. The Agency confirmed this assertion, and realized that the waste management industry was unintentionally left in a quandary: they were required to certify compliance with the carbamate waste treatment standards, but commercial laboratories were only able to perform the necessary analyses for some of the newly regulated constituents. Thus, it was impossible to document whether the treatment standards were or were not achieved for those constituents which could not be analyzed.

The problem was complicated by the LDR rules that pertain to regulation of underlying hazardous constituents (UHCs) in characteristic (or formerly characteristic) hazardous wastes. Because new constituents were added to the UTS list, they thus became potential UHCs. Whenever a generator sends a characteristic (or formerly-characteristic) waste to a treatment facility, they must identify for treatment not only the hazardous characteristic, but also all UHCs reasonably expected to be present in the waste at the point of generation. (See 40 CFR 268.2(i).) Because of the lack of laboratory standards for all carbamate constituents, generators could not in all cases identify the UHCs reasonably expected to be present in their wastes, and treatment facilities and EPA could not monitor compliance with the standards for the carbamate UHCs. Generators also reported that commercial laboratories were unable to provide the recommended methods.

II. The Revised Carbamate Treatment Standards

In an emergency final rule promulgated on August 26, 1996 (61 FR 43924), EPA established temporary alternative treatment standards for carbamate wastes for a one-year period. EPA believed that one year was sufficient time for laboratory standards to be developed and for laboratories to take appropriate steps to do the necessary analyses for these wastes.

The Phase III rule required treatment of carbamate wastes to UTS levels. The temporary alternative standards promulgated in the August 26, 1996 rule provided waste handlers a choice of meeting the Phase III treatment levels, or of using a specified treatment technology, the specified standard being the technology upon whose performance the numerical treatment standard was based. (See 61 FR 43925, August 26, 1996.) Combustion was the specified technology for nonwastewaters; combustion, biodegradation, chemical oxidation, and carbon adsorption are the specified technologies for wastewaters. If the wastes were treated by a specified technology, there was no requirement to measure compliance with treatment levels, thus avoiding the analytical problems.

III. Today's Extension of the Alternative Treatment Standard Provision

EPA is extending the alternative treatment standards for carbamate wastes for one additional year. EPA and the regulated community initially expected that laboratory standards would be developed during the past year, but that appears not to be the case for all carbamate constituents. Furthermore, there appears to be confusion as to which analytical methods can be used to measure carbamate constituents. (See memorandum from Kevin Igli, Waste Management, Inc., to James Berlow, EPA, dated July 16, 1997, in the docket for this rule.)

The waste treatment industry has begun a testing project that will determine whether existing analytical methods can be extended to apply to all carbamate constituents. (See August 8,

1997 letter from Kevin Igli, Waste Management, Inc., to Michael Petruska, EPA.) The Agency believes that much can be learned from this study. EPA estimates it will take four to six months to conduct this study, and then additional time to review the results. If the study verifies that analytical problems remain, EPA may issue an appropriate notice seeking comment, and then a final rule modifying the standard. This would all take approximately 1 year. If EPA finds there are no serious analytical difficulties, however, the Agency may consider reinstating the numeric standard sooner than 1 year.

Since the analytical problems which necessitated the 1996 emergency rule remain, however, EPA is allowing the alternative treatment standards to remain in place until the study is completed and the results factored into a final decision on whether to retain the alternative treatment standards permanently or to revert to the exclusive numerical standards promulgated in the Phase III rule. (The Agency's general preference is to establish numerical treatment standards for hazardous wastes whenever possible because they provide maximum flexibility in selecting treatment technologies, while ensuring that the technologies are optimally operated to achieve full waste treatment.)

Under the alternative treatment standards, combustion is the specified technology for nonwastewaters; combustion, biodegradation, chemical oxidation, and carbon adsorption are the specified technologies for wastewaters. (Descriptions of these treatment technologies can be found in 40 CFR 268.42, Table 1.) If the wastes are treated by a specified technology, there is no requirement to measure compliance with treatment levels.

Because the performance of these Best Demonstrated Available Technologies (BDATs) were the basis of the originally promulgated treatment levels, EPA believes that temporarily allowing the use of these BDATs for an additional year—without a requirement to monitor the treatment residues—fully satisfies the core requirement of the LDR program: Hazardous wastes must be treated to minimize threats to human health and the environment before they are land disposed.

The Agency is also suspending for an additional year inclusion of carbamate waste constituents on the UTS list at 40 CFR 268.48. Not including these constituents on the UTS list eliminates the need to identify and treat them, and monitor compliance with their UTS levels, when they are present as UHCs in characteristic hazardous wastes. The Agency believes that suspending the carbamate constituents from the UTS list will not have adverse environmental consequences because it will be in effect for only one additional year. Furthermore, EPA found in the Phase III rulemaking that these constituents are unlikely to occur in wastes generated outside the carbamate production industry (61 FR 15584, April 8, 1996), so today's rule may not cause an adverse environmental impact because carbamate constituents simply are not present in most characteristic hazardous wastes.

IV. Good Cause for Foregoing Notice and Comment Requirements

This final rule is being issued without notice and opportunity for public comment. Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), an agency may forgo notice and comment in promulgating a rule when, according to the APA, the agency for good cause finds (and incorporates the finding and a brief statement of the reasons for that finding into the rules issues) that notice and public comments procedures are impracticable, unnecessary, or contrary to the public interest. For the reasons set forth below, EPA believes it has good cause to find that notice and comment would be unnecessary and contrary to the public interest, and therefore is not required by the APA.

First, although both industry and EPA have endeavored to resolve the problem during the past year, analytic laboratory standards will continue to be unavailable for a number of the carbamate waste constituents covered by the Phase III rule. Members of the regulated community thus cannot fully document compliance with the requirements of the treatment standard through no fault of their own. For the same reason, EPA cannot ascertain compliance for these constituents.

In addition, this unavailability of analytic standards is likely to create a serious disruption in the production of at least some carbamate pesticides. Although the treatment of the restricted carbamate wastes through biodegradation, carbon adsorption, chemical oxidation (for wastewaters), and combustion is both possible and highly effective, certification that the treatment actually meets the treatment standard levels may not be possible in many instances. Without the certification, disposal of the residuals left after treatment cannot legally occur. The Agency believes this situation will quickly impede production of certain pesticides, since legal disposal of some carbamate wastes will no longer be available. *See Steel Manufacturers Ass'n* v. *EPA*, 27 F.3d 642, 646–47 (D.C. Cir. 1994) (absence of a treatment standard providing a legal means of disposing of wastes from a process is equivalent to shutting down that process). With regard to the suspension of certain carbamates as underlying hazardous constituents in characteristic (and formerly-characteristic) prohibited wastes, the Agency believes that the same practical difficulties described for listed carbamate wastes would be created.

Furthermore, the Agency believes it is necessary for industry to complete a study project that will provide answers to the questions raised about the availability of analytical standards and which analytical methods are appropriate for carbamate wastes. This study will require a number of months to be completed, and then the Agency must make a decision about whether or not to retain the alternative treatment standards.

This extension of the emergency rule preserves the core of the promulgated Phase III rule by ensuring that the restricted carbamate wastes are treated by a BDAT before they are land disposed. At the same time, EPA is eliminating the situation which could halt production of carbamate pesticides, and allowing time for a study project to be completed. For these reasons, EPA believes there is good cause to issue the rule immediately without prior notice and opportunity for comment.

V. Rationale for Immediate Effective Date

The Agency believes that the regulated community is in the untenable position of having to comply with treatment standards but lacks analytical methods to measure compliance. To avoid this result, therefore, this extension needs to take effect essentially immediately. In addition, today's rule does not create additional regulatory requirements; rather, it provides greater flexibility for compliance with treatment standards. For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 6903(b)(3), to provide for an immediate effective date. See generally 61 FR at 15662. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

VI. Analysis Under Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

This final rule does not create new regulatory requirements; rather, it provides a temporary alternative means to comply with the treatment standards already promulgated. Therefore, this final rule is not a ''significant'' regulatory action within the meaning of Executive Order 12866.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, and does not impose any Federal mandate on State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. This final rule does not create new regulatory requirements; rather, it provides a temporary alternative means to comply with the treatment standards already promulgated. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities. EPA recognizes that small entities may own and/or operate carbamate pesticide manufacturing operations or TSDFs that will become subject to the requirements of the land disposal restrictions program. However, since such small entities are already subject to the requirements in 40 CFR part 268, this rule does not impose any additional burdens on these small entities, because this rule does not create new regulatory requirements. Rather, it provides a temporary alternative means to comply with the treatment standards already promulgated.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Today's rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Because there are no new information collection requirements in today's rule, an Information Collection Request has not been prepared.

VII. Submission to Congress and the General Accounting Office

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

VIII. State Authority

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Today's rule is being promulgated pursuant to section 3004(m), of RCRA (42 U.S.C. 6924(m)). Therefore, the Agency is adding today's rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorization

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because today's rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive interim or final

authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21. All HSWA interim authorizations will expire January 1, 2003. (See section 271.24 and 57 FR 60132, December 18, 1992.)

In general, EPA recommends that States pay close attention to the sunset date for today's rule. If States are adopting the Phase III rule before the sunset date of today's rule, and applying for authorization, EPA strongly encourages these States to adopt today's rule when they adopt the April 8, 1996, Phase III rule. States should note that after the sunset date, the provisions of this rule may be considered less stringent if the Agency decides to disallow use of the alternative treatment standards. If so, States would be barred under section 3009 of RCRA from adopting this rule after August 26, 1998, and would not be able to receive authorization for it. States that are planning to adopt and become authorized for today's rule and the Phase III rule should factor the sunset date into their rulemaking activities.

Appendix to the Preamble—List of Regulated Constituents

K156—Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate)

K157—Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)

K158—Bag house dust, and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)

K159—Organics from the treatment of thiocarbamate wastes.

K161—Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.)

P203 Aldicarb sulfone
P127 Carbofuran
P189 Carbosulfan
P202 m-Cumenyl methylcarbamate
P191 Dimetilan
P198 Formetanate hydrochloride
P197 Formparanate
P192 Isolan
P196 Manganese dimethyldithiocarbamate
P199 Methiocarb
P066 Methomyl
P190 Metolcarb
P128 Mexacarbate
P194 Oxamyl
P204 Physostigmine
P188 Physostigmine salicylate
P201 Promecarb
P185 Tirpate
P205 Ziram
U394 A2213
U280 Barban
U278 Bendiocarb
U364 Bendiocarb phenol
U271 Benomyl
U279 Carbaryl
U372 Carbendazim
U367 Carbofuran phenol
U395 Diethylene glycol, dicarbamate
U373 Propham
U411 Propoxur
U387 Prosulfocarb
U410 Thiodicarb
U409 Thiophanate-methyl
U389 Triallate
U404 Triethylamine

Additional chemicals from carbamate production regulated in 40 CFR 268.48
Butylate
EPTC
Dithiocarbamates, total
Molinate
Pebulate
o-Phenylenediamine
Vernolate

List of Subjects

40 CFR part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR part 271

Environmental protection, Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Penalties, Reporting and recordkeeping requirements.

Dated: August 21, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

SUBPART D—TREATMENT STANDARDS

2. Section 268.40 is amended by revising the dates in paragraph (g) to read ''Between August 26, 1997 and August 26, 1998''.

3. Section 268.48(a) is amended by revising the dates in footnote 6 to the table—Universal Treatment Standards to read ''Between August 26, 1997 and August 26, 1998''.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

4. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

SUBPART A—REQUIREMENTS FOR FINAL AUTHORIZATION

5. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register** to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of Regulation	Federal Register reference	Effective date
*	*	*	*
August 28, 1997	Second Emergency Revision of the Land Disposal Restrictions (LDR) Phase III Treatment Standards for Listed Hazardous Wastes from Carbamate Production.	62 FR [Insert page numbers].	August 26, 1997 until August 26, 1998.
*	*	*	*

* * * * *

[FR Doc. 97–22949 Filed 8–27–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7224]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Mohave ..	City of Bullhead City.	June 17, 1997, June 24, 1997, *Mohave Valley Daily News.*	The Honorable Norm Hicks, Mayor, City of Bullhead City, 1255 Marina Boulevard, Bullhead City, Arizona 86442.	June 5, 1997	040125
California:					
Riverside	City of Banning	June 20, 1997, June 27, 1997, *The Record-Gazette.*	The Honorable Gary Reynolds, Mayor, City of Banning, P.O. Box 998, Banning, California 92220.	June 5, 1997	060246
Marin	City of Novato	July 1, 1997, July 8, 1997, *Marin Independent Journal.*	The Honorable Pat Eklund, Mayor, City of Novato, 900 Sherman Avenue, Novato, California 94945.	June 13, 1997	060178

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Sonoma	City of Petaluma	June 17, 1997, June 24, 1997, *Argus Courier*.	The Honorable Patricia Hilligoss, Mayor, City of Petaluma, P.O. Box 61, Petaluma, California 94953.	June 2, 1997	060379
Santa Clara	City of San Jose	July 1, 1997, July 8, 1997, *San Jose Mercury News*.	The Honorable Susan Hammer, Mayor, City of San Jose, 801 North First Street, Room 600, San Jose, California 95110.	June 12, 1997	060349
North Dakota:					
Dunn	Unincorporated areas.	June 20, 1997, June 27, 1997, *Dunn County Herald*.	The Honorable Orris Bang, Chairman, Dunn County Board of Commissioners, Dunn County Auditor's Office, P.O. Box 105, Manning, North Dakota 58642.	June 9, 1997	380026
Dunn	City of Halliday	June 20, 1997, June 27, 1997, *Dunn County Herald*.	The Honorable Leo Lesmeister, Mayor, City of Halliday, P.O. Box 438, Halliday, North Dakota 58642.	June 9, 1997	380029
Oklahoma:					
Oklahoma	City of Edmond	June 12, 1997, June 19, 1997, *Edmond Evening Sun*.	The Honorable Bob Rudkin, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73083.	May 28, 1997	400252
Tulsa	City of Tulsa	June 17, 1997, June 24, 1997, *Tulsa World*.	The Honorable M. Susan Savage, Mayor, City of Tulsa, 200 Civic Center, Tulsa, Oklahoma 74103.	May 23, 1997	405381
Texas:					
Dallas	City of Carrollton	June 20, 1997, June 27, 1997, *Metrocrest News*.	The Honorable Milburn Gravley, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	June 4, 1997	480167
Tarrant	City of Grapevine	June 19, 1997, June 26, 1997, *The Grapevine Sun*.	The Honorable William D. Tate, Mayor, City of Grapevine, 200 South Main, Grapevine, Texas 76051.	June 4, 1997	480598
Kaufman	City of Terrell	July 1, 1997, July 8, 1997, *Terrell Tribune*.	The Honorable Don L. Lindsay, Mayor, City of Terrell, P.O. Box 310, Terrell, Texas 75160.	June 17, 1997	480416

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 15, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–22941 Filed 8–27–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The

community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Diego (FEMA Docket No. 7212).	City of Oceanside	Mar. 20, 1997, Mar. 27, 1997, *North County Times*.	The Honorable Dick Lyon, Mayor, City of Oceanside, 300 North Coast Highway, Oceanside, California 92054.	Mar. 4, 1997	060294
Clorado:					
Jefferson (FEMA Docket No. 7212).	City of Golden	Mar. 14, 1997, Mar. 21, 1997, *The Golden Transcript*.	The Honorable Jan C. Schenck, Mayor, City of Golden, 911 Tenth Street, Golden, Colorado 80401.	Mar. 3, 1997	080090
Jefferson (FEMA Docket No. 7212).	Unincorporated areas.	Mar. 14, 1997, Mar. 21, 1997, *The Golden Transcript*.	The Honorable Michelle Lawrence, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	Mar. 3, 1997	080087
Texas:					
El Paso (FEMA Docket No. 7212).	City of El Paso	Mar. 13, 1997, Mar. 20, 1997, *El Paso Times*.	The Honorable Larry Francis, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	Feb. 26, 1997	480214
Denton (FEMA Docket No. 7212).	Town of Flower Mound.	Mar. 20, 1997, Mar. 27, 1997, *Flowerplex Pipeline*.	The Honorable Larry W. Lipscomb, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas 75208.	Feb. 27, 1997	480777
Williamson (FEMA Docket No. 7212).	City of Round Rock.	Mar. 20, 1997, Mar. 27, 1997, *Round Rock Leader*.	The Honorable Charles Culpepper, Mayor, City of Round Rock, 221 East Main Street, Round Rock, Texas 78664.	Feb. 27, 1997	481048

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 15, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–22942 Filed 8–27–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
ARIZONA	
Yavapai County (Unincorporated Areas) (FEMA Docket No. 7214)	
Big Chino Wash:	
Just upstream of the Sullivan Lake Spillway	*4,356
Approximately 600 feet upstream of U.S. Route 89	*4,364
Chino Valley Stream:	
Approximately 3,650 feet downstream of U.S. Route 89	*4,406
Approximately 7,550 feet upstream of U.S. Route 89	*4,494
Chino Valley Stream (with levee):	
Approximately 7,700 feet downstream of U.S. Route 89	*4,378
Approximately 50 feet downstream of U.S. Route 89	*4,434
Santa Cruz Wash:	
Approximately 4,200 feet downstream of Old U.S. Route 89	*4,362
Approximately 20,850 feet upstream of Old U.S. Route 89	*4,489
Maps are available for inspection at the Yavapai County Flood Control District, 255 East Gurley Street, Prescott, Arizona.	
ARKANSAS	
Calhoun County (Unincorporated Areas) (FEMA Docket No. 7214)	
Two Bayou Main Canal:	
Approximately 300 feet downstream of State Highway 4	*113
Just downstream of a railroad spur located approximately 2,000 feet upstream of confluence of Dogwood Creek	*123
Just downstream of State Highway 274	*127
Approximately 200 feet upstream of divergence from Two Bayou Old Channel	*135
Approximately 900 feet downstream of State Highway 203 and East Camden and Highland Railroad	*155
Approximately 17,540 feet upstream of East Camden and Highland Railroad	*185
Two Bayou Old Channel:	
Approximately 300 feet downstream of State Highway 274	*120
At County Road	*128
Approximately 1,000 feet downstream of divergence from Two Bayou Main Canal	*134
Dogwood Creek:	
Approximately 200 feet upstream of confluence with Two Bayou Main Canal	*120
Approximately 200 feet upstream of State Highway 274	*135
Approximately 200 feet upstream of State Highway 203	*175
Approximately 11,680 feet upstream of State Highway 203	*205
Dogwood Creek Tributary:	
Approximately 700 feet upstream of confluence with Dogwood Creek	*145
Just upstream of an unnamed road located approximately 8,240 feet above mouth	*152

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Maps are available for inspection at the Calhoun County Judge's Office, County Courthouse (in County Square), Second and Main Streets, Hampton, Arkansas.	
Little River County (and Incorporated Areas) (FEMA Docket No. 7214)	
Red River:	
Approximately 5,000 feet upstream of the Union Pacific Railroad at County limit	+261
Approximately 10.5 miles upstream of Highway 41	+317
East Flat Creek:	
Just upstream of Burlington Northern Railroad	+387
Approximately 700 feet upstream of Second Street	+425
East Flat Creek Tributary A:	
At confluence with East Flat Creek	+384
Approximately 300 feet upstream of Third Avenue	+404
East Flat Creek Tributary B:	
At confluence with East Flat Creek	+406
Approximately 200 feet upstream of Third Avenue	+417
Lick Creek:	
Approximately 750 feet downstream of Kansas City Southern Railroad	+283
Approximately 3,200 feet upstream of Highway 234	+290
Maps are available for inspection at the City of Foreman, 200 Schuman, Foreman, Arkansas.	
Maps are available for inspection at the Little River County Courthouse, 351 North Second Street, Ashdown, Arkansas.	
CALIFORNIA	
Ferndale (City), Humboldt County (FEMA Docket No. 7214)	
Eastside Channel:	
Approximately 850 feet upstream of Van Ness Avenue	*28
Approximately 1 mile upstream of Van Ness Avenue	*39
Francis Creek:	
Approximately 1,000 feet downstream of Turner Bridge	*20
Approximately 500 feet upstream of Berding Street	*65
Maps are available for inspection at the City of Ferndale Public Works Department, City Hall, 834 Main Street, Ferndale, California.	
St. Helena (City), Napa County (FEMA Docket No. 7214)	
Sulphur Creek:	
At confluence with Napa River	*215
At Main Street	*236
Approximately 300 feet upstream of Valley View Street	*255
Sulphur Creek Tributary:	
At confluence with Sulphur Creek	*238
Approximately 300 feet upstream of Spring Street	*264
Charter Oak Avenue Split Flow:	
Approximately 500 feet southwest of the intersection of Charter Oak Avenue and Main Street	*238
Maps are available for inspection at the City of St. Helena City Hall, 1480 Main Street, St. Helena, California.	
Sunnyvale (City), Santa Clara County (FEMA Docket No. 7188)	
Sunnyvale East Channel:	
At confluence with Guadalupe Slough	*8
Approximately 1,900 feet upstream of Tasman Drive	*17
Sunnyvale West Channel:	
At confluence with Moffett Channel	*8
Approximately 300 feet upstream of Orbit Court	*23
San Francisco Bay:	
At Sunnyvale	*8
Maps are available for inspection at the City of Sunnyvale Department of Public Works, 456 West Olive Avenue, Sunnyvale, California.	
IOWA	
Marengo (City), Iowa County (FEMA Docket No. 7214)	
Ponding:	
Just south of the Chicago, Rock Island and Pacific Railroad, approximately 2,000 feet east of Eastern Avenue	*735
Approximately 1,000 feet east of Wallace Avenue	*735
North of North Street, between Court and Eastern Avenues	*735
Maps are available for inspection at the City of Marengo City Hall, 153 East Main Street, Marengo, Iowa.	
KANSAS	
Lindsborg (City), McPherson County (FEMA Docket No. 7210)	
Cow Creek:	
Just upstream of Sheridan Street	*1,320
At Coronado Avenue	*1,333
Maps are available for inspection at the City of Lindsborg City Hall, 101 South Main, Lindsborg, Kansas.	
LOUISIANA	
St. Martin Parish (Unincorporated Areas) (FEMA Docket No. 7210)	
Bayou Long:	
At southeastern portion of Parish, east of State Highway 70	*6
Maps are available for inspection at the Parish Police Jury, 415 South Main Street, St. Martinville, Louisiana.	
Woodworth (Village), Rapides Parish (FEMA Docket No. 7214)	
Bayou Boeuf:	
Just west of the Missouri-Pacific Railroad at the northern corporate limits	*71
Maps are available for inspection at the Village of Woodworth City Hall, 27 Castor Plunge Road, Woodworth, Louisiana.	
MISSOURI	
Lamar (City), Barton County (FEMA Docket No. 7210)	
North Fork Spring River:	
At confluence of Unnamed Tributary A	*936
Just upstream of Burlington Northern Railroad	*940
At Reavley Street Extended	*942
Unnamed Tributary A:	
Approximately 1,300 feet downstream of Walnut Street	*936
Just upstream of U.S. Highway 160	*958
Maps are available for inspection at the City of Lamar City Hall, 1104 Broadway, Lamar, Missouri.	
NEBRASKA	
Stanton County (Unincorporated Areas) (FEMA Docket No. 7214)	
Elkhorn River:	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
At Cuming-Stanton County line	*1,401
Just upstream of State Highway 15	*1,411
At Madison-Stanton County line	*1,501
Maps are available for inspection at the Stanton County Courthouse, Planning and Zoning Office, 804 Ivy Street, Stanton, Nebraska.	
OKLAHOMA	
Chelsea (City), Rogers County (FEMA Docket No. 7214)	
North Tributary:	
Approximately 330 feet downstream of Sixth Street	*692
Just upstream of First Street	*699
Approximately 2,000 feet upstream of Burlington Northern Railroad	*710
School Tributary:	
Just above State Route 28	*714
Just upstream of Ash Street	*722
South Tributary:	
Just upstream of Maple Avenue	*699
Approximately 4,300 feet downstream of Fourth Street	*714
Town Tributary:	
Approximately 440 feet above confluence with South Tributary	*697
Approximately 660 feet above mouth	*698
Maps are available for inspection at the City of Chelsea City Hall, 637 Olive Street, Chelsea, Oklahoma.	
Rogers County (Unincorporated Areas) (FEMA Docket No. 7214)	
Boggy Creek:	
Approximately 1,400 feet downstream of 193rd Avenue East	*581
At 96th Street North	*587
Approximately 160 feet upstream of Dover Place	*630
At 106th Street North	*657
Dover Tributary 1:	
At Dover Place	*615
At confluence approximately 2,800 feet upstream of Dover Place	*647
Dover Tributary 2:	
At confluence with Boggy Creek	*630
Approximately 200 feet upstream of Dover Place	*631
Approximately 1,000 feet upstream of Dover Place	*635
Dover Tributary 3:	
At confluence with Boggy Creek	*630
Just upstream of Stone Bridge Drive	*653
Just upstream of 106th Street North	*657
Dover Tributary 4:	
At confluence with Boggy Creek	*641
Approximately 100 feet upstream of Ashford Lane	*654
Just upstream of 106th Street North	*656
Pine Creek:	
At confluence with Elm Creek	*631
Approximately 1,000 feet upstream of 86th Street North	*633
Approximately 300 feet upstream of 92nd Street North	*650
Just upstream of 93rd Street North	*655
Just upstream of 96th Street North	*679
Pine Creek Tributary:	
At confluence with Pine Creek	*656
Approximately 720 feet upstream of confluence with Pine Creek	*663
Pryor Creek:	
At the Rogers-Mayes County line	*686
Approximately 0.5 mile upstream of confluence of Flood Retarding Structure No. 24 Tributary	*694
North Tributary:	
At confluence of South Tributary	*690
Just upstream of Burlington Northern Railroad	*708
Just upstream of State Route 28, east-west crossing	*732
School Tributary:	
At confluence with North Tributary	*711
Just downstream of Ash Street	*721
South Tributary:	
At confluence with North Tributary	*690
Just upstream of Fourth Street	*726
Town Tributary:	
At confluence with South Tributary	*695
Approximately 430 feet upstream of confluence	*695
Maps are available for inspection at the Rogers County Planning Commission, Rogers County Courthouse, 219 South Missouri, Claremore, Oklahoma.	
Wyandotte (Town) and Ottawa County (Unincorporated Areas) (FEMA Docket No. 7214)	
Wyandotte Ditch:	
At confluence with Grand Lake o' the Cherokees	*756
Just above Main Street	*761
At eastern corporate limit approximately 3,100 feet upstream of Main Street	*780
Approximately 3,800 feet upstream of Main Street	*789
Maps are available for inspection at the Town of Wyandotte Town Hall, 14 North Main Street, Wyandotte, Oklahoma.	
Maps are available for inspection at the Ottawa County Courthouse, 102 East Central, Miami, Oklahoma.	
TEXAS	
Collin County (and Incorporated Areas) (FEMA Docket No. 7214)	
Maxwell Creek:	
At Hooper Road	*508
Just upstream of FM 544	*533
Approximately 100 feet upstream of McWhirte Road	*578
Bunny Run South Tributary:	
At confluence with Maxwell Creek	*522
Approximately 4,600 feet upstream of confluence	*556
Bunny Run North Tributary:	
At confluence with Bunny Run South Tributary	*527
Approximately 2,500 feet upstream of confluence	*543
McMillan Tributary:	
At confluence with Maxwell Creek	*561
Approximately 2,000 feet upstream of confluence	*575
Maps are available for inspection at the Collin County Courthouse, 210 South McDonald Street, McKinney, Texas.	
Maps are available for inspection at the City of Murphy City Hall, 205 North Murphy Road, Murphy, Texas.	
Maps are available for inspection at the City of Parker City Hall, 5700 East Parker Road, Parker, Texas.	
Murphy (City), Collin County (FEMA Docket No. 7214)	
Maxwell Creek:	
At intersection of Cherokee Drive and Maxwell Creek Road	*519
Just downstream of McMillan Drive	*562
Bunny Run South Tributary:	
At confluence with Maxwell Creek	*522
Approximately 4,600 feet upstream of confluence	*556
Bunny Run North Tributary:	
At confluence with Bunny Run South Tributary	*527
Approximately 2,500 feet upstream of confluence	*543
McMillan Tributary:	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
At confluence with Maxwell Creek	*561
Approximately 2,000 feet upstream of confluence	*575
Maps are available for inspection at the City of Murphy City Hall, 205 North Murphy Road, Murphy, Texas.	
UTAH	
St. George (City), Washington County (FEMA Docket No. 7214)	
Virgin River:	
Approximately 4,400 feet downstream of confluence with Middleton Wash	*2,567
Approximately 2,700 feet upstream of confluence with Middleton Wash	*2,583
Approximately 9,900 feet upstream of confluence with Middleton Wash	*2,601
Maps are available for inspection at the City of St. George Engineering Department, 175 East 200 North, St. George, Utah.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: August 15, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–22940 Filed 8–27–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 96–98; FCC 97–295]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Third Order on Reconsideration (Order) released August 18, 1997 addresses the obligation of incumbent local exchange carriers (LECs) to provide unbundled access to interoffice transport facilities on a shared basis. The Order clarifies the definition of shared transport as a network element which includes the same transport links and routing table as used by the incumbent local exchange carrier. The effect of this rule will be to allow competitive carriers to share in the scale and scope benefits of the incumbent LEC's network, thus increasing competition opportunities in the local exchange and exchange access market.

EFFECTIVE DATE: The stay of 47 CFR 51.501 through 51.515, 51.601 through 51.611, 51.705 through 51.715, and 51.809 effective October 15, 1996 (62 FR 662, Jan. 6, 1997) was lifted by the United States Court of Appeals for the Eighth Circuit effective July 18, 1997.

The amendments to 47 CFR part 51 made in this final rule are effective September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Kalpak Gude, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted and released August 18, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–295.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Regulatory Flexibility Analysis

The changes adopted in this Order do not affect our analysis in the *First Report and Order* (61 FR 45476 (August 29, 1996)).

Synopsis of Third Order on Reconsideration

I. Introduction

1. In this Order, we address two petitions for reconsideration or clarification of the *Local Competition and Order* regarding the obligation of incumbent local exchange carriers (LECs) to provide unbundled access to interoffice transport facilities on a shared basis. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, (61 FR 45476 (August 29, 1996)) (Local Competition Order), *Order on Reconsideration*, (61 FR 52706 (October 8, 1996)), *Second Order on Reconsideration*, 61 FR 66931 (December 19, 1996)), *further recon. pending, aff'd in part and vacated in part sub. nom. CompTel.* v. *FCC*, 11 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utilities Bd.* v. *FCC and consolidated cases*, No. 96–3321 *et al.*, 1997 WL 403401 (8th. Cir., Jul. 18, 1997) (*Iowa Utilities Bd.*). We intend to address petitions for reconsideration of other aspects of the *Local Competition Order* in the future.

2. In the *Local Competition Order*, which established rules to implement sections 251 and 252 of the Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996, the Commission required incumbent LECs ''to provide unbundled access to shared transmission facilities between end offices and the tandem switch.'' In this reconsideration order, we first explain that the *Local Competition Order* required incumbent LECs to provide requesting carriers with access to the same transport facilities, between the end office switch and the tandem switch, that incumbent LECs use to carry their own traffic. We further explain that, when a requesting carrier takes unbundled local switching, it gains access to the incumbent LEC's routing table, resident in the switch. Second, we reconsider the requirement that incumbent LECs only provide ''shared transport'' between the end office and tandem. Section 51.319(d) of the Commission's rules requires that incumbent LECs provide access on an unbundled basis to interoffice transmission facilities shared by more than one customer or carrier. 47 CFR § 51.319(d). In this reconsideration order, we refer to such shared interoffice transmission facilities as ''shared transport.'' For the reasons discussed below, we conclude that incumbent LECs should be required to provide requesting carriers with access to shared transport for all transmission facilities connecting incumbent LECs' switches—that is, between end office switches, between an end office switch and a tandem switch, and between tandem switches. Third, we conclude that incumbent LECs must permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table and transport links that the incumbent LEC uses to route and carry its own traffic. By requiring incumbent LECs to provide requesting carriers with access to the incumbent LEC's routing table and to all its interoffice transmission facilities on an unbundled basis, requesting carriers can route calls in the same manner that an incumbent routes its own calls and thus take advantage of the incumbent LEC's economies of scale, scope, and

density. Finally, incumbent LECs must permit requesting carriers to use shared transport as an unbundled element to carry originating access traffic from, and terminating access traffic to, customers to whom the requesting carrier is also providing local exchange service.

3. We also issue a further notice of proposed rulemaking seeking comment on whether requesting carriers may use shared transport facilities in conjunction with unbundled switching, to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service. Moreover, we seek comment on whether requesting carriers may use dedicated transport facilities to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service.

II. Background

Local Competition Order

4. Sections 251(c)(3) and 251(d)(2) of the Act set forth standards for identifying unbundled network elements that incumbent LECs must make available to requesting telecommunications carriers. Section 251(c)(3) requires incumbent LECs to provide requesting carriers with ''nondiscriminatory access to network elements on an unbundled basis at any technically feasible point.'' Section 251(d)(2) provides that, in identifying unbundled elements, the ''Commission shall consider, at a minimum, whether—

(A) Access to such network elements as are proprietary in nature is necessary; and

(B) The failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.''

5. In the *Local Competition Order,* the Commission, pursuant to sections 251(c)(3) and 251(d)(2), identified a minimum list of seven network elements to which incumbent LECs must provide access on an unbundled basis. These network elements included local switches, tandem switches, and interoffice transmission facilities. With respect to interoffice transmission facilities, the Commission required incumbent LECs to provide requesting telecommunications carriers access to both dedicated and ''shared'' interoffice transmission facilities. The Commission defined ''interoffice transmission facilities'' as:

Incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

The Commission stated that ''[f]or some elements, especially the loop, the requesting carrier will purchase exclusive access to the element for a specific period, [and for] other elements, especially shared facilities such as common transport, [carriers] are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis.'' In defining the network elements to which incumbent LECs must provide access on an unbundled basis, the Commission adopted the statutory definition of unbundled elements as physical facilities of the network, together with the features, functions, and capabilities associated with those facilities. The Commission concluded that ''the definition of the term network element includes physical facilities, such as a loop, switch, or other node, as well as logical features, functions, and capabilities that are provided by, for example, software located in a physical facility such as a switch.'' The Commission found that:

The embedded features and functions within a network element are part of the characteristics of that element and may not be removed from it. Accordingly, incumbent LECs must provide network elements along with all of their features and functions, so that new entrants may offer services that compete with those offered by incumbents as well as new services.

The Commission also determined that ''we should not identify elements in rigid terms, but rather by function.''

6. On July 18, 1997, the United States Court of Appeals for the Eighth Circuit issued a decision affirming certain of the Commission's rules adopted in the *Local Competition Order,* and vacating other rules. *Iowa Utilities Bd.* v. *FCC,* 1997 WL 403401 (8th Cir. July 18, 1997). With respect to issues relevant to this reconsideration decision, the court affirmed the Commission's authority to identify unbundled network elements pursuant to section 251(d)(2), and generally upheld the Commission's decision regarding incumbent LECs' obligations to provide access to network elements on an unbundled basis. The order we issue today is consistent with the court's decision.

III. Discussion

7. On July 18, 1997, the United States Court of Appeals for the Eighth Circuit affirmed in part and vacated in part the Commission's *Local Competition Order.* We note, as a predicate to our discussion below, that the court affirmed the Commission's rulemaking authority to identify unbundled network elements. The court held that section 251(d)(2) of the Act expressly gave the Commission jurisdiction in this area. We thus conclude that the Commission has authority to address, in this reconsideration order, the issues raised by petitioners concerning the extent to which ''shared transport'' should be provided as an unbundled element.

8. WorldCom filed a petition for clarification, and LECC filed a petition for reconsideration of the *Local Competition Order;* both petitions concerned the definition of shared transport as an unbundled network element. WorldCom filed a petition for clarification pursuant to 47 U.S.C. § 405 and 47 CFR § 1.429, which set forth rules regarding petitions for reconsideration. In its petition WorldCom also stated that, ''[s]hould the Commission not regard this petition as a request for clarification of the *Local Competition Order,* WorldCom requests that it be regarded as a petition for reconsideration.'' We believe WorldCom's filing is more properly addressed as a petition for reconsideration, and treat it as such in this decision.

9. Parties disagree about what we required in the *Local Competition Order* with respect to shared transport. In addition, parties ask us to clarify or reconsider our decision regarding the provision of shared transport under section 251(c)(3). We first restate what we required in the *Local Competition Order,* and then reconsider certain aspects that may have been unclear or that were not addressed in the *Local Competition Order.* We then respond to arguments raised by parties that advocate a different approach to the provision of shared transport than our rules require.

10. We believe that the petitions for reconsideration have raised reasonable questions about the scope and nature of an incumbent LEC's obligation to offer shared transport as an unbundled network element, pursuant to section 251(c)(3) and our implementing regulations. We address these issues below. We also believe, however, some parties have argued that certain aspects of the rules adopted last August were ambiguous which, in our view, were clear. Specifically, in the *Local Competition Order,* we expressly required incumbent LECs to provide access to transport facilities ''shared by more than one customer or carrier.'' The term ''carrier'' includes both an incumbent LEC as well as a requesting telecommunications carrier. We,

therefore, conclude that ''shared transport,'' as required by the *Local Competition Order* encompasses a facility that is shared by multiple carriers, including the incumbent LEC. We recognize that the *Local Competition Order* did not explicitly state that an incumbent LEC must provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same facilities that an incumbent LEC uses for its traffic. We find, however, that a fair reading of our order and rules does not support the claim advanced by Ameritech that a shared network element necessarily is shared only among competitive carriers and is separate from the facility used by the incumbent LEC for its own traffic. Indeed, only Ameritech and US West suggest that the *Local Competition Order* could be interpreted to require sharing only between multiple competitive carriers. Moreover, the fact that we required incumbent LECs to provide access to other network elements, such as signalling, databases, and the local switch, which are shared among requesting carriers and incumbent LECs is consistent with our view that transport facilities ''shared by more than one customer or carrier'' must be shared between the incumbent LECs and requesting carriers. Furthermore, with respect to local switching, we expressly rejected, in the *Local Competition Order*, a proposal that incumbent LECs could, or were required to, partition local switches before providing requesting carriers access to incumbent LEC switches under section 251(c)(3). We stated that ''[t]he requirements we establish for local switch unbundling do not entail physical division of the switch, and consequently do not impose the inefficiency or technical difficulties identified by some commentators.'' We thus required that shared portions of incumbent LEC switches would be shared by all carriers, including the incumbent LEC. Although we do not believe that the *Local Competition Order* was unclear as to this aspect of an incumbent LEC's obligation to provide shared transport, we take this opportunity to state explicitly that the *Local Competition Order* requires incumbent LECs to offer requesting carriers access, on a shared basis, to the same interoffice transport facilities that the incumbent uses for its own traffic.

11. We also conclude that the *Local Competition Order* was not ambiguous as to an incumbent LEC's obligation to offer access to the routing table resident in the local switch to requesting carriers that purchase access to the unbundled local switch. The *Local Competition Order* made clear that requesting carriers that purchase access to the unbundled local switch may obtain customized routing, unless it is not technically feasible to provide customized routing from that switch. In those instances, a requesting carrier is limited to using the routing instructions in the incumbent LEC's routing table. In so holding, we necessarily accepted the view that requesting carriers that take unbundled local switching have access to the incumbent LEC's routing table, resident in the switch. We find nothing in the *Local Competition Order* that supports the contention that requesting carriers that obtain access to unbundled local switching, pursuant to section 251(c)(3), do not obtain access to the routing table in the unbundled local switch.

12. The *Local Competition Order* did not clearly define certain aspects of incumbent LECs' obligation to provide access to shared transport under section 251(c)(3). In particular, we did not clearly and unambiguously (1) identify all portions of the network to which incumbent LEC must provide interoffice transport facilities on a shared basis; and (2) address whether requesting carriers may use shared transport facilities to provide exchange access service to IXCs for access to customers to whom they also provide local exchange service. We do so here on reconsideration.

A. Incumbent LECs' Obligation Regarding Shared Transport

13. We conclude that the obligation of incumbent LECs to provide requesting carriers with access to shared transport extends to all incumbent LEC interoffice transport facilities, and not just to interoffice facilities between an end office and tandem. Thus, incumbent LECs are required to provide shared transport (between end offices, between tandems, and between tandems and end offices).

14. The *Local Competition Order* expressly required ''incumbent LECs to provide unbundled access to shared transmission facilities between end offices and the tandem switch.'' Parties disagree, however, about whether incumbent LECs are required to provide shared transport between end offices. As noted above, there is a discrepancy between the rule that establishes the general obligation to provide shared transport as a network element, and the rule vacated by the court that purports to establish the pricing standard for shared transport. 47 CFR §§ 51.319(d) and 51.509(d). We note that the Eighth Circuit has held that the Commission lacked jurisdiction to adopt the pricing standard set forth in § 51.509(d), and accordingly vacated that section of the Commission's rules. To the extent that incumbent LECs already have transport facilities between end offices, and between tandems, the routing table contained in the switch most likely would route calls between such switches. We therefore conclude that there is no basis for limiting the use of shared transport facilities to links between end office switches and tandem switches. Limiting the definition of shared transport in this manner would not permit requesting carriers to utilize the routing tables in the incumbent LECs' switches. To the contrary, such a limitation effectively would require a requesting carrier to design its own customized routing table, in order to avoid having its traffic transported over the same interoffice facilities, connecting end offices, that the incumbent LEC use to transport its own interoffice traffic. Moreover, in the *Local Competition Order*, we held that it is technically feasible to provide access to interoffice transport facilities between end offices and between end offices and tandem switches. No new evidence has been presented in this proceeding to convince us that our earlier conclusion regarding technical feasibility was incorrect.

15. We further clarify in this order that incumbent LECs are only required to offer *dedicated* transport between their switches, or serving wire centers, and requesting carriers' switches. Our *Local Competition Order* was not absolutely clear as to whether incumbent LECs must provide dedicated or shared interoffice transport between incumbent LEC switches, or serving wire centers, and switches owned by requesting carriers. In the *Local Competition Order*, we required incumbent LECs to ''provide access to *dedicated transmission facilities* between LEC central offices or between end offices and those of competing carriers.'' This could be read to suggest that incumbent LECs are only required to provide dedicated (but not shared) interoffice transport facilities between their end offices, or serving wire centers, and points in the requesting carrier's network. The rule that defines interoffice transmission facilities, however, is less clear, and could be read to require incumbent LECs to provide shared transport between incumbent LECs' switches, or serving wire centers, and requesting carriers' switches.

16. We therefore clarify here that incumbent LECs must offer only *dedicated transport*, and not shared transport, between their switches, or

serving wire centers, and requesting carriers' switches, as set forth in the *Local Competition Order.* We also note that the *Local Competition Order* expressly limited the requirement to provide unbundled interoffice transport facilities to *existing* incumbent LEC facilities.

17. On reconsideration, we further clarify that incumbent LECs are not required to provide shared transport between incumbent LEC switches and serving wire centers. We stated above that shared transport must be provided between incumbent LEC switches. Serving wire centers are merely points of demarcation in the incumbent LEC's network, and are not points at which traffic is switched. Traffic routed to a serving wire center is traffic dedicated to a particular carrier. We thus conclude that unbundled access to the transport links between incumbent LEC switches and serving wire centers must only be provided by incumbent LECs on a *dedicated* basis.

18. Finally, we note that, traditionally, shared facilities are priced on a usage-sensitive basis, and dedicated facilities are priced on a flat-rated basis. We believe that this usage-sensitive pricing mechanism provides a reasonable and fair allocation of cost between the users of shared transport facilities. For example, in the *Access Charge Reform Order* (62 FR 40460 (July 29, 1997)), specifically the sections dealing with rate structure issues for interstate access charges, we required that the cost of switching, a shared facility, be recovered on a per minute of use basis, while the cost of entrance facilities, which are dedicated to a single interexchange carrier, be recovered on a flat-rated basis. We note that several state commissions, in proceedings conducted pursuant to section 252 of the Act, have required incumbent LECs to offer shared transport priced on a usage-sensitive basis. We acknowledge that, under the Eighth Circuit's decision, we may not establish pricing rules for shared transport. However, in situations where the Commission is required to arbitrate interconnection agreements pursuant to subsection 252(e)(5), we intend to establish usage-sensitive rates for recovery of shared transport costs unless parties demonstrate otherwise.

B. Application of the Requirements of Section 251(d)(2) To Shared Transport

19. Shared transport, as defined in this order, satisfies the two-prong test set forth in section 251(d)(2) of the Act. Section 251(d)(2) requires the Commission, in determining what network elements should be made available under section 251(c)(3), to consider ''at a minimum, whether (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.'' In the *Local Competition Order,* we held that an incumbent could refuse to provide access to a network element pursuant to section 251(d)(2) only if the incumbent LEC demonstrated that ''the element is proprietary and that gaining access to that element is not necessary because the competing provider can use other, nonproprietary elements in the incumbent LEC's network to provide service.'' We further held that, under section 251(d)(2)(B), we must consider ''whether the failure of an incumbent to provide access to a network element would decrease the quality, or increase the financial or administrative cost of the service a requesting carrier seeks to offer, compared with providing that service over other unbundled elements in the incumbent LEC's network.'' The Eighth Circuit affirmed the Commission's interpretation of section 251(d)(2).

20. In the *Local Competition Order,* we concluded that, with respect to transport facilities, ''the record provides no basis for withholding these facilities from competitors based on proprietary considerations.'' We also concluded that section 251(d)(2)(B) requires incumbent LECs to provide access to shared interoffice facilities and dedicated interoffice facilities. With respect to the unbundled local switch, we held that, even assuming that switching may be proprietary, at least in some respects, ''access to unbundled local switching is clearly 'necessary' under our interpretation of section 251(d)(2)(A).'' We also concluded that a requesting carrier's ability to offer local exchange service would be ''impaired, if not thwarted,'' without access to the unbundled local switch, and therefore, that section 251(d)(2)(B) requires incumbent LECs to provide access to the unbundled local switch.

21. Upon reconsideration, we herein affirm that incumbent LECs are obligated under section 251(d)(2) to provide access to shared transport, as we here define it, as an unbundled network element. Parties in the record have not contended that interoffice transport facilities are proprietary, and we have no basis for modifying our prior conclusion that interoffice transport facilities are not proprietary. Thus, there is no basis under section 251(d)(2)(A) for incumbent LECs to refuse to provide interoffice transport facilities on a shared as well as a dedicated basis.

22. We also note that the failure of an incumbent LEC to provide access to all of its interoffice transport facilities on a shared basis would significantly increase the requesting carriers' costs of providing local exchange service and thus reduce competitive entry into the local exchange market. In the *Local Competition Order,* we observed that:

> By unbundling various dedicated and shared interoffice facilities, a new entrant can purchase *all* interoffice facilities on an unbundled basis as part of a competing local network, or it can combine its own interoffice facilities with those of the incumbent LEC. The opportunity to purchase unbundled interoffice facilities will decrease the cost of entry compared to the much higher cost that would be incurred by an entrant that had to construct all of its own facilities. An efficient new entrant might not be able to compete if it were required to build interoffice facilities where it would be more efficient to use the incumbent LEC's facilities.

We continue to find the foregoing statements to be true with respect to shared as well as dedicated transport facilities. Requesting carriers should have the opportunity to use *all* of the incumbent LEC's interoffice transport facilities. Moreover, the opportunity to purchase transport facilities on a shared basis, rather than exclusively on a dedicated basis, will decrease the costs of entry.

23. We believe that access to transport facilities on a shared basis is particularly important for stimulating initial competitive entry into the local exchange market, because new entrants have not yet had an opportunity to determine traffic volumes and routing patterns. Moreover, requiring competitive carriers to use dedicated transport facilities during the initial stages of competition would create a significant barrier to entry because dedicated transport is not economically feasible at low penetration rates. In addition, new entrants would be hindered by significant transaction costs if they were required to continually reconfigure the unbundled transport elements as they acquired customers. We note that incumbent LECs have significant economies of scope, scale, and density in providing transport facilities. Requiring transport facilities to be made available on a shared basis will assure that such economies are passed on to competitive carriers. Further, if new entrants were forced to rely on dedicated transport facilities, even at the earliest stages of competitive entry, they would almost inevitably miscalculate the capacity or routing

patterns. We recognize, however, that the need for access to all of the incumbent LEC's interoffice facilities on a shared basis may decrease as competitive carriers expand their customer base and have an opportunity to identify traffic volumes and call routing patterns. We therefore may revisit at a later date whether incumbent LECs continue to have an obligation, under section 251(d)(2), to provide access to all of their interoffice transmission facilities on a shared, usage sensitive basis. We note that, if, in the future, competitive carriers gain sufficient market penetration to justify obtaining dedicated transport facilities, either through the use of unbundled elements or through building their facilities, shared transport may no longer meet the section 251(d)(2) requirements. In that event, the Commission can evaluate at that time whether incumbent LECs must continue to provide access to shared transport as a network element.

24. As noted above, although interoffice transport, as we define the element pursuant to section 251(c)(3), refers to the transport links in the incumbent LEC's network, access to those links on a shared basis effectively requires a requesting carrier to utilize the routing table contained in the incumbent LEC's switch. Ameritech contends that the routing table contained in the switch, which is used in conjunction with shared transport, is proprietary. Ameritech and other incumbent LECs further allege that requesting carriers may obtain the functional equivalent of shared transport either by purchasing transport as an access service, or by purchasing dedicated transport facilities. These parties thus contend that, under section 251(d)(2)(A), incumbent LECs are not required to provide shared transport (including use of the routing table contained in the switch) as a network element.

25. Issues regarding intellectual property rights associated with network elements are before us in a separate proceeding. For purposes of this Order only, we therefore assume without deciding that the routing table is proprietary. We nevertheless conclude that section 251(d)(2) requires an incumbent LEC to provide access to both its interoffice transmission facilities and to the routing tables contained in the incumbent LEC's switches. We affirm our finding in the *Local Competition Order* that transport provided as part of access service, or as a wholesale usage service, is not a viable substitute for shared transport as a network element. All incumbent LECs are not required to offer transport as an access service on a stand alone basis. Only Class A carriers are required, under our *Expanded Interconnection* rules, to unbundle interstate transport service. Moreover, transport service that incumbents offer under the *Expanded Interconnection* tariffs may include only interstate transport facilities (transport provided either via a tandem switch or direct trunked between a local switch and the serving wire center), not interoffice transport facilities directly connecting two local switches. In the *Local Competition Order,* moreover, we expressly rejected the suggestion that requesting carriers ''are not impaired in their ability to provide a service * * * if they can provide the proposed service by purchasing the service at wholesale rates from a LEC.''

C. Use of Shared Transport Facilities To Provide Exchange Access Service

26. In this order on reconsideration, we clarify that requesting carriers that take shared or dedicated transport as an unbundled network element may use such transport to provide interstate exchange access services to customers to whom it provides local exchange service. We further clarify that, where a requesting carrier provides interstate exchange access services to customers, to whom it also provides local exchange service, the requesting carrier is entitled to assess originating and terminating access charges to interexchange carriers, and it is not obligated to pay access charges to the incumbent LEC.

27. In the *Local Competition Order,* we held that, if a requesting carrier purchases access to a network element in order to provide local exchange service, the carrier may also use that element to provide exchange access and interexchange services. We did not impose any restrictions on the types of telecommunications services that could be provided over network elements. We did not specifically consider in the *Local Competition Order,* however, whether a requesting carrier may use interoffice transport to provide exchange access service. We conclude here that a requesting carrier may use the shared transport unbundled element to provide exchange access service to customers for whom the carrier provides local exchange service. We find that this is consistent with our initial decision.

D. Response to Specific Arguments Raised by Parties

28. As discussed above, we define the unbundled network element of shared transport under section 251(c)(3) as interoffice transmission facilities, shared between the incumbent LEC and one or more requesting carriers or customers, that connect end office switches, end office switches and tandem switches, or tandem switches, in the incumbent LEC's network. We exclude from this definition interoffice transmission facilities that connect an incumbent LEC's switch and a requesting carrier's switch, and those connecting an incumbent LEC's end office switch, or tandem switch, and a serving wire center. This definition of shared transport assumes the interconnection point between the two carriers' networks, pursuant to section 251(c)(2), is at the incumbent LEC's switch. This definition is consistent with the statutory definition of network elements, which defines a network element as a facility or equipment used in the provision of a telecommunications service, including the features, functions, and capabilities provided by means of such facility or equipment.

29. As an initial matter, we reject Ameritech's contention that, by definition, network elements must be partly or wholly dedicated to a customer. To the contrary, we held in the *Local Competition Order* that some network elements, such as loops, are provided exclusively to one requesting carrier, and some network elements, such as interoffice transport provided on a shared basis, are provided on a minute-of-use basis and are shared with other carriers. In the *Local Competition Order,* we also identified signalling, call-related databases, and the switch, as network elements that necessarily must be shared among the incumbent and multiple competing carriers.

30. We also reject Ameritech's and BellSouth's contention that, because WorldCom and other requesting carriers seek access to an element—shared transport—that cannot be effectively disassociated from another element—local switching, the requesting carriers are in fact seeking access to a bundled service rather than to transport as a network element unbundled from switching. As previously discussed, several of the network elements we identified in the *Local Competition Order* depend, at least in part, on other network elements. In particular, although we identified the signalling network as a network element, the information necessary to utilize signalling networks resides in the switch, which we identified as a separate network element. In addition, we required incumbent LECs, upon request, to provide access to unbundled loops conditioned to provide, among other things, digital services such as ISDN, even though the equipment used

to provide ISDN service typically resides in the local switch, rather than in the loop. We thus find no basis for concluding that each network element must be functionally independent of other network elements.

31. We reject as well Ameritech's contention that a network element must be identifiable as a limited or pre-identified portion of the network. We find nothing in the statutory definition of network elements that prohibits requesting telecommunications carriers from seeking access to every transport facility within the incumbent's network. Our definition of signalling as a network element does not require requesting carriers to identify in advance a particular portion of the incumbent LEC's signalling facilities, but instead permits requesting carriers to obtain access to multiple signalling links and signalling transfer points in the incumbent LEC's network on an as-needed basis. We also reject Ameritech's assertion that shared transport cannot be physically separated from switching. Both dedicated and shared transport facilities are transport links between switches. These links are physically distinct from the end office and tandem switches themselves.

32. Although we conclude that shared transport is physically severable from switching, incumbent LECs may not unbundle switching and transport facilities that are already combined, except upon request by a requesting carrier. Although, the Eighth Circuit struck down the Commission's rule that required incumbent LECs to rebundle separate network elements, the court nevertheless stated that it: ''upheld the remaining unbundling rules as reasonable constructions of the Act, because, as we have shown, the Act itself calls for the rapid introduction of competition into the local phone markets by requiring incumbent LECs to make their networks available to * * * competing carriers.'' Among other things, the court left in effect § 51.315(b) of the Commission's rules, which provides that, ''[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.'' Therefore, although incumbent LECs are not required to combine transport and switching facilities to the extent that those elements are not already combined, incumbent LECs may not separate such facilities that are currently combined, absent an affirmative request. In addition to violating section 51.315(b) of our rules, such dismantling of network elements, absent an affirmative request, would increase the costs of requesting carriers and delay their entry into the local exchange market, without serving any apparent public benefit. We believe that such actions by an incumbent LEC would impose costs on competitive carriers that incumbent LECs would not incur, and thus would violate the requirement under section 251(c)(3) that incumbent LECs provide nondiscriminatory access to unbundled elements. Moreover, an incumbent LEC that separates shared transport facilities that are already connected to a switch would likely disrupt service to its own customers served by the switch because, by definition, the shared transport links are also used by the incumbent LEC to serve its customers. Thus, incumbent LECs would seem to have no network-related reason to separate network elements that it already combines absent a request.

33. We likewise reject Ameritech's contention that purchasing access to the switch as a network element does not entitle a carrier to use the routing table located in that switch. According to Ameritech, vendors provide switches that are capable of acting on routing instructions, but the switch itself does not include routing instructions; those instructions are added by the carrier after it purchases the switch from the vendor and are contained in a routing table resident in the switch. Ameritech asserts that its routing tables are proprietary products, and ''are not a feature of the switch.'' In the *Local Competition Order,* we determined that ''we should not identify elements in rigid terms, but rather by function.'' Routing is a critical and inseverable function of the local switch. One of the most essential features a switch performs is to provide routing information that sends a call to the appropriate destination. We find no support in the statute, the *Local Competition Order,* or our rules for Ameritech's assertion that the switch, as a network element, does not include access to the functionality provided by an incumbent LEC's routing table. In fact, the only question addressed in the *Local Competition Order* was whether requesting carriers could obtain *customized* routing, that is, routing different from the incumbent LEC's existing routing arrangements.

34. We further find that access to unbundled switching is not necessarily limited to the product the incumbent LEC originally purchased from a vendor. As we noted in the *Local Competition Order,* incumbent LECs may in some instances be required to modify or condition a network element to accommodate a request under section 251(c)(3). Moreover, we held that unbundled local switching includes access to the vertical features of the switch, regardless of whether the vertical features were included in the switch when it was purchased, or whether the vertical features were purchased separately from the vendor or developed by the incumbent. We held that network elements include physical facilities ''as well as logical features, functions, and capabilities that are provided by, *for example, software located in a physical facility such as a switch.*'' We also note that the Eighth Circuit affirmed the Commission's interpretation of the Act's definition of ''network elements.'' The court stated that ''the Act's definition of network elements is not limited to only the physical components of a network that are directly used to transmit a phone call from point A to point B'' and that the Act's definition explicitly made reference to ''databases, signaling systems, and information sufficient for billing and collection.'' Thus, just as databases and signaling systems may include software created by the incumbent LEC, which must be made available to competitive carriers purchasing those elements on an unbundled basis, we believe that the routing table created by the incumbent LEC that is resident in the switch must be made available to requesting carriers purchasing unbundled switching. Finally, we note that Ameritech is the only incumbent LEC that has argued in this record that the routing table is not included in the unbundled local switching element. Other incumbent LECs have stated that they offer shared transport in conjunction with unbundled local switching. This suggests that other incumbent LECs recognize that the routing table is a feature, function, or capability of the switch.

35. We also disagree with Ameritech's and BellSouth's argument that defining the unbundled network element shared transport as all transport links between any two incumbent LEC switches would be inconsistent with Congress's intention to distinguish between resale services and unbundled network elements. Section 251(c)(3) requires incumbent LECs to make available unbundled network elements at cost-based rates; sections 251(c)(4) and 252(d)(3) require incumbent LECs to make available for resale, at retail price less avoided costs, services the incumbent LEC offers to retail users. In the *Local Competition Order,* we held that a key distinction between section 251(c)(3) and section 251(c)(4) is that a requesting carrier that obtains access to

unbundled network elements faces greater risks than a requesting carrier that only offers services for resale. A requesting carrier that takes a network element dedicated to that carrier, and recovered on a flat-rated basis, must pay for the cost of the entire element, regardless of whether the carrier has sufficient demand for the services that the element is able to provide. The carrier thus is not guaranteed that it will recoup the costs of the element. By contrast, a carrier that uses the resale provision will not bear the risk of paying for services for which it does not have customers. In particular, a requesting carrier that takes an unbundled local switch must pay for all of the vertical features included in the switch, even if it is unable to sell those vertical features to end user customers. Requesting carriers that purchase shared transport as a network element to provide local exchange service must also take local switching, for the practical reasons set forth herein, and consequently will be forced to assume the risk associated with switching. A requesting carrier that uses its own self-provisioned local switches, rather than unbundled local switches obtained from an incumbent LEC, to provide local exchange and exchange access service would use dedicated transport facilities to carry traffic between its network and the incumbent LEC's network. Thus, the only carrier that would need shared transport facilities would be one that was using an unbundled local switch.

36. BellSouth's argument, that assessing a usage-sensitive rate for shared transport would be inconsistent with the 1996 Act because it would not reflect the manner in which costs are incurred, is similarly unpersuasive. BellSouth's argument is premised on the assumption that incumbent LECs would be required to provide shared transport over facilities between the tandem switch and the serving wire center. In this order, however, we make clear that incumbent LECs are required to provide transport on a dedicated, but not on a shared basis, over transport facilities between the incumbent LEC's tandem and the serving wire center. Thus, BellSouth's concern is misplaced.

37. We also find that there is no element in the incumbent LEC's network that is an equivalent substitute for the routing table. We agree with Ameritech that requesting carriers could duplicate the shared transport network by purchasing dedicated facilities. But in that instance, requesting carriers would be forced to develop their own routing instructions, and would not be utilizing a portion of the incumbent LEC's network to substitute for the routing table. In the *Local Competition Order,* we specifically rejected the suggestion that an incumbent LEC is not required to provide a network element if a requesting carrier could obtain the element from a source other than the incumbent LEC. The Eighth Circuit affirmed the Commission's conclusion.

38. Furthermore, we find that, at this stage of competitive entry, limiting shared transport to dedicated transport facilities, as Ameritech suggests, would impose unnecessary costs on new entrants without any corresponding, direct benefits. AT&T and Ameritech have both presented evidence regarding the costs of dedicated transport facilities linking every end office and tandem in an incumbent LEC's network as significant relative to the cost of ''shared transport.''. For example, AT&T contends that the cost is $.041767 per minute for dedicated transport plus associated non-recurring charges (NRCs). AT&T claims that Ameritech would charge a total of $5008.58 per DS1 (including administrative charges and connection charges) and $58,552.87 per switch (including customized routing and billing development). AT&T argues that this compares with $.000776 per minute for unbundled shared transport. Ameritech, on the other hand, contends the use of tandem routed dedicated facilities cost is $.0031148 per minute plus associated NRCs. Ameritech claims that the nonrecurring charges per DS1 are $2769.27 (including administrative charges per order). Ameritech states that other NRCs include two trunk port connection charges ($770.29 initial, $29.16 subsequent), service ordering charge per occasion ($398.72 initial, $17.37 subsequent), billing development charge per switch ($35,328.87), custom routing charge, per line class code per switch ($232.24), and a service order charge ($398.73). Nevertheless, under either AT&T's or Ameritech's cost calculations for dedicated transport, we conclude that the relative costs of dedicated transport, including the associated NRCs, is an unnecessary barrier to entry for competing carriers.

39. We also find that limiting shared transport to dedicated facilities, as defined by Ameritech, would be unduly burdensome for new entrants. First, we agree with MCI, AT&T, et al., that a new entrant may not have sufficient traffic volumes to justify the cost of dedicated transport facilities. Second, a new entrant entering the local market with smaller traffic volumes would have to maintain greater excess capacity relative to the incumbent LEC in order to provide the same level of service quality (i.e., same level of successful call attempts) as the incumbent LEC. *See* William W. Sharkey, *The Theory of Natural Monopoly* 184–85, (1982) (''that for a given number of circuits the economies [of scale] are more pronounced at higher grades of service (lower blocking probability). The economics of scale, however, decline substantially as the number of circuits increases. *Therefore for small demands a fragmentation of the network could result in a significant cost penalty, because more circuits would be required to maintain the same grade of service. At larger demands the costs of fragmentation are less pronounced*.'') (emphasis added). As a new entrant gains market share and increased traffic volumes for local service, however, the relative amount of excess capacity necessary to prevent blocking should decrease. We do not rule out the possibility, therefore, that, once new entrants have had a fair opportunity to enter the market and compete, we might reconsider incumbent LECs' obligations to provide access to the routing table.

40. As discussed above, requesting carriers may use shared transport to provide exchange access service to customers for whom they also provide local exchange service. Several competing carriers contend that an interexchange carrier (IXC) has the right to select a requesting carrier that has purchased unbundled shared transport to provide exchange access service. The carriers further contend that, if the IXC selects a requesting carrier, rather than the incumbent LEC, as the exchange access provider, the competing carrier is entitled to bill the IXC for the access services associated with shared transport. We find that a requesting carrier may use shared transport facilities to provide exchange access service to originate or terminate traffic to its local exchange customers, regardless of whether the requesting carrier or another carrier is the IXC for that traffic. We further conclude that a requesting carrier that provides exchange access service to another carrier is entitled to assess access charges associated with the shared transport facilities used to transport the traffic. We believe that this necessarily follows from our decision in the *Local Competition Order* where we stated that:

> [W]here new entrants purchase access to unbundled network elements to provide exchange access services, whether or not they are also offering toll services through such elements, the new entrants may assess exchange access charges to IXCs originating or terminating toll calls on those elements. In these circumstances, incumbent LECs may not assess exchange access charges to IXCs because the new entrants, rather than the

incumbents, will be providing exchange access services. * * *

We therefore find that requesting carriers that provide exchange access using shared transport facilities to originate and terminate local exchange calls may also use those same facilities to provide exchange access service to the same customers to whom the requesting carrier is providing local exchange service. Requesting carriers are then entitled to assess access charges to interexchange carriers that use the shared transport facilities to originate and terminate traffic to the requesting carrier's customers.

E. Final Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act (RFA), the Commission issued a Final Regulatory Flexibility Analysis (FRFA) in its *Local Competition Order* in this proceeding. None of the petitions for reconsideration filed in Docket No. 96–98 specifically address, or seek reconsideration of, that FRFA. This present Supplemental Final Regulatory Flexibility Analysis addresses the potential effect on small entities of the rules adopted pursuant to the *Third Order on Reconsideration* in this proceeding, supra. This Supplemental FRFA incorporates and adds to our FRFA.

42. *Need for and Objectives of this Third Order on Reconsideration and the Rules Adopted Herein.* The need for and objectives of the rules adopted in this *Third Order on Reconsideration* are the same as those discussed in the *Local Competition Order*'s FRFA ''Summary Analysis of Section V Access to Unbundled Network Elements.'' In general, our rules adopted in Section V were intended to facilitate the statutory requirement that incumbent local exchange carriers (LECs) are required to provide nondiscriminatory access to unbundled network elements. In this Third Order on Reconsideration, we grant in part and deny in part the petitions filed for reconsideration and/or clarification of the *Local Competition Order*, in order to further the same needs and objectives. We conclude that the duty of incumbent LECs to provide access to unbundled network elements also includes the provision of ''shared transport'' as an unbundled network element between end offices, even if tandem switching is not used to route the traffic. We also hold that the term ''shared transport'' refers to all transmission facilities connecting an incumbent LEC's switches—that is, between end office switches, between an end office switch and a tandem switch, and between tandem switches. We conclude that incumbent LECs are obligated under Section 251(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(d)(2), to provide access to both their interoffice transmission facilities and their routing tables contained in the incumbent LEC's switches. Finally, we conclude that a requesting carrier may use the shared transport unbundled element to provide exchange access service to customers for whom the carrier provides local exchange service.

43. *Description and Estimate of the Number of Small Entities To Which the Rules Will Apply.* In determining the small entities affected by our Third Order on Reconsideration for purposes of this Supplemental FRFA, we adopt the analysis and definitions set forth in the FRFA in our *Local Competition Order.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules we have adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act. 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). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees. Consistent with our FRFA and prior practice, we here exclude small incumbent local exchange carriers (LECs) from the definition of ''small entity'' and ''small business concern.'' While such a company may have 1500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field of operations or are not independently owned and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this present analysis and use the term ''small incumbent LECs'' to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

44. In addition, for purposes of this Supplemental FRFA, we adopt the FRFA estimates of the numbers of telephone companies, incumbent LECs, and competitive access providers (CAPs) that might be affected by the *Local Competition Order.* In the FRFA, we determined that it was reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that might be affected. We further estimated that there are fewer than 1,347 small incumbent LECs that might be affected. Finally, we estimated that there were fewer than 30 small entity CAPs that would qualify as small business concerns.

45. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* As a result of the rules adopted in the *Third Order on Reconsideration*, we require incumbent LECs to provide requesting carriers with access to the same shared transport for all transmission facilities connecting incumbent LECs' switches. No party to this proceeding has suggested that changes in the rules relating to access to unbundled network elements would affect small entities or small incumbent LECs. We determine that complying with this rule may require use of engineering, technical, operational, accounting, billing, and legal skills. For example, a new entrant may be required to combine its own interoffice facilities with those of the incumbent LEC, or be required to combine purchased unbundled network elements into a package unique to its own needs.

46. *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Alternatives Considered.* As stated in our FRFA, we determined that our decision to establish minimum national requirements for unbundled elements should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. National requirements for unbundling may allow new entrants, including small entities, to take advantage of economies of scale in network design, which may minimize the economic impact of our decision in the *Local Competition Order.* As stated above, no petitioner has challenged this finding. We further find that our new rules, which clarify the definition of ''shared transport,'' will likely ensure that small entities obtain the unbundled elements that they request.

47. *Report to Congress:* The Commission will send a copy of the *Third Order on Reconsideration*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). A copy of the *Third Order on Reconsideration* and this supplemental FRFA (or summary

thereof) will also be published in the **Federal Register**, *see* 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Ordering Clauses

48. *Accordingly, it is ordered* that, pursuant to sections 1–4, 201–205, 214, 251, 252, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 251, 252, and 303(r), the Third Order on Reconsideration is adopted.

49. *It is further ordered* that changes adopted on reconsideration and the rule amendments will be effective September 29, 1997.

50. *It is further ordered,* pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.106 of the Commission's rules, 47 CFR 1.106 (1995), that the petitions for reconsideration filed by WorldCom, Inc. and the Local Exchange Carriers Coalition are denied in part and granted in part to the extent indicated above.

51. *It is further ordered,* that the Commission shall send a copy of this Third Order on Reconsideration and Further Notice of Proposed Rulemaking, including the associated Supplemental Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Communications common carriers, Network elements, Transport and termination.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 51 of title 47 of the Code of Federal Regulations is amended as follows:

PART 51—INTERCONNECTION

1. The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 225–27, 251–54, 271, unless otherwise noted.

2. Section 51.319 is amended by revising paragraph (d)(1) to read as follows:

§ 51.319 Specific unbundling requirements.

* * * * *

(d) * * *

(1) Interoffice transmission facilities include:

(i) Dedicated transport, defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers;

(ii) Shared transport, defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC's network;

* * * * *

3. Section 51.515 is amended by adding paragraph (d) to read as follows:

§ 51.515 Application of access charges.

* * * * *

(d) Interstate access charges described in part 69 shall not be assessed by incumbent LECs on each element purchased by requesting carriers providing both telephone exchange and exchange access services to such requesting carriers' end users.

[FR Doc. 97–22734 Filed 8–27–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[FCC 97–163]

Implementation of Section 254(k) of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Commission implements section 254(k) by codifying its prohibitions in part 64 of the Commission's rules. The Commission revises § 64.901 to establish a new section (c) to reflect section 254(k) of the Telecommunications Act of 1996 (1996 Act). Section 254(k) states that ''a telecommunications company may not use services that are not competitive to subsidize services subject to competition.''

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Mulitz, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0827.

SUPPLEMENTARY INFORMATION: The opening of the local exchange and exchange access markets to competition as well as the ability of the Bell Operating Companies (BOCs) to enter new markets and engage in previously proscribed activities creates the potential for incumbent local exchange carriers' (ILECs) to misallocate costs in ways that our current rules may not restrict because these rules are focused on the allocation of costs between regulated and nonregulated activities. New section 254(k), however, establishes two dichotomies that are not explicitly addressed by our existing rules. Section 254(k) requires additional scrutiny of the allocation of costs between competitive and noncompetitive activities, both regulated and nonregulated, and between universal services and all other services.

Section 254(k) states that ''a telecommunications company may not use services that are not competitive to subsidize services that are subject to competition.'' The Commission concludes that this provision of section 254(k) places an obligation on telecommunications carriers that supplements our existing rules. This provision of section 254(k) addresses the concern that ILECs may attempt to gain an unfair market advantage in competitive markets by allocating to their less competitive services, for which subscribers have no available alternative, an excessive portion of the costs incurred by their competitive operations.

Section 254(k) also directs the Commission, with respect to interstate services, to ''establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

For ILECs, the Commission concludes that codifying section 254(k)'s prohibitions in part 64 of our rules will give the fullest effect to the Act's prohibitions. In this way, our rules will reflect the intent of the Act and reinforce our commitment to enforcing this mandate. Because this rule change merely codifies the requirements of the Act and involves no discretionary action by the Commission, we find good cause to conclude that notice and comment procedures are unnecessary.

Ordering Clause

Accordingly, *It is ordered* that, pursuant to sections 1, 4, 201–205, 218, 220, 251, 252 and 254(k) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154, 201–205, 218, 220, 251, 252 and 254(k), and

section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), part 64 of the Commission's rules, 47 CFR part 64, is amended, as described above.

It is further ordered that, pursuant to sections 1, 4, 201–205, 218, 220, 224, 251, 252 and 254(k) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154, 201–205, 218, 220, 251, 252 and 254(k), and section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), the amendment to part 64 described above, *shall be effective upon publication* of this Order in the **Federal Register**.

List of Subjects in 47 CFR Part 64

Civil defense, Claims, Communications common carriers, Computer technology, Credit, Foreign relations, Individuals with disabilities, Political candidates, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules Changes

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403 (b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. secs. 201, 218, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.901 is amended by adding paragraph (c) to read as follows:

§ 64.901 Allocation of costs.

* * * * *

(c) A telecommunications carrier may not use services that are not competitive to subsidize services subject to competition. Services included in the definition of universal service shall bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

[FR Doc. 97–22937 Filed 8–27–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 167
Thursday, August 28, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–25; Notice No. SC–97–4–NM]

Special Conditions: Boeing Model 747 Series Airplanes; Overhead Crew Rest Area

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes to amend special conditions issued to the Boeing Commercial Airplane Company for the Model 747 series airplanes. This airplane has a novel or unusual design feature associated with the overhead crew rest area. Special Conditions No. 25–ANM–16 were issued on November 13, 1987, addressing this installation. On January 23, 1997, Boeing applied for a type design change which proposes to add an additional feature; the installation of curtains or partitions in the crew rest area. Since the applicable airworthiness regulations, including those contained in Special Conditions No. 25–ANM–16, do not contain adequate or appropriate safety standards for this particular design feature, this notice contains the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthienss standards for transport category airplanes.

DATES: Comments must be received on or before September 17, 1997.

ADDRESSES: Comments on this proposal may be mailed in duplicate to Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–25, 1601 Lind Avenue SW., Renton, WA 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–25. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Transport Standards Staff, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2799, or facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposal described in this notice may be changed in light of the comments received. All comments received will be available in the rules docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–25.'' The postcard will be date stamped and returned to the commenter.

Background

On December 17, 1986, the Boeing Commercial Airplane Company applied for a change to Type Certificate No. A20WE to include Model 747 series airplanes with overhead crew rest areas installed. The crew rest area was to be installed above the main passenger cabin in the vicinity of the Number 5 passenger door. This is an area that had not been used for this purpose in any previous transport-category airplane. Due to the novel or unusual features associated with the installation of those crew rest areas, Special Conditions No. 25–ANM–16 were issued on November 13, 1987, to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate. Upon issuance, Special Conditions No. 25–ANM–16 became part of the regulations incorporated by reference in Type Certificate No. A20WE for Boeing 747 series airplanes.

Boeing Commercial Airplane Group now proposes certification of overhead crew rest areas that would be divided into three sections by a hard partition and a curtain. These crew rest areas, which would be in the same location, would be designated for in-flight use only and would include additional novel or unusual design features not incorporated in the previous crew rest areas. Because of these additional features, the regulations incorporated by reference in Type Certificate No. A20WE, including Special Conditions 25–ANM–16, do not contain adequate or appropriate safety standards. Special Conditions 25–ANM–16 would, therefore, be amended to contain the additional safety standards found necessary to establish a level of safety equivalent to that established in the regulations.

Discussion

A hard partition separates the crew rest area into forward and aft sections while a door in the partition provides access between the forward and aft sections. A curtain slides in the forward and aft directions to visually divide the aft section of the crew rest area. Item 3 of Special Conditions No. 25–ANM–16 requires that a stairway be installed between the main deck and the crew rest area. Additionally, there must be an alternate evacuation route for occupants of the crew rest area, located on the opposite side of the crew rest area or sufficiently separated within the compartment from the stairway. The installation of a hard partition creates an area within the crew rest area which does not have a means of egressing directly to the main cabin.

In addition to the partition, a curtain has been added to the crew rest area which further breaks up the crew rest area into sections. This was not considered in Special Conditions No. 25–ANM–16. The curtain and partition installation also reduces the accessibility to the emergency equipment and communication controls, and has the potential to prevent the occupants from being able to easily locate the primary and

secondary escape means. This could cause additional confusion during an emergency.

Since the installation of a door in the crew rest area raises concerns about operational reliability during an in-flight emergency and since the related paragraphs of § 25.819 from which the original special conditions were developed require two evacuation routes, design features must be provided to assure that occupants of the forward section will be able to vacate the crew rest area in the event of an in-flight emergency. Additional emergency equipment and two-way communication equipment will also be required in the forward section since the equipment in the aft area will not be readily accessible to the forward section occupants in the event of an in-flight emergency.

A limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of the evacuation routes would be required.

The additional proposed safety standards would be contained in proposed new Item 13. Although Items 1 through 12 are standards already adopted in Special Conditions No. 25–ANM–16 and are not subject to further public comment, they are repeated in this notice in order to place the additional proposed standards in proper perspective.

Delivery of Model 747–400 airplanes with these additional novel or unusual design features is currently scheduled for September 26, 1997. Because a delay would significantly affect the applicant's installation and type certification of the crew rest areas, the public comment period is only 20 days.

Type Certification Basis

The Type Certification Basis for the Boeing Model 747 series prior to the 747–400 is Part 25 of the FAR effective February 1, 1965, as amended by Amendments 25–1 through 25–8, plus Amendments 25–15, 25–17, 25–18, 25–20, and 25–39, with certain exceptions and several sets of special conditions, which are identified in Type Certificate Data Sheet No. A20WE. These exceptions are not pertinent to the subject of overhead crew rest areas.

The regulations incorporated by reference in Type Certificate No. A20WE for the Boeing Model 747–400 series airplanes include Part 25 of the FAR as amended by Amendments 25–1 through 25–59, with certain exceptions not relevant to the installation of an overhead crew rest area.

In addition, the regulations incorporated by reference for all 747 series include the noise certification requirements of Part 36 of the FAR, emission standards, and a number of special conditions, including Special Conditions No. 25–ANM–16.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Boeing model 747 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Conclusion: This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following additional special condition (Item No. 13) as part of the type certification basis for the Boeing Model 747 series airplanes with overhead crew rest areas installed. (Existing special conditions (Item Nos. 1–12) are repeated below for clarity.)

1. Occupancy of the overhead crew rest area is limited to a maximum of 10 crewmembers. Occupancy during taxi, takeoff, or landing is not permitted.

2. There must be a stairway between the main deck and the crew rest area and there must be an alternate evacuation route for occupants of the crew rest area.

The stairway and alternate evacuation route must be located on opposite sides of the crew rest area or have sufficient separation within the compartment. The stairway and the alternate evacuation route must provide for evacuation of an incapacitated person, with assistance, from the crew rest area to the main deck, must not be dependent on any powered device, and must be designed to minimize the possibility of blockage which might result from fire, mechanical or structural failure. The crewmember procedures for carriage of an incapacitated person must be established.

3. An exit sign meeting the requirements of § 25.812(b)(1)(i) must be provided in the crew rest area near the stairway.

4. In the event the airplane's main power system should fail, emergency illumination of the crew rest area must be automatically provided. Unless two independent sources of normal lighting are provided, the emergency illumination of the crew rest area must be automatically provided if the crew rest area normal lighting system should fail. The illumination level must be sufficient for the occupants of the crew rest area to locate, and descend to the main deck by means of the stairway and/or the alternate evacuation route, and to read any required operating instructions.

5. There must be a means for two-way voice communication between crewmembers on the flight deck and occupants of the crew rest area, and between crewmembers at least one flight attendant seat on the main deck and occupants of the crew rest area.

6. There must also be either public address speaker(s), or other means of alerting the occupants of the crew rest area to an emergency situation, installed in the crew rest area.

7. There must be a means, readily detectable by occupants of the crew rest area, that indicates when seat belts should be fastened and when smoking is prohibited.

8. For each occupant permitted in the crew rest area, there must be an approved seat or berth that must be able to withstand the maximum flight loads when occupied.

9. The following equipment must be provided:

a. At least one approved fire extinguisher appropriate to the kinds of fires likely to occur.

b. One protective breathing device, having TSO–C99 authorization or equivalent, suitable for firefighting.

c. One flashlight.

10. A smoke detection system that annunciates in the flight deck and is audible in the crew rest area must be provided.

11. A supplemental oxygen system equivalent to that provided for main deck passengers must be provided for each seat and berth.

12. There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of the evacuation routes.

13. The following requirements apply to crew rest areas that are divided into

several sections by the installation of curtains or partitions.

a. To compensate for lack of crowd awareness, there must be an audible alert concurrent with automatic presentation of supplemental oxygen masks in each section of the crew rest area, whether or not seats or berths are installed in the section. There must also be a means by which the flightcrew can manually deploy the oxygen masks.

b. A placard is required adjacent to each curtain that visually divides or separates the overhead crew rest area into small areas to serve a function of creating privacy. The placard must require that the curtain(s) remain open when the private area it creates is unoccupied. The vestibule area adjacent to the stair well is not considered a private area, and as such, its vacancy does not require a placard.

c. Each crew rest section created by the installation of a curtain must meet the requirements of items 4, 6, 7, and 10 of these special conditions with the curtain open or closed.

d. Overhead crew rest areas, which are visually divided to the extent that evacuation could be affected, must have exit signs meeting the requirements of § 25.812(b)(1)(i) in each separate area of the crew rest which direct occupants to the primary stairway exit.

e. Sections within an overhead crew rest area that are created by the installation of a rigid partition with a door physically separating the sections require either a secondary evacuation route from each section of the crew rest area to the main deck or it must be shown that any door between the sections cannot be jammed, rendering the door unusable. In either case, any door between compartments must be shown to be frangible from both directions and openable when crowded against. There can be no more than one door between each section of a crew rest area and the primary stairway exit. Exit signs meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit must be provided in each section of the crew rest area.

f. Each smaller area, within the main crew rest area, created by the installation of a partition with a door must individually meet the requirements of items 4, 5, 6, 7, 9 and 10 of these special conditions with the door open or closed.

Issued in Renton, Washington, on August 20, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–22921 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–4]

Proposed Realignment of Jet Routes; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign 14 jet routes located in the Dallas/Ft. Worth (DFW), TX, area. These proposed realignments would remove all high altitude navigation routes from the DFW Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and realign them to existing navigational aids (NAVAIDs) located in the DFW area. This proposal is a portion of a master plan to relocate the DFW VORTAC 3/4 nautical miles (NM) to the west of its current position and to provide more NAVAID capacity for airport traffic use by eliminating the high altitude en route traffic service. Additionally, Jet Route J–66 will be further realigned west of the DFW area to include the Big Springs, TX, VORTAC as part of its route structure. This realignment would allow pilots to fly at lower minimum enroute altitudes (MEA) between the Newman, TX, and Abilene, TX, VORTACs.

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

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 97–ASW–4, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ASW–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future

NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign 14 jet routes located in the DFW area. These proposed realignments will remove all high altitude navigation routes from the DFW VORTAC. Ten of the jet routes will use the Ranger, TX, VORTAC, which is located approximately 8 NM to the west. One jet route will use the Cowboy, TX, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME), which is located approximately 6.5 NM to the east. Two jet routes will terminate at the Wichita Falls, TX, VORTAC rather than continue to the DFW area. These particular two jet routes originally terminated at the DFW VORTAC. The remaining jet route bypasses DFW altogether by proceeding direct from the Ardmore, OK, VORTAC to the Texarkana, AR, VORTAC. The DFW VORTAC will no longer service high altitude en route traffic, thereby increasing NAVAID capacity for DFW International Airport traffic area use.

Additionally, Jet Route J–66 will be further realigned west of the DFW area to include the Big Springs, TX, VORTAC as part of its route structure. This realignment would allow pilots to fly at lower minimum enroute altitudes (MEA) on J–66 between the Newman, TX, and Abilene, TX, VORTACs.

Jet routes are published in paragraph 2004 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

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

Paragraph 2004—Jet Routes

* * * * *

J–4 [Revised]

From Los Angeles, CA, via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; Parker, CA; Buckeye, AZ; San Simon, AZ; Newman, TX; Wink, TX; Abilene, TX; Ranger, TX; Belcher, LA; Jackson, MS; Meridian, MS; Montgomery, AL; INT Montgomery 051° and Colliers, SC, 268° radials; Colliers; Columbia, SC; Florence, SC; to Wilmington, NC.

* * * * *

J–21 [Revised]

From the INT of the United States/Mexican Border and the Laredo, TX, 172° radial via Laredo; San Antonio, TX; Austin, TX; Waco, TX; Ranger, TX; Ardmore, OK; Will Rogers, OK; Wichita, KS; Omaha, NE; Gopher, MN; to Duluth, MN.

* * * * *

J–25 [Revised]

From Matamoras, Mexico, via Brownsville, TX; INT of the Brownsville 358° and the Corpus Christi, TX, 178° radials; Corpus Christi; INT of the Corpus Christi 311° and the San Antonio, TX, 167° radials; San Antonio; Austin, TX; Waco, TX; Ranger, TX; Tulsa, OK; Kansas City, MO; Des Moines, IA; Mason City, IA; Gopher, MN; Brainerd, MN; to Winnipeg, MB, Canada. The airspace within Canada is excluded. The airspace within Mexico is excluded.

* * * * *

J–33 [Revised]

From Humble, TX, via INT Humble 349° and Ranger, TX, 135°T(129°M) radials; to Ranger.

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J–42 [Revised]

From Delicias, Mexico, via Fort Stockton, TX; Abilene, TX; Ranger, TX; Texarkana, AR; Memphis, TN; Nashville, TN; Beckley, WV; Montebello, VA; Gordonsville, VA; Nottingham, MD; INT Nottingham 061° and Woodstown, NJ, 225° radials; Woodstown; Robbinsville, NJ; LaGuardia, NY; INT LaGuardia 042° and Hartford, CT, 236° radials; Hartford; Putman, CT; Boston, MA. The portion of this route outside of the United States is excluded.

* * * * *

J–52 [Revised]

From Vancouver, BC, Canada; via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Ardmore, OK, 309° radials; Ardmore; Texarkana, AR; Sidon, MS; Bigbee, MS; Vulcan, AL; Atlanta, GA; Colliers, SC; Columbia, SC; Raleigh-Durham, NC; to Richmond, VA. The portion within Canada is excluded.

* * * * *

J–58 [Revised]

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Farmington, NM; Las Vegas, NM; Amarillo, TX; Wichita Falls, TX; Ranger, TX; Alexandria, LA; Harvey, LA; INT of Grand Isle, LA, 105° and Crestview, FL, 201° radials; INT of Grand Isle 105° and Sarasota, FL, 286° radials; Sarasota; Lee County, FL; to the INT Lee County 120° and Dolphin, FL, 293° radials; Dolphin.

* * * * *

J–66 [Revised]

From Newman, TX; via Big Spring, TX; Abilene, TX; Ranger, TX; Bonham, TX; Little Rock, AR; Memphis, TN; to Rome, GA.

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J–72 [Revised]

From Boulder City, NV, via Peach Springs, AZ; Gallup, NM; Albuquerque NM; Texico, NM; to Wichita Falls, TX.

* * * * *

J–76 [Revised]

From Las Vegas, NV, via INT Las Vegas 090° and Tuba City, AZ, 268° radials; Tuba City; Las Vegas, NM; Tucumcari, NM; to Wichita Falls, TX.

* * * * *

J–87 [Revised]

From Humble, TX, via Navasota, TX; INT of Navasota 342°T(336°M) and Cowboy, TX, 166°T(160°M) radials; Cowboy; Tulsa, OK; Butler, MO; Kirksville, MO; Moline, IL; Joliet, IL; to Northbrook, IL.

* * * * *

J–105 [Revised]

From Ranger, TX; via McAlester, OK; Razorback, AR; Springfield, MO; Bradford, IL; to Badger, WI.

* * * * *

J–131 [Revised]

From San Antonio, TX, via INT San Antonio 007° and Ranger, TX, 214°T (208°M) radials; Ranger; Texarkana, AR; Little Rock, AR; to Pocket City, IN.

* * * * *

J–181 [Revised]

From Ranger, TX; Okmulgee, OK; Neosho, MO; INT Neosho 049° and Bradford, IL, 219° radials; to Bradford.

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Issued in Washington, DC, on August 21, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–22974 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 120

[Docket No. 97N–0296]

Fruit and Vegetable Juice Beverages: Notice of Intent to Develop a HACCP Program, Interim Warning Statement, and Educational Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is announcing a comprehensive program to address the incidence of foodborne illness related to consumption of fresh juice and to ultimately address the safety aspects of all juice products. This document informs consumers, juice processors, State and local officials, and other interested persons of FDA's plans to publish two proposals and to initiate several educational programs to minimize the hazards associated with fresh juice. This document will permit all interested persons to take advantage of the guidance provided by the upcoming proposals as quickly as possible, e.g., in time for the 1997 ''fresh apple cider'' season.

DATES: Submit written comments at any time.

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: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

Escherichia coli O157:H7 has been recently implicated as a source of a number of foodborne disease outbreaks. During the last few years, several States have reported outbreaks of *E. coli* O157:H7 illness as a result of consumption of apple juice and cider that were not pasteurized or otherwise treated to destroy pathogens (Refs. 1, 2, and 3). Symptoms have ranged from diarrhea to hemolytic uremic syndrome. In October 1996, the Seattle-King County Department of Public Health and the Washington State Department of Health reported an outbreak of *E. coli* O157:H7 infections associated with consumption of unpasteurized apple juice that occurred in three western States and British Columbia and resulted in at least 66 cases of illness and the death of one child (Refs. 2 and 4).

Pathogens other than *E. coli* O157:H7 present in apple and other types of juice and juice products also have been documented as causing foodborne illness. There are reported outbreaks attributable to *Salmonella typhimurium and Cryptosporidium* in apple cider (Refs. 3, 5, and 6), and *Vibrio cholerae* in coconut milk (Ref. 7). In addition, there are reports of illness from consumption of unpasteurized orange juice contaminated with *S. hartford* (Ref. 8), orange juice drink contaminated with *S. agona* (Ref. 9), orange juice contaminated with *Bacillus cereus* (Ref. 10), and home-made carrot juice contaminated with *Clostridium botulinum* (Ref. 11).

Both fruit and vegetable juices have been vehicles for outbreaks of foodborne illness. Although fruit juice is acidic and thus inhibitory to the growth of most microorganisms, fruit juices, rather than vegetable juices, have been the source of most juice-associated outbreaks. The evidence also suggests that the groups at greatest risk of life-threatening illness are children, the elderly, and persons with compromised immune systems.

Illnesses caused by hazards other than microbial contamination have also been associated with foods, including juice. From 1990 to 1996, there has been one outbreak and 11 recalls of fruit juice or beverages containing fruit juice (Refs. 12 and 13). Ingestion of toxic metals as well as poisonous parts of the plants used to make the juice have been cited as the cause of some juice related illness.

Five recalls between 1990 and 1995 of fruit juices or beverages containing fruit juice were because of the presence of food ingredients that were inadvertently added to the product, not declared on the label, or not suitable for that food (Ref. 13). Food ingredients involved with these recalls were natamycin, sulfites, FD&C yellow No. 5, and salt.

Since 1991, there have been five recalls of juice products because of improper sanitation procedures or faulty equipment that resulted in cross-contamination with ingredients from other foods, minerals such as copper, glass, or other hazardous materials. These outbreaks and recalls demonstrate that juice and juice beverages may be susceptible to many hazards.

The October 1996 apple juice outbreak from *E. coli* O157:H7, and the agency's concern that the current regulatory program relative to fresh juice and juice products may not be adequate to ensure the production of safe juice products, persuaded FDA to gather information to help address these problems. FDA held a public meeting on December 16 and 17, 1996, to discuss the current state of the science and to review the technological and safety factors relating to the production and distribution of fresh juices. The agency was interested in learning about all aspects of juice production and distribution in an effort to consider how FDA's regulatory program should be revised, and whether additional measures are needed to reduce the risk of future outbreaks.

Experts from industry, academia, and the regulatory and consumer sectors presented information on illnesses and the epidemiology of outbreaks arising from contaminated juices; current concerns with emerging pathogens; the *E. coli* O157:H7 outbreak in October 1996 caused by contaminated unpasteurized apple juice; procedures for processing juices; and new and existing technologies to decrease or eliminate the number of pathogens or other contaminating microorganisms.

FDA received over 180 comments, most of which concerned apple juice specifically. Many comments pertained to juices in general and some referred only to apple juice, apple cider, or citrus juices. Most comments were concerned with changes in processing to improve the safety of juices. Among the changes recommended were requiring pasteurization of juices, requiring a Hazard Analysis and Critical Control Point (HACCP) program, and

establishing current good manufacturing practices (CGMP's) in juice processing.

The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) subsequently recommended to FDA, among other things, that HACCP and safety performance criteria should form the general conceptual framework for assuring the safety of juices, and that control measures should be based on a thorough hazard analysis. Furthermore, the NACMCF recommended that a mandatory HACCP program be established, and that processors implement and strictly adhere to industry CGMP's. The NACMCF also recommended that industry education programs be developed that address basic food microbiology, the principles of cleaning and sanitizing equipment, CGMP's, and HACCP.

The information FDA obtained through the public meeting, as well as the recommendations of the NACMCF, clearly suggest that new measures are necessary to ensure that juice is safe. The virulence of new pathogens, such as *E. coli* O157:H7, and the risk of severe illness associated with these pathogens, especially for children, the elderly, and persons with weakened immune systems, create a need for prompt, active intervention. The agency has considered the recommendations provided in the comments and by the NACMCF and has developed a proposed strategy for ensuring juice safety. This proposed strategy involves addressing both the immediate goal of reducing the risk of foodborne illness associated with juice products and the long-term goal of ensuring that juice products are safe. This proposed strategy, as discussed below, involves a three-pronged approach that includes a mandatory HACCP program, label warning statements, and educational programs targeted at the industry and consumers.

II. Mandatory HACCP Program

The agency has considered several alternatives recommended in the comments in determining whether to initiate rulemaking on a mandatory HACCP program for some or all juice products. The alternatives being considered include: (1) Increasing the frequency of FDA's inspection of juice manufacturers, as well as increasing agency sampling, laboratory analysis, and related regulatory activities; (2) issuing CGMP's or sanitation standards to increase the safety of juices; and (3) mandating pasteurization or other equivalent treatment of juices.

At this point, the agency believes, based on available data, that a mandatory HACCP program is the most effective means of controlling microbiological, as well as chemical and physical hazards that may occur during juice processing, and that, therefore, such a program may be necessary for the safe and sanitary production of fruit and vegetable juices. Accordingly, the agency intends to propose a regulation that will mandate a HACCP program for some or all fruit and vegetable juice products. FDA intends to propose that some or all juice processors have and implement a written HACCP plan whenever a hazard analysis reveals that one or more food hazards are reasonably likely to occur, and that a HACCP plan be specific to each location where juice is processed by that processor. Thus, the agency is considering that implementation of a HACCP program will be the primary, long-term control measure for pathogens and other safety concerns related to the production and distribution of juice products.

Under a mandatory HACCP program, FDA would propose a phase in period for implementation of HACCP plans for juice products. The phase in approach will permit the regulated industry time to develop a HACCP plan, accomplish the training of personnel, and adjust its activities to include necessary HACCP activities.

The forthcoming HACCP proposal will fully discuss all of the issues surrounding the safety of fruit and vegetable juices raised in this document.

III. Label Warning Statements

Although FDA has tentatively concluded that additional steps are necessary to ensure that juices are safe, the agency recognizes that rulemaking and implementation of a HACCP program are time consuming, and that a HACCP program for some or all juices would not likely be fully implemented for several years. In light of these facts, and the immediate concerns raised by the potential for foodborne illness from consumption of juice products neither processed in accordance with an established HACCP plan, pasteurized, nor otherwise treated to prevent or eliminate the presence of harmful bacteria that may be present, the agency sees a need for immediate action to ensure that consumers, particularly those at greatest risk, are informed of this potential hazard. This information can be conveyed through labeling, which can be effected by industry much more quickly than it can implement a HACCP program.

Consequently, the agency is considering proposing that the labels and labeling of some or all juice products not specifically processed to prevent or eliminate the presence of harmful bacteria bear a warning statement informing consumers of the risk of illness associated with consumption of the product. The agency anticipates that this will be an interim measure, until requirements for processing juice products under HACCP principles are fully implemented. The agency notes that it is considering providing that interventions that have been validated to achieve a cumulative 5-log reduction in *E. coli* O157:H7 or other pathogens would obviate the need for a warning label. Based on available information, however, the agency considers pasteurization the only process validated to meet this standard at this time. However, the agency solicits comments on other ways to achieve this reduction. Thus, in the absence of a validated HACCP plan, the agency anticipates that a warning statement will appear on some or all unpasteurized juice products.

Consumer research data available to the agency suggest that consumers need clear and concise information about the nature and magnitude of the hazard in the food to understand a warning statement, and that certain elements are essential to ensure that the warning statement is effective (Ref. 14). These elements include statements describing the hazard, explaining why the hazard is present, advising how to avoid or alleviate the hazard, and identifying the group at risk. Depending on the type of food and the nature of the hazard, each of these elements may not be essential in developing an effective warning statement.

To inform consumers effectively of the potential hazard associated with some or all juice products, FDA has tentatively concluded that three of the elements listed above would need to be reflected in the label warning statement. The warning statement for unpasteurized juice products could contain: (1) A statement of the hazard, that is, a statement about the potential presence of bacteria that can cause serious illness; (2) a statement explaining why the hazard is present, that is, a statement that the labeled product has not been processed or treated to destroy the harmful bacteria; and (3) a statement identifying the group at risk, that is, that evidence suggests that children, the elderly, and persons with weakened immune systems are at greatest risk of serious illness from exposure to harmful bacteria in juice and juice products. The agency will request comments on whether the warning statements should also include a fourth element, advising that at-risk consumers avoid the product.

The consumer research data also showed that the first sentence of a warning statement is likely to influence a consumer's decision as to whether to continue reading the rest of a warning statement. Therefore, the agency intends to propose that the first sentence of the warning statement clearly state the hazard, i.e., that juice may contain pathogens known to cause serious/life-threatening illness. The agency recognizes, however, that there may be several ways to incorporate the essential elements into the warning statement. For example, the following model statements incorporate the three essential elements that FDA has tentatively concluded would need to be reflected in the label warning statement, but they communicate the information using different wording.

1.**WARNING:** Unless specifically processed, some juices may contain harmful bacteria known to cause serious illness. This product has not been specifically processed to destroy such bacteria. The risk of life-threatening illness is greatest for children, the elderly, and persons with weakened immune systems.

2.**WARNING:** Some juices have recently been found to contain harmful bacteria known to cause life-threatening illness. This product has not been specifically processed to destroy such bacteria. Children, the elderly, and persons with weakened immune systems should avoid this product.

3. **WARNING:** This product has not been pasteurized and therefore may contain harmful bacteria which can cause serious illness in children, elderly, and persons with weakened immune systems.

The second statement includes the fourth element, advising the at-risk consumer to avoid the product. FDA believes that any of these statements would inform consumers adequately of the potential risk of foodborne illness associated with the juice product. Accordingly, FDA is considering proposing statements such as these warning statements for juice products not pasteurized or otherwise treated to prevent or eliminate the presence of harmful bacteria. However, the agency recognizes that because these statements are untested, there may be a more effective way to alert consumers to the potential hazard.

The agency is mindful that manufacturers may wish to include optional language on the label. For example, in addition to the information required by the essential elements, information describing the product as ''unpasteurized'' may be included. Handling instructions to ensure the safety of the product also may be included, e.g., ''boil product prior to serving.'' Similarly, manufacturers of pasteurized juice products may wish to include information on the label of their product informing the consumer that the product has been pasteurized. Because such information may be helpful and convenient for consumers searching for pasteurized juices, the agency encourages manufacturers of pasteurized juices to include the term ''pasteurized'' on the product label. In its labeling proposal, FDA will request comments on whether such additional information should be required. The agency notes, however, that consistent with the requirements for all label statements, any optional information must be truthful and not misleading.

Consistent with the placement and prominence requirements of other warning statements, FDA is considering proposing that the statement appear prominently and conspicuously on the information panel of the immediate container of the product, in type size no less than one-sixteenth of an inch, and set apart from other printed matter on the information panel by hairlines in the configuration of a box. In addition, the agency is considering proposing that the word ''**WARNING**'' be in capital letters and in bold type.

The agency may conduct focus group research to evaluate consumer understanding of the proposed warning messages and to ensure that the messages are not misleading. The results of any focus group research would be considered by the agency in arriving at warning statements included in a final regulation.

In its proposal, the agency will discuss and solicit comment on its tentative decision to require an interim warning statement on unpasteurized juices, its justification for the required elements of the warning statement, and its tentative conclusion that the proposed statements adequately inform the consumer of the potential risk associated with the juice product. In addition, the agency is considering proposing a sunset provision for the mandatory warning statement.

Given the severity of the outbreaks with fresh apple juice that occurred during the 1996 season, the agency strongly encourages processors of unpasteurized apple juices to immediately and voluntarily label their products or provide point of purchase information with any of the model statements or a similar statement that includes the essential elements discussed above. Although the agency has particular concern about the potential for foodborne illness associated with apple juice because of the documented contamination with *E. coli* O157:H7, it encourages manufacturers of all types of juice to place warning labels on their products that have not been pasteurized. Such labeling may be accomplished by the use of stickers, placards, brochures, etc.

Further, FDA is aware that some State authorities are considering the steps that they need to take to protect consumers. The agency encourages State and local officials to consider the information in this document as guidance as they contemplate requirements for untreated juice products during the 1997 season.

The agency is considering whether to include some or all fruit and vegetable juice products that have not been pasteurized or otherwise specifically processed to prevent or eliminate the presence of harmful bacteria in any future proposal on label warning statements. The agency expects that any final rule on a mandatory warning statement will be issued prior to the start of the 1998 ''fresh apple juice/cider'' season.

IV. Educational Program

FDA's primary goal is to ensure that the food supply is safe and that consumers are protected to the greatest extent possible from foodborne illness and other adverse reactions resulting from food consumption. The rulemakings that FDA intends to initiate on HACCP and on the interim warning statement should help to accomplish this goal with respect to juice products. Nevertheless, the benefits of these rulemakings will be enhanced if, in conjunction with them, FDA initiates educational programs aimed at industry and consumers. Consistent with the NACMCF recommendations, the agency believes that industry education programs addressing basic food microbiology, the principles of cleaning and sanitizing equipment, CGMP's, and HACCP will greatly assist juice processors in developing and implementing an effective HACCP plan. Given the severity of the outbreaks with unpasteurized apple juice and cider and the fact that final rules cannot be in place by the 1997 fresh cider season, the agency will use the education programs to encourage the industry to label their products voluntarily to advise consumers of the risks associated with fresh juice. In addition, educating consumers about the risks to certain populations associated with the consumption of untreated juice and the potential for the presence of pathogens and other hazardous substances will help to ensure that consumers fully understand the importance of label

statements and the significance of the appearance of warning statements on certain juice products but not on others.

The agency intends to involve State and local officials in its education initiative because it is often the State or local official who is in direct contact with the farmer or juice processor. Thus, State and local officials can play a significant role in educating and assisting juice manufacturers and consumers in understanding the public health concerns associated with consumption of untreated juice products and in developing measures to reduce the risk.

To meet its educational objectives, FDA intends to: (1) Enlist the aid of State and local officials, industry representatives, trade associations, and consumer groups in coordinating consumer and industry educational outreach programs; (2) use FDA field public affairs specialists to educate consumers and health professionals through lectures, meetings, and local media spots; (3) use FDA's home page on the World Wide Web to alert consumers to the potential hazard; (4) hold public meetings to discuss the issues raised in the impending proposals as well as the educational programs discussed in this document; (5) distribute ''Dear Consumer'' letters to targeted consumer groups; (6) use the FDA CFSAN information line to relay information to consumers and health professionals about the public health concern associated with untreated juice; (7) distribute camera-ready English and Spanish articles and English radio scripts and video news releases to the news media nationwide in September 1997 to coincide with the National Food Safety Education Program and ''Back to School'' program; and (8) distribute letters and articles to State and local officials.

V. Conclusion

As outlined in this document, FDA has developed a proposed comprehensive strategy to address the public health concerns associated with consumption of fresh juice and juice products not specifically treated to prevent or eliminate the presence of pathogens. The agency invites comment on the appropriateness of its strategy on the guidance contained in this document and on whether additional or alternative regulatory or nonregulatory measures are necessary to adequately protect consumers. Comments suggesting additional or alternative measures should explain why such measures are needed and suggestions on how to implement the measure.

In addition, the agency solicits comments on the specific wording of the warning statement to ensure that the final warning statement adequately conveys to consumers the risk of illness associated with consumption of the juice product. Furthermore, the agency solicits comments on whether to include all or some fruit and vegetable juice products that have not been pasteurized or otherwise specifically processed to prevent or eliminate the presence of harmful bacteria in any future proposal on HACCP or label warning statements.

Because the details of this strategy will be discussed more fully in any future proposals, commenters may choose to wait until that time to respond. However, the agency will consider comments received within 15 days of publication of this notice prior to publication of any proposed rule. Because of time constraints, the agency may not be able to consider comments received after this date, but these comments will be considered as part of the public rulemaking record associated with any proposal.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Besser, R. E., S. M. Lett, J. T. Weber, M. P. Doyle, T. J. Barrett, J. G. Wells, and P. M. Griffin, ''An Outbreak of Diarrhea and Hemolytic Uremic Syndrome from *Escherichia coli 0157:H7* in Fresh-pressed Apple Cider,'' *Journal of the American Medical Association,* 269(17):2217:2220, 1993.

2. Centers for Disease Control and Prevention, ''Outbreak of *Escherichia coli 0157:H7* Infections Associated with Drinking Unpasteurized Commercial Apple Juice—British Columbia, California, Colorado, and Washington, October 1996,'' *Morbidity and Mortality Weekly Report,* 45(44):975, 1996.

3. Centers for Disease Control and Prevention, ''Outbreaks of *Escherichia coli 0157:H7* Infection and Crytosporidiosis Associated with Drinking Unpasteurized Apple Cider—Connecticut and New York, October 1996,'' *Morbidity and Mortality Weekly Report,* 46(1):4–8, 1997.

4. National Advisory Committee on Microbiological Criteria for Foods—Fresh Produce Subcommittee Proceedings, December 16, 1996.

5. Centers for Disease Control, ''*Salmonella typhimurium* Outbreak Traced to a Commercial Apple Cider—New Jersey,'' *Morbidity and Mortality Weekly Report,* 24:87–88, 1975.

6. Millard, P. S., K. F. Gensheimer, D. G. Addiss, D. M. Sosin, G. A. Beckett, A. Houck-Jankoski, and A. Hudson, ''An Outbreak of Crytosporidiosis from Fresh-pressed Apple Cider,'' *Journal of the American Medical Association,* 272(20):1592–1596, 1994.

7. Centers for Disease Control and Prevention, ''Cholera Associated with Imported Frozen Coconut Milk—Maryland, 1991,'' *Morbidity and Mortality Weekly Report,* 40(49):844–845, 1991.

8. Centers for Disease Control and Prevention Memorandum from Kim A. Cook, M.D. to Steve Thacker, M.D., October 1, 1995.

9. FDA Recall Data Memorandum, Dirk J. Mouw to Raymond P. Mars, June 2, 1992.

10. FDA Recall Data Memorandum, M. Anthony Abel to Ronald E. Joyce, March 21, 1994.

11. Memorandum of Telephone Conversation between Debra Street, Ph.D., FDA, and P. Walker, Washington State Department of Health, January 15, 1997.

12. Memorandum of Telephone Conversation between Debra Street, Ph.D., FDA, and Dr. K. Hendricks, Texas State Department of Health, January 16, 1997.

13. FDA Memorandum to File, B. Timbo, Ph.D., July 14, 1997.

14. FDA Memorandum, Alan S. Levy, Ph.D. to Kenneth Falci, Ph.D., June 26, 1997.

VII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this document at any time. As noted above, the agency will consider comments received by September 12, 1997, prior to publication of any proposed rule. 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.

Dated: August 22, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22977 Filed 8–25–97; 4:44 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AF85

Veterans Education: Suspension and Discontinuance of Payments

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to make changes to the education regulations. With respect to determinations concerning suspension or discontinuance of payments of educational assistance when educational institutions (including training establishments) fail to meet requirements, it is proposed to require that recommendations first be obtained from Committees on Educational Allowances, to establish procedural and composition requirements for the Committees, and to establish hearing rules for the Committees. In addition, it is proposed that appeals of a decision concerning such suspension or discontinuance of payments of educational assistance be determined by the Director of the Education Service upon request by the affected educational institution based on the evidence of record. The proposed changes would apply to the following educational assistance programs: Montgomery GI Bill—Active Duty, Montgomery GI Bill—Selected Reserve, Survivors' and Dependents' Educational Assistance, the Post-Vietnam Era Veterans' Educational Assistance Program, and the Educational Assistance Pilot Program. The proposed changes appear to be appropriate to ensure proper decisionmaking. In addition, nonsubstantive changes would be made for the purpose of clarification.

DATES: Comments must be received on or before October 27, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900-AF85.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, (202) 273–7187.

SUPPLEMENTARY INFORMATION: This document proposes to make changes to the education regulations in 38 CFR part 21. More specifically, it is proposed to make changes to the regulations concerning suspension or discontinuance of payments of educational assistance when educational institutions (including training establishments) fail to meet requirements. The proposed changes would apply to the following educational assistance programs: Montgomery GI Bill—Active Duty, Montgomery GI Bill—Selected Reserve, Survivors' and Dependents' Educational Assistance, the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP), and the Educational Assistance Pilot Program. The authority for this proposal is contained in 10 U.S.C. 2147 note and 16136(b); and 38 U.S.C. 501, 3034(a), 3241(a), and 3690.

Under these programs, veterans, reservists, servicemembers, and eligible persons (as statutorily identified for each program) receive educational assistance from the Department of Veterans Affairs (VA) while attending programs of education. To be eligible for assistance, individuals must pursue courses approved by a State approving agency. Educational institutions are required to inform VA of certain occurrences relating to these programs (e.g., when VA-supported students discontinue or reduce training, change programs, or fail to progress satisfactorily), and to meet a number of other legal requirements. When an educational institution has failed to meet such requirements and the State approving agency has not withdrawn course approval, the Director of the VA facility of jurisdiction may suspend or discontinue payment of educational assistance.

It is not proposed to change the requirement in the regulations that failure by an educational institution to meet requirements pertaining to the percentage of students receiving VA educational benefits could result in discontinuance of educational assistance to new students based on undisputed information submitted by the educational institution. (See 38 CFR 21.4201.) However, when an educational institution otherwise fails to meet requirements, it is proposed that, prior to making determinations concerning suspension or discontinuance of educational assistance, the Director of the VA facility of jurisdiction will refer the matter to the VA facility's Committee on Educational Allowances and receive recommendations therefrom. This document also proposes to require that such a referral be in writing, contain the reasons for the referral, and be posted in the VA facility of jurisdiction. We believe that this would help ensure appropriate decisionmaking.

Currently, a Committee on Educational Allowances must be composed of three individuals. It is proposed to require that at least one of the individuals be a VA employee familiar with the adjudication of claims for benefits administered by the Veterans Benefits Administration. VA believes that this is warranted to ensure that the committee has sufficient expertise for appropriate recommendations.

This document also proposes to establish a comprehensive set of hearing rules for use by the respective Committees on Educational Allowances. This would help ensure uniformity and fairness with respect to recommendations made by the committees.

The current regulations provide for an automatic de novo review in VA Central Office by the Central Office Education Training and Review Panel of any decision of the Director of the VA facility of jurisdiction if the committee's recommendation to the Director is not unanimous or if the Director disagrees with the recommendation of the committee. It is proposed that the review be based on the evidence of record rather than constituting a de novo review. It is also proposed that the review be conducted by the Director of the Education Service rather than by the Central Office Education Training and Review Panel. Further, instead of providing for an automatic review, it is proposed that such a review be provided only upon request by the affected educational institution. This appears to provide adequate fairness for these circumstances and will help to ensure efficiency and uniformity in decisionmaking.

Also, nonsubstantive changes would be made for the purpose of clarification.

The Department of Defense (DOD) and VA are jointly issuing this proposal insofar as it relates to VEAP. This program is funded by DOD and administered by VA. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this proposal insofar as it relates to the Montgomery GI Bill—Selected Reserve program. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this proposal is issued solely by VA.

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs, within their respective jurisdictions, hereby certify that the adoption of the proposed provisions will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although it is possible that a small-entity school could be affected by this rulemaking, the number of individuals affected at the

school would in all likelihood be an insignificant portion of the student body. Also, experience has shown that only one or two schools per year would be affected by the provisions of this rulemaking concerning suspensions and discontinuance of payments. Therefore, pursuant to 5 U.S.C. 605(b), the proposed provisions are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by this proposal are 64.117, 64.120, and 64.124. There is no Catalog of Federal Domestic Assistance number for the Montgomery GI Bill—Selected Reserve program.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 21, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

Approved: May 8, 1997.

Normand G. Lezy,

Lieutenant General, USAF Deputy Assistant Secretary (Military Personnel Policy).

Approved: April 24, 1997.

W.C. Donnell,

RADM, USCG Assistant Commandant for Human Resources.

For the reasons set out in the preamble, 38 CFR part 21, subparts D, G, K, and L, is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D is revised to read as follows:

Authority: 10 U.S.C. 2147 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

§ 21.4133 [Removed]

2. Section 21.4133 is removed.

§ 21.4134 [Removed]

3. Section 21.4134 is removed.

4. In § 21.4135, paragraph (f) is revised; introductory text is added to paragraph (j); paragraph (j)(1) is revised; the heading for paragraph (k) is revised; introductory text is added to paragraph (k); and paragraph (k)(1) is revised, to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(f) *Discontinued by VA (§§ 21.4215, 21.4216).* If VA discontinues payments of educational assistance as provided by §§ 21.4215(d) and 21.4216, the effective date of discontinuance will be as follows:

(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if the discontinuance were preceded by such a suspension.

(2) End of the month in which the decision to discontinue is effective pursuant to § 21.4215(d), if the Director of a VA facility did not suspend payments prior to the discontinuance.

(Authority: 38 U.S.C. 3690)

* * * * *

(j) *Disapproval by State approving agency (§ 21.4259(a)).* If a State approving agency disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.

* * * * *

(k) Disapproval by Department of Veterans Affairs (§§ 21.4215, 21.4259(c)). If VA disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

(1) Date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.

* * * * *

§ 21.4146 [Amended]

5. Section 21.4146(e) is amended by removing ''§§ 21.4207 and 21.4202(b)(4)'' and adding, in its place, ''§§ 21.4210(g) and 21.4212''.

§ 21.4152 [Amended]

6. Section 21.4152(b)(2) is amended by removing ''§ 21.4202'' and adding, in its place, ''§ 21.4210(d)''.

§ 21.4202 [Amended]

7. In § 21.4202, paragraphs (a) and (b) are removed and reserved.

§ 21.4207 [Removed]

8. Section 21.4207 is removed.

§ 21.4208 [Removed]

9. Section 21.4208 is removed.

10. Section 21.4210 is added to read as follows:

§ 21.4210 Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.

(a) *Overview.* (1) VA may pay educational assistance to an individual eligible for such assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 35, or 36, only if the individual is pursuing a course approved in accordance with the provisions of 38 U.S.C. chapter 36. In general, courses are approved for this purpose by a State approving agency designated to do so (or by VA in some instances). Notwithstanding such approval, however, VA, as provided in paragraphs (b), (c), and (d) of this section, may suspend, discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of courses or training approved under 38 U.S.C. chapter 36.

(2) For the purposes of this section and the purposes of §§ 21.4211 through 21.4216, except as otherwise expressly stated to the contrary—

(i) The term course includes an apprenticeship or other on-job training program;

(ii) The term educational institution includes a training establishment; and

(iii) Reference to action suspending, discontinuing, or otherwise denying enrollment or reenrollment means such action with respect to providing educational assistance under the chapters listed in paragraph (a)(1) of this section. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3452, 3671, 3690)

(b) *Denial of payment in individual cases.* VA may deny payment of educational assistance to a specific individual for pursuit of a course or courses if, following an examination of the individual's case, VA has credible evidence affecting that individual that—

(1) The course fails to meet any of the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 34, 35, or 36; or

(2) The educational institution offering the individual's course has violated any of those requirements of law.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690(b)(1), 3690(b)(2))

(c) *Notice in individual cases.* Except as provided in paragraph (e) of this section, when VA denies payment of

educational assistance to an individual under paragraph (b) of this section, VA will provide concurrent written notice to the individual. The notice shall state—

(1) The adverse action;

(2) The reasons for the action; and

(3) The individual's right to an opportunity to be heard thereon in accordance with part 19 of this title.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Actions affecting groups.* (1) The Director of the VA facility of jurisdiction may suspend payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course, and may disapprove all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course. The decision to take such action, except as provided in paragraph (d)(2) of this section, must be based on evidence of a substantial pattern of veterans, servicemembers, reservists, or eligible persons enrolled in the course receiving educational assistance to which they are not entitled because:

(i) One or more of the course approval requirements of 38 U.S.C. chapter 36 are not met, including the course approval requirements specified in §§ 21.4253, 21.4254, 21.4261, 21.4262, 21.4263, and 21.4264; or

(ii) The educational institution offering the course has violated one or more of the recordkeeping or reporting requirements of 10 U.S.C. chapter 1606, or of 38 U.S.C. chapters 30, 32, 34, 35, and 36. These violations may include, but are not limited to, the following:

(A) Willful and knowing submission of false reports or certifications concerning students or courses of education;

(B) Failure to report to VA a veteran's, servicemember's, reservist's, or eligible person's reduction, discontinuance, or termination of education or training; or

(C) Submission of improper or incorrect reports in such number, manner, or period of time as to indicate negligence on its part, including failure to maintain an adequate reporting or recordkeeping system.

(2) The Director also may make a decision to take the action described in paragraph (d)(1) of this section when the Director has evidence that one or more prohibited assignments of benefits have occurred at an educational institution as a result of that educational institution's policy. This decision may be made regardless of whether there is a substantial pattern of erroneous payments at the educational institution. See § 21.4146.

(3) The Director may disapprove the enrollment of all individuals not already enrolled in an educational institution (which for the purposes of this paragraph does not include a training establishment) when the Director finds that the educational institution:

(i) Has charged or received from veterans, servicemembers, reservists, or eligible persons an amount for tuition and fees in excess of the amount similarly circumstanced nonveterans are required to pay for the same course; or

(ii) Has instituted a policy or practice with respect to the payment of tuition, fees, or other charges that substantially denies to veterans, servicemembers, reservists, or eligible persons the benefits of advance payment of educational assistance authorized to such individuals under §§ 21.4138(d), 21.7140(a), and 21.7640(d); or

(iii) Has used erroneous, deceptive, or misleading practices as set forth in § 21.4252(h).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3680A(d), 3684, 3685, 3690, 3696, 5301)

(e) *Actions that must accompany a mass suspension of educational assistance payments or suspension of approval of enrollments and reenrollments in a course or educational institution.* (1) The Director of the VA facility of jurisdiction may suspend payment of educational assistance and may suspend approval of new enrollments and reenrollments as provided in paragraph (d) of this section, only after:

(i) The Director notifies in writing the State approving agency concerned and the educational institution of any failure to meet the approval requirements and any violation of recordkeeping or reporting requirements; and

(ii) The educational institution—

(A) Refuses to take corrective action; or

(B) Does not take corrective action within 60 days (or 90 days if permitted by the Director).

(2) Not less than 30 days before the Director acts to make a mass suspension of payments of educational assistance and/or suspend approval of new enrollments and reenrollments, the Director will, to the maximum extent feasible, provide written notice to each veteran, servicemember, reservist, and eligible person enrolled in the affected courses. The notice will:

(i) State the Director's intent to suspend payments and/or suspend approval of new enrollments and reenrollments unless the educational institution takes corrective action;

(ii) Give the reasons why the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments; and

(iii) State the date on which the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690(b))

(f) *Actions in cases indicating submission of false, misleading, or fraudulent claims or statements.* The Director of the VA facility of jurisdiction will take the following action, as indicated, that may be in addition to suspending payments or further approval of enrollments or reenrollments in a course or educational institution.

(1) If the Director has evidence indicating that an educational institution has willfully submitted a false or misleading claim, or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim, the Director will make a complete report of the facts of the case to the appropriate State approving agency and to the Office of Inspector General for appropriate action.

(2) If the Director believes that an educational institution has submitted a false, fictitious, or fraudulent claim or written statement within the meaning of the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812) or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim or made such a written statement, the Director will follow the procedures in part 42 of this title.

(Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801–3812; 38 U.S.C. 3034(a), 3241(a), 3690(d))

(g) *Referral to the Committee on Educational Allowances.* If the Director of the VA facility of jurisdiction suspends payment of educational assistance to, or suspends approval of the enrollment or reenrollment of, individuals in any course or courses as provided in paragraph (d) of this section, the Director will refer the matter to the Committee on Educational Allowances as provided in § 21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(h) *Withdrawal of referral to Committee on Educational Allowances.* (1) If, following a suspension of payments and/or of approval of enrollments or reenrollments, the Director of the VA facility of jurisdiction determines that the conditions which

justified the suspension have been corrected, and the State approving agency has not withdrawn or suspended approval of the course or courses, the Director may resume payments to and/or approval of enrollments or reenrollments of the affected veterans, servicemembers, reservists, or eligible persons. If the case has already been referred to the Committee on Educational Allowances under paragraph (g) of this section at the time such action is taken, the Director will advise the Committee that the original referral is withdrawn.

(2) If, following a referral to the Committee on Educational Allowances, the Director finds that the State approving agency will suspend or withdraw approval, the Director may, if otherwise appropriate, advise the Committee that the original referral is withdrawn.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

11. Section 21.4211 is added to read as follows:

§ 21.4211 Composition, jurisdiction, and duties of Committee on Educational Allowances.

(a) *Authority*. VA is authorized by 38 U.S.C. 3690 to discontinue educational benefits to veterans, servicemembers, reservists, or eligible persons when VA finds that the program of education or course in which such individuals are enrolled fails to meet any of the requirements of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part, or when VA finds an educational institution or training establishment has violated any such statute or regulation, or fails to meet any such statutory or regulatory requirement. Sections 21.4210 and 21.4216 implement that authority. This section provides for establishment of a Committee on Educational Allowances within each VA facility of jurisdiction whose findings of fact and recommendations will be provided to the Director of that VA facility, to whom such authority to discontinue educational benefits or disapprove enrollments or reenrollments has been delegated.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) *Purpose*. (1) The Committee on Educational Allowances is established to assist the Director of the VA facility of jurisdiction in reaching a conclusion as to whether, in a specific case, educational assistance to all individuals enrolled in any course or courses offered by the educational institution should be discontinued and, if appropriate, whether approval of all further enrollments or reenrollments in those courses should be denied to veterans, servicemembers, reservists, or other eligible persons pursuing those courses under programs administered by VA because a requirement of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part is not being met or a provision of such statute or regulation has been violated.

(2) The function of the Committee on Educational Allowances is to develop facts and recommend action to be taken on the basis of the facts found. A hearing before the Committee is not in the nature of a trial in a court of law. Instead, it is an administrative inquiry designed to create a full and complete record upon which a recommendation can be made as to whether the Director should discontinue payment of educational benefits and/or deny approval of new enrollments or reenrollments. Both the interested educational institution and VA Regional Counsel, or designee, representing VA, will be afforded the opportunity to present to the Committee any evidence, argument, or other material considered pertinent.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) *Jurisdiction*. The Committee on Educational Allowances will consider only those cases which are referred in accordance with §§ 21.4210(g) and 21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Committee members*. The Committee on Educational Allowances will consist of three employees of the VA facility of jurisdiction, at least one of whom is familiar with the adjudication of claims for benefits administered by the Veterans Benefits Administration. The Director of the VA facility of jurisdiction will designate a Chairperson. In the event that any member becomes unable to serve for any reason, the Director may appoint a replacement member. Before the Committee resumes its proceedings, the new member will be given an opportunity to apprise himself or herself of the actions and testimony already taken by the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) *Duties and responsibilities of the Committee*. (1) The function of the Committee on Educational Allowances is to make recommendations to the Director of the VA facility of jurisdiction in connection with specific cases referred for consideration as provided in §§ 21.4210(g) and 21.4212.

(2) The performance of this function will include:

(i) Hearing testimony or argument from witnesses or representatives of educational institutions and VA, as appropriate, when such persons appear personally before the Committee;

(ii) Receiving and reviewing all the evidence, testimony, briefs, statements, and records included in each case; and

(iii) Furnishing the Director of the VA facility of jurisdiction a written statement setting forth specifically the question or questions considered, a summation of the essential facts of record, recommendations as to issues referred for consideration by the Committee, and the basis therefor. In any case where there is not unanimity, both the majority and the minority views and recommendations will be furnished.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

12. Section 21.4212 is added to read as follows:

§ 21.4212 Referral to Committee on Educational Allowances.

(a) *Form and content of referral to Committee*. When the Director of the VA facility of jurisdiction refers a case to the Committee on Educational Allowances, as provided in § 21.4210(g), the referral will be in writing and will—

(1) State the approval, reporting, recordkeeping, or other criteria of statute or regulation which the Director has cause to believe the educational institution has violated;

(2) Describe the substantial pattern of veterans, servicemembers, reservists, or eligible persons receiving educational assistance to which they are not entitled which the Director has cause to believe exists, if applicable;

(3) Outline the nature of the evidence relied on by the Director in reaching the conclusions of paragraphs (a)(1) and (a)(2) of this section;

(4) Describe the Director's efforts to obtain corrective action and the results of those efforts; and

(5) Ask the Committee on Educational Allowances to perform the functions described in §§ 21.4211, 21.4213, and 21.4214 and to recommend to the Director whether educational assistance payable to individuals pursuing the courses in question should be discontinued and approval of new enrollments or reenrollments denied.

(b) *Notice of the referral*. (1) At the time of referral the Director will—

(i) Send notice of the referral, including a copy of the referral

document, by certified mail to the educational institution. The notice will include statements that the Committee on Educational Allowances will conduct a hearing; that the educational institution has the right to appear before the Committee and be represented at the hearing to be scheduled; and that, if the educational institution intends to appear at the hearing, it must notify the Committee within 60 days of the date of mailing of the notice;

(ii) Provide an information copy of the notice and referral document to the State approving agency of jurisdiction; and

(iii) Place a copy of the notice and referral document on display at the VA facility of jurisdiction for review by any interested party or parties.

(2) The Director will provide a copy of the notice and referral document to the VA Regional Counsel, or designee, of jurisdiction, who will represent VA before the Committee on Educational Allowances.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

13. Section 21.4213 is added to read as follows:

§ 21.4213 Notice of hearing by Committee on Educational Allowances.

(a) *Content of hearing notice.* In any case referred to the Committee on Educational Allowances for consideration, a hearing will be held. If, as provided in § 21.4212(b), the educational institution has timely notified the Committee of its intent to participate in the hearing, the educational institution will be notified by certified letter from the Chairperson of the date when the hearing will be held. This hearing notification will inform the educational institution of—

(1) The time and place of the hearing;

(2) The matters to be considered;

(3) The right of the educational institution to appear at the hearing with representation by counsel, to present witnesses, to offer testimony, to present arguments, and/or to submit a written statement or brief; and

(4) The complete hearing rules and procedures.

(b) *Expenses connected with hearing.* The notice also will inform the educational institution that VA will not pay any expenses incurred by the educational institution resulting from its participation in the hearing, including the expenses of counsel or witnesses on behalf of the educational institution.

(c) *Publication of hearing notice.* Notice of the hearing will be published in the **Federal Register**, which will constitute notice to any interested individuals, and will indicate that, while such individuals may attend and observe the hearing, they may not participate unless called as witnesses by VA or the educational institution.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034(a), 3241(a), 3690)

14. Section 21.4214 is added to read as follows:

§ 21.4214 Hearing rules and procedures for Committee on Educational Allowances.

(a) *Rule 1.* The Chairperson of the Committee on Educational Allowances will be in charge of the proceedings, will administer oaths or affirmations to witnesses, and will be responsible for the official conduct of the hearing. A majority of the members of the Committee will constitute a quorum. No party to the proceedings may conduct a voir dire of the Committee members.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) *Rule 2.* At the opening of the hearing, the Chairperson of the Committee on Educational Allowances will inform the educational institution of the purpose of the hearing, the nature of the evidence of record relating to the asserted failures or violations, and the applicable provisions of law and VA regulations. The Chairperson will advise the VA Regional Counsel, or designee, representing VA, that the Committee on Educational Allowances will entertain any relevant evidence or witnesses which VA Counsel presents to the Committee and which would substantiate a decision by the Committee to recommend that the Director of the VA facility of jurisdiction take an adverse action on the issues submitted for its review. The educational institution will be advised of its right to present any evidence, relevant to the issues submitted for the Committee's review, by oral or documentary evidence; to submit rebuttal evidence; to present and cross-examine witnesses; and to make such statements as may be appropriate on its behalf for a true and full disclosure of the facts. VA Counsel will be allowed to cross-examine any witnesses offered by the educational institution and to reply to any written briefs or arguments submitted to the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) *Rule 3.* Any testimony or evidence, either oral or written, which the Committee on Educational Allowances deems to be of probative value in deciding the question at issue will be admitted in evidence. While irrelevant, immaterial, or unduly repetitious evidence, testimony, or arguments should be excluded, reasonable latitude will be permitted with respect to the relevancy, materiality, and competency of evidence. In most instances the evidence will consist of official records of the educational institution and VA, and these documents may be attested to and introduced by affidavit; but the introduction of oral testimony by the educational institution or by VA will be allowed, as appropriate, in any instance where the educational institution or VA Counsel desires. VA, however, will neither subpoena any witness on behalf of the educational institution for such purposes nor bear any expenses in connection with the appearance of such witness. In instances where the evidence reasonably available consists of signed written statements, secondary or hearsay evidence, etc., such evidence may be introduced into the record and will be given the weight and consideration which the circumstances warrant.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Rule 4.* A verbatim stenographic or recorded transcript of the hearing will be made. This transcript will become a permanent part of the record, and a copy will be furnished to the educational institution and the VA Counsel at the conclusion of the proceeding, unless furnishing of the copy of the transcript is waived by the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) *Rule 5.* The Chairperson of the Committee on Educational Allowances will identify all exhibits in the order of introduction or receipt (numerically for VA exhibits and alphabetically for exhibits introduced by the educational institution). All such original exhibits or documents shall be attached to the original of the transcript. VA shall make photocopies or certified copies and attach them to the copy of the transcript furnished to the educational institution and the VA Counsel. The original transcript will accompany the Committee's recommendation to the Director of the VA facility of jurisdiction along with all exhibits, briefs, or written statements received by the Committee during the course of the proceedings. Such documents should be clearly marked to indicate which were received into evidence and relied upon by the Committee in making its recommendations.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(f) *Rule 6.* The Committee on Educational Allowances, at its discretion, may reasonably limit the number of persons appearing at the hearing, including any affected individuals presented as witnesses by VA or the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(g) *Rule 7.* Any person who is presented to testify will be required to be duly placed under oath or affirmation by the Chairperson of the Committee on Educational Allowances. If an official of the educational institution desires to present a statement personally, the individual will be required to be placed under oath or affirmation. The Chairperson will advise each witness that the Committee understands that he or she is voluntarily appearing before the Committee; that any testimony or statement given will be considered as being completely voluntary; and that no one has authority to require the individual to make any statement or answer any question against his or her will before the Committee, except that a person called as a witness on behalf of either VA or the educational institution must be willing to submit to cross-examination with respect to testimony given. Each witness will also be advised that his or her testimony or statement, if false, even though voluntary, may subject him or her to prosecution under Federal statutes.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(h) *Rule 8.* Any member of the Committee on Educational Allowances may question any witness presented to testify at the hearing or either a representative of the educational institution or the VA Counsel concerning matters that are relevant to the question at issue. Generally, questioning by a Committee member will be limited to the extent of clarifying information on the facts and issues involved.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(i) *Rule 9.* If the educational institution fails to timely notify the Committee of its intent to participate in a hearing or if a representative of the educational institution is scheduled to appear for a hearing but, without good cause, fails to appear either in person or by writing, the Committee will proceed with the hearing and will review the case on the basis of the evidence of record which shall be presented by the VA Counsel.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(j) *Rule 10.* Any objection by an authorized representative of the educational institution or the VA Counsel on a ruling by the Chairperson of the Committee on Educational Allowances regarding the admissibility of testimony or other evidence submitted will be made a matter of record, together with the substance in brief of the testimony intended or other evidence concerned. If the other evidence concerned is in the form of an affidavit or other document, it may be accepted for filing as a future reference if it is later ruled admissible as part of the record of the hearing.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(k) *Rule 11.* Objections relating to the jurisdiction or membership of the Committee on Educational Allowances or the constitutionality of statutes or the constitutionality of, or statutory authority for, VA regulations, are not before the Committee for decision. The time of the Committee will not be used to hear arguments in this regard. However, any such matters outside the province of the Committee may be the subject of a brief or a letter for consideration by the VA Office of General Counsel upon completion of the hearing. The ruling of such authority upon such issues will be obtained and included in the record before the Committee's recommendations are submitted to the Director of the VA facility of jurisdiction. If the VA General Counsel's ruling on such legal issues necessitates reopening the proceeding, that shall be done before the Committee makes its recommendations to the Director of the VA facility of jurisdiction.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(l) *Rule 12.* The hearing will be open to the public.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(m) *Rule 13.* The hearing will be conducted in an orderly manner with dignity and decorum. The conduct of members of the Committee on Educational Allowances, the VA Counsel, and any representatives of the educational institution shall be characterized by appropriate impartiality, fairness, and cooperation. The Chairperson of the Committee shall take such action as may be necessary, including suspension of the hearing or the removal of the offending person from the hearing room for misbehavior, disorderly conduct, or the persistent disregard of the Chairperson's ruling. Where this occurs, the Chairperson will point out that the Committee is entitled to every possible consideration in order that the case may be presented clearly and fully, which may be accomplished only through observance of orderly procedures.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(n) *Rule 14.* The Chairperson of the Committee on Educational Allowances will conduct the hearing proceedings in such a manner that will protect from disclosure information which tends to disclose or compromise investigative sources or methods or which would violate the privacy of any individual. The salient facts, which form the basis of charges, may be disclosed and discussed without revealing the source.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(o) *Rule 15.* At the close of the hearing, the Chairperson of the Committee on Educational Allowances shall inform the appropriate representative of the educational institution that the arguments and the evidence presented will be given careful consideration; and that notice of the decision of the Director of the VA facility of jurisdiction, together with the Committee's recommendations, will be furnished to the educational institution and the VA Counsel at the earliest possible time. The Chairperson will also indicate that notice of the Director's decision will be published in the **Federal Register** for the information of all other interested persons.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(p) *Rule 16.* In making its findings of facts and recommendations, the Committee on Educational Allowances will consider only questions which are referred to it by the Director of the VA facility of jurisdiction as being at issue and which are within the jurisdiction of the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

15. Section 21.4215 is added to read as follows:

§ 21.4215 Decision of Director of VA facility of jurisdiction.

(a) *Decision.* The Director of the VA facility of jurisdiction will render a written decision on the issue of discontinuance of payments of benefits and/or denial of further enrollments or reenrollments in the course or courses at the educational institution which was the subject of the Committee on Educational Allowances proceedings.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) *Basis of decision.* (1) The decision of the Director of the VA facility of jurisdiction will be based upon all admissible evidence of record, including—

(i) The recommendations of the Committee on Educational Allowances;

(ii) The hearing transcript and the documents admitted in evidence; and

(iii) The ruling on legal issues referred to appropriate authority.

(2) The decision will clearly describe the evidence and state the facts on which the decision is based and, in the event that the decision differs from the recommendations of the Committee on Educational Allowances, will give the reasons and facts relied upon by the Director in deciding not to follow the Committee majority's recommendations.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) *Correction of deficiencies.* If the Director of the VA facility of jurisdiction believes that the record provided for review is incomplete or for any reason should be reopened, before rendering a decision he or she will order VA staff to gather any additional necessary evidence and will notify the educational institution that it may comment upon the new evidence added. The Director will then notify the educational institution as to whether the matter will be resubmitted to the Committee on Educational Allowances for further proceedings, on the basis of the new circumstances. If the matter is referred back to the Committee, the Director will defer a decision until he or she has received the Committee's new recommendations based upon all of the evidence of record.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Effective date.* If the decision of the Director of the VA facility of jurisdiction is adverse to the educational institution, the decision shall indicate specifically the effective date of each adverse action covered by the decision.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) *Notification of decision.* (1) The Director of the VA facility of jurisdiction shall send a copy of the decision to the educational institution by certified mail, return receipt requested. A copy of the decision also will be provided by regular mail to the institution's legal representative of record, if any. If the decision is adverse to the educational institution, the Director will enclose a notice of the educational institution's right to have the Director, Education Service review the decision.

(2) The Director of the VA facility of jurisdiction will also send a copy of the decision to:

(i) The State approving agency; and

(ii) VA Counsel.

(3) The Director of the VA facility of jurisdiction shall post a copy of the decision at the VA facility of jurisdiction. A copy of the decision shall be published in the **Federal Register**.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

16. Section 21.4216 is added to read as follows:

§ 21.4216 Review of decision of Director of VA facility of jurisdiction.

(a) *Decision is subject to review by Director, Education Service.* A review by the Director, Education Service of a decision of a Director of a VA facility of jurisdiction to terminate payments or disapprove new enrollments or reenrollments, when requested by the educational institution, will be based on the evidence of record when the Director of the VA facility of jurisdiction made that decision. It will not be de novo in nature and no hearing on review will be held.

(b) *Authority of Director, Education Service.* The Director, Education Service has the authority to affirm, reverse, or remand the original decision. In the case of such a review, the reviewing official's decision, other than a remand, shall become the final Department decision on the issue presented.

(c) *Notice of decision of Director, Education Service is required.* Notice of the reviewing official's decision will be provided to the interested parties and published in the **Federal Register**, in the same manner as is provided in § 21.4215(e) for decisions of the Director of the VA facility of jurisdiction, for the information of all concerned.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

17. The authority citation for part 21, subpart G, is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, unless otherwise noted.

§ 21.5130 [Amended]

18. In § 21.5130, paragraphs (b) and (c) are removed, and paragraphs (d), (e), (f), and (g) are redesignated as paragraphs (b), (c), (d), and (e), respectively.

19. In § 21.5200, the introductory text is amended by removing ''in the same manner as they are applied in the administration of chapters 34 and 36''; paragraph (h) is removed; paragraph (j) is redesignated as paragraph (h); and paragraph (i) is revised and paragraphs (j), (k), (l), (m), (n), and (o) are added, to read as follows:

§ 21.5200 Schools.

* * * * *

(i) Section 21.4210—Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.

(j) Section 21.4211—Composition, jurisdiction and duties of Committee on Educational Allowances.

(k) Section 21.4212—Referral to Committee on Educational Allowances.

(l) Section 21.4213—Notice of hearing by Committee on Educational Allowances.

(m) Section 21.4214—Hearing rules and procedures for Committee on Educational Allowances.

(n) Section 21.4215—Decision of Director of VA facility of jurisdiction.

(o) Section 21.4216—Review of decision of Director of VA facility of jurisdiction.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

20. The authority citation for part 21, subpart K, is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

21. Section 21.7133 is revised to read as follows:

§ 21.7133 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034, 3690)

§ 21.7135 [Amended]

22. In § 21.7135, paragraph (i) introductory text and paragraph (i)(2) are amended by removing ''§ 21.4207'' and adding, in its place, ''§ 21.4211 (d) and (g)''; and paragraphs (i)(1), (j)(1), and (k)(1) are amended by removing ''§ 21.4134'' wherever it appears, and adding, in its place, ''§ 21.4210''.

23. In § 21.7158, the section heading, paragraph (b)(2), and the authority citation for paragraph (b) are revised, to read as follows:

§ 21.7158 False, late, or missing reports.

* * * * *

(b) * * *

(2) If an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove that institution's or establishment's courses for further enrollments and may discontinue educational assistance to veterans and servicemembers already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034, 3690)

Subpart L—Educational Assistance for Members of the Selected Reserve

24. The authority citation for part 21, subpart L, is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

§ 21.7624 [Amended]

25. Section 21.7624(b) is amended by removing ''21.4202(b)'' and adding, in its place, ''21.4210(b)''.

26. Section 21.7633 is revised to read as follows:

§ 21.7633 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 10 U.S.C 16136(b); 38 U.S.C. 3690)

§ 21.7635 [Amended]

27. In § 21.7635, the introductory text of paragraph (e) is amended by removing ''§ 21.4207 of this part'', and adding, in its place, ''§ 21.4211 (d) and (g)''; paragraph (e)(2) is amended by removing ''§ 21.4207 of this part'', and adding, in its place, ''§ 21.4211 (d) and (g)''; and paragraphs (e)(1), (f)(1), and (g)(1) are amended by removing ''§ 21.4134 of this part'' wherever it appears, and adding, in its place, ''§ 21.4210''.

28. In § 21.7658, paragraph (b)(1) introductory text is amended by removing ''negligent'' and adding, in its place, ''negligent:''; paragraph (b)(1)(i) is amended by removing ''institution of higher learning to report,'' and adding, in its place, ''educational institution to report'' and by removing ''reservist,'' and adding, in its place, ''reservist;''; paragraph (b)(1)(ii) is amended by removing ''§ 21.7644(b) of this part'' and adding, in its place, ''§ 21.7644(c)''; and the section heading, the heading of paragraph (b), and paragraph (b)(2) are revised to read as follows:

§ 21.7658 False, late, or missing reports.

* * * * *

(b) *Educational institution or training establishment.* * * *

(2) If an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove that institution's or establishment's courses for further enrollments and may discontinue educational assistance to reservists already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3690)

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5883–9]

40 CFR Part 55

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Ventura County Air Pollution Control District (Ventura County APCD) is the designated COA. The intended effect of approving the OCS requirements for the above District, contained in the Technical Support Document, is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before September 29, 1997.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XV, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rules and copies of the document EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XV. This docket is available for public inspection and copying Monday-Friday during regular business hours at the following locations:

EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XV, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XV, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to section 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under section 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by a local air pollution control agency.

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) or certain requirements of the Act.

Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the following rule revisions submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make them applicable to OCS sources for which Ventura County APCD is designated as the COA:

Rule 42 Permit Fees (Adopted 4/15/97)

Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)

III. Administrative Requirements

A. Executive Order 12866

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.

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

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

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 States, local, or tribal OCS 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 55

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

Dated: August 19, 1997.

Felicia Marcus,

Regional Administrator.

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

PART 55—[AMENDED]

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

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

2. Section 55.14 is proposed to be amended by revising paragraph (e)(3)(ii)(H) to read as follows:

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

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to CFR Part 55 is proposed to be amended by revising paragraph (b)(8) under the heading ''California'' to read as follows:

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

* * * * *

California

* * * * *

(b) * * *

* * * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 4/9/96)

Rule 5 Effective Date (Adopted 5/23/72)

[2] Each COA delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Appendix II–B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 4/15/97)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter—Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter—Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 9/10/96)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 8/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 7/9/96)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_X (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 6/13/95)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 3/14/95)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)

* * * * *

[FR Doc. 97–22950 Filed 8–27–97; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090–AA63

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior's Office of Hearings and Appeals is proposing to amend its rules to provide that, except as otherwise provided by law or other regulation, a decision will be stayed, if it is appealed, until there is a dispositive decision on the appeal.

DATES: Comments are due on or before September 29, 1997.

ADDRESSES: Send written comments to Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203. Comments received will be available for inspection during regular business hours (9 a.m. to 5 p.m.) in the Office of the Director, Office of Hearings and Appeals, 11th Floor, 4015 Wilson Blvd., Arlington, VA. Persons wishing to inspect comments are requested to call in advance at 703–235–3810 to make an appointment.

FOR FURTHER INFORMATION CONTACT: James L. Byrnes, Chief Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: 703–235–3750.

SUPPLEMENTARY INFORMATION: The Department of the Interior (Department) proposes to amend the regulation contained at 43 CFR 4.21. The regulation now provides that, except as provided by law or other pertinent regulation, anyone who appeals a decision of an authorized officer may request a stay of that decision pending completion of administrative review by the Office of Hearings and Appeals (OHA) at the time the appeal is filed. If a stay is not requested, the decision goes into effect the day after the time in which a party adversely affected may file a notice of appeal. If a stay is requested, the decision is stayed automatically for an additional 45 days while the Director of OHA or an appeals board considers the request for a stay. If the Director or board denies the stay or fails to act on the petition within these 45 days, the decision goes into effect. Only if the stay request is granted is the effect of the decision stayed while the appeal is pending.

The current regulation was adopted on January 19, 1993. 58 FR 4942 (1993). Prior to that regulation all decisions subject to section 4.21, except as provided in other pertinent regulations, were stayed pending a decision on appeal unless placed into effect by the Director of OHA or an appeals board.

Based on experience with the 1993 amendment to section 4.21, the Department proposes to amend the rule to provide that some decisions should be stayed automatically pending a decision on appeal, rather than requiring an appellant to file a stay request and requiring an appeals board to issue a decision or order on the stay petition. This would be particularly appropriate when it is in the interest of both the Government and the appellant to have the decision stayed pending appeal. For example, in instances where the Department takes an enforcement action against a party who has an asserted property interest of some kind, such as a lessee or mining claimant, the action would best be stayed while an appeal is pending if the lessee's or claimant's activity is not endangering health, safety, or the environment. Staying such as action would prevent the Department from taking an enforcement action which may be reversed on appeal. It also would permit an appellant from going directly to district court.

This proposed regulation would automatically stay decisions when appealed unless otherwise provided by law or regulation. The rule would also provide a means for parties to petition OHA to place a decision stayed by this rule into effect. Finally, the rule would allow appellants to petition for a stay of a decision which is in effect under a regulation in Title 30 or Title 43 of the Code of Federal Regulations unless that regulation specifically provides that section 4.21 does not apply.

It has been the Department's experience that the 1993 amendment to section 4.21 has caused a significant paperwork burden on OHA. The amendment has led to large numbers of stay requests which have had the adverse effect of slowing adjudication of other appeals, and of having more recent appeals to OHA decided before older pending appeals where stays were not requested. This revision of section 4.21 would speed up the adjudication of appeals and reduce the paperwork burden on appellants and OHA.

This proposed revision is undertaken in conjunction with an effort by the Bureau of Land Management (BLM) to review and consolidate various appeal and protest regulations contained in title 43 of the CFR. On October 17, 1996, the Department of the Interior published a proposed rule to amend 43 CFR Part 1840, 61 FR 54120 (1996), which deals with appeals procedures for BLM. If this proposed amendment to section 4.21 is published in final, the Department may consider amending the proposed rule for 43 CFR Part 1840 by revising section 1844.11(a)(1) to state that, except as provided in later paragraphs of that section, if an adversely affected party appeals a decision, the decision will be stayed under the new 43 CFR 4.21. Section 1844.11(b) in the proposed rule for part 1840 lists specific regulations that would continue to be excepted from the stay-pending-appeal rule proposed here.

Executive Order 12866

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, accordingly, is not subject to review by the Office of Management and Budget.

National Environmental Policy Act

The Department has determined that this proposed rule will have no significant effect on the quality of the human environment and will not involve unresolved conflicts concerning alternative uses of resources.

This rule is categorically excluded from environmental review under section 102(2)(c) of the National Environmental Policy Act on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

Paperwork Reduction Act

This proposed rule contains no information collection requirements subject to OMB approval under 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

This proposed rule does not pose any takings implications requiring preparation of a Takings Implication Assessment under Executive Order No. 12630 of March 15, 1988.

The Regulatory Flexibility Act

This proposed rule does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act because the rule relates to agency procedure. 5 U.S.C. 601 *et seq.*

Unfunded Mandates Reform Act of 1995

This proposed rule will not impose an unfunded mandate of $100 million or more in any given year on local, tribal, and State governments in the aggregate, or on the private sector in accordance with the Unfunded Mandates Reform Act. 2 U.S.C. 1501 *et seq.*

Drafting Information

The primary author of this proposed rule is James L. Byrnes, Chief Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure and public lands.

For the reasons set forth in the preamble, the Department of the Interior proposes to amend 43 CFR 4.21 as described below.

1. The authority citation for part 4 continues to read as follows:

Authority: R.S. 2478, *as amended,* 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.21 is amended by revising paragraphs (a) and (c) to read as follows:

§ 4.21 General provisions.

(a) *Effect of decision pending appeal.* Except as otherwise provided by law or regulation:

(1) A decision will not be effective during the time in which a party adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending a decision on the appeal. However, any party or agency official may request, in writing, that the Director or an Appeals Board place the decision, or any part of it, into effect immediately when the public interest requires.

(2) An appellant may petition for a stay of a decision which is in effect under a regulation in this title or Title 30. The stay request may be filed during the time in which a notice of appeal may be filed. The stay request must be filed with the Director or an Appeals Board in accordance with the standards in paragraph (b)(1) and (b)(2) of this section.

* * * * *

(c) *Exhaustion of administrative remedies* No decision that at the time of its issuance is subject to appeal to the Director or an Appeals Board will be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless it has been made effective pending a decision on appeal under paragraph (a)(1) of this section or other applicable regulations.

Dated: August 19, 1997.

Robert J. Lamb,

Acting Assistant Secretary—Policy, Management and Budget.

[FR Doc. 97–22891 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–RK–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7226]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
California	Butte County and Incorporated Areas.	Big Chico Creek	At Bidwell Avenue extended, approximately 6,400 feet downstream of Rose Avenue.	None	*158
			At diversion structure footbridge, approximately 1,700 feet upstream of Manzanita Avenue.	None	*266
		Lindo Channel	Approximately 2,000 feet downstream of Nord Avenue.	None	*168
			Just upstream of Manzanita Avenue	None	*254
			Just upstream of diversion weir dividing flow from creek diversion channel.	None	*269
		Mud Creek	At Nord Highway	None	*163
			At confluence with Sycamore Creek, approximately 150 feet upstream of Highway 99 northbound.	None	*175
		Mud Creek Diversion Channel.	At confluence with Sycamore Creek, approximately 1,400 feet upstream of Cohasset Road.	None	*192
			Approximately 2,850 feet upstream of Wildwood Avenue.	None	*272
		Sycamore Creek	At confluence with Mud Creek, approximately 150 feet upstream of Highway 99 northbound.	None	*175
			Just downstream of Cohasset Road	None	*190
			Approximately 5,900 feet upstream of Mud Creek Diversion Channel.	None	*234
		Butte Creek	Approximately 2,550 feet downstream of Aguas Frias Road.	None	*104
			Approximately 200 feet downstream of Skyway.	None	*243
			Just upstream of Skyway	*246	*246
		Butte Creek-Right Overbank Flooding.	At intersection of Aguas Frias Road and the alignment of Nelson Road and Butte-Glenn County line.	None	*97
			At Bruce Lane, approximately 4,000 feet south of its intersection with Hegan Lane.	None	*190
		Butte Creek-Left Overbank Flooding.	At downstream limit of detailed study in the inside area of levees.	None	*94
			On Durnel Drive, just north of Hamlin Slough levees.	None	*123
			Just downstream of Highway 99	None	*215
		Hamlin Slough	At confluence with Butte Creek	None	*119
			Approximately 6,000 feet upstream of Esquon Road.	None	*145
			At Oroville-Chico Highway (Zone AO)	None	#1
		Little Chico-Butte Diversion Channel.	At a low water crossing, approximately 950 feet downstream of an abandoned railroad.	None	*226
			Just downstream of diversion structure	None	*297
		Comanche Creek	Approximately 14,750 feet downstream of Crouch Road.	None	*123
			Just downstream of Highway 99	None	*216
		Little Chico Creek	Approximately 5,840 feet downstream of a wooden bridge approximately 4,400 feet downstream of Alberton Avenue.	None	*124
			Approximately 3,750 feet upstream of Stilson Canyon Road.	None	*344

Maps are available for inspection at the Butte County Library, 1108 Sherman Avenue, Chico, California.

Send comments to The Honorable John Blacklock, Chief Administrative Officer, Butte County Administrative Department, 25 County Center Drive, Oroville, California 95965.

Maps are available for inspection at Merriam Library, California State University, Chico, California.

Send comments to Mr. Tom Lando, City Manager, City of Chico, 411 Main Street, Chico, California 95928.

Maps are available for inspection at the City of Oroville Public Works Department, City Hall, 1735 Montgomery Street, Oroville, California.

Send comments to The Honorable Dennis Diver, Mayor, City of Oroville, 1735 Montgomery Street, Oroville, California 95965.

	Gilroy (City) Santa Clara County.	Uvas Creek East Overbank Above Highway 101.	Just above Highway 101	None	*186
			Approximately 2,000 feet upstream of Highway 101.	*190	*192

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
		West Branch Llagas Creek.	Approximately 500 feet upstream of Golden Gate Avenue.	*231	*232
		West Branch Llagas Creek, East Split.	Approximately 300 feet north of Day Road.	#1	*222
			Approximately 500 feet north of Golden Gate Avenue.	#1	*232
		Uvas Creek East Overbank Above SPRR.	Ponding north of Bolsa Road between the Southern Pacific Railroad and Uvas Creek.	None	*175
			Just south of intersection of Monterey Highway and the Southern Pacific Railroad.	None	*187
Maps are available for inspection at the City of Gilroy City Hall, 7351 Rosanna Street, Gilroy, California.					
Send comments to Mr. Jay Baska, City Administrator, City of Gilroy, 7351 Rosanna Street, Gilroy, California 95020.					
	Morgan Hill (City) Santa Clara County.	Madrone Channel	Approximately 300 feet downstream of East Dunne Avenue.	None	*353
			Just downstream of Cochran Road	None	*378
		Tennant Creek	Approximately 0.5 mile downstream of Fountain Oaks Drive.	None	*347
			Approximately 0.25 mile upstream of Fountain Oaks Drive.	None	*361
		Watsonville Road Overflow.	At convergence with Llagas Creek	#1	*303
			West of El Camino Real and 400 feet south of Watsonville Road.	#1	*319
		West Little Llagas Creek ..	Approximately 3,000 feet downstream of Monterey Highway.	*310	*316
			Just upstream of Watsonville Road	*318	*321
			Along Del Monte Avenue, 1,000 feet north of Wright Avenue.	None	*352
			Approximately 1,800 feet upstream of Llagas Road.	*384	*384
Maps are available for inspection at the City of Morgan Hill Public Works Department, 100 Edes Court, Morgan Hill, California.					
Send comments to The Honorable Dennis Kennedy, Mayor, City of Morgan Hill, 17555 Peak Avenue, Morgan Hill, California 95037.					
	Santa Clara County (Unincorporated Areas).	Alamitos Creek	At projection of Pfeiffer Court across Graystone Lane.	*258	*260
			At confluence of Arroyo Calero	*283	*283
		East Little Llagas Creek ...	At confluence with Llagas and Church Creeks.	*248	*248
			Just upstream of Middle Avenue	None	*304
		Madrone Channel	At confluence with East Little Llagas Creek.	None	*305
			Approximately 2,000 feet upstream of East Main Avenue.	None	*369
		San Tomas Aquino Creek	At intersection of Davis and Gianera Streets.	None	*15
			At intersection of Fillmore and North Fourth Streets.	None	*17
		Tennant Creek	At confluence with East Little Llagas Creek.	None	*288
			Just upstream of Middle Avenue	None	*308
			Approximately 1,500 feet upstream of Tennant Avenue.	None	*346
		Uvas Creek	Just above the Southern Pacific Railroad	None	*174
			Just upstream of Hecker Pass Highway (Highway 152).	None	*246
			Just below Uvas Reservoir	None	*398
		Watsonville Road Overflow.	Just downstream of Watsonville Road	#1	*320
			At confluence with Llagas Creek	*303	*303
		West Branch Llagas Creek.	Just upstream of Day Road	*221	*221
			Along Turlock Avenue between Highland Avenue and Fitzgerald Road.	None	#1
			Approximately 2,500 feet upstream of Coolidge Avenue.	None	*291
		West Little Llagas Creek ..	Just upstream of Highway 101	*303	*305

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
			Just downstream of Monterey Highway ...	*314	*316
		Calabazas Creek	Approximately 600 feet downstream of Prospect Road.	*290	*290
			Just downstream of Prospect Road	*300	*297
		Middle Avenue Overflow (from West Little Llagas Creek).	At confluence with Llagas Creek just north of San Martin Avenue.	None	*283
			At intersection of Middle and Murphy Avenues.	#1	*305
		West Branch Llagas Creek-Upper Split.	Approximately 1,000 feet west of Coolidge Avenue.	None	*278
			At Harding Avenue, 500 feet north of intersection with Highland Avenue.	None	*267
		Uvas Creek (South Split)	Just north of Bloomfield Avenue between Monterey Highway and the Southern Pacific Railroad.	None	*166
			Approximately 3,000 feet north of Bloomfield Avenue between Monterey Highway and the Southern Pacific Railroad.	None	*179
Maps are available for inspection at the Santa Clara County Department of Land Use and Development, Central Permit Office, 70 West Hedding Street, San Jose, California.					
Send comments to The Honorable Ron Gonzales, Chairperson, Santa Clara County Board of Supervisors, 70 West Hedding Street, Tenth Floor, San Jose, California 95110.					
Louisiana	Calcasieu Parish (Unincorporated Areas).	Belfield Lateral	Approximately 2,000 feet upstream of Joe Miller Road.	*23	*24
			At the intersection of Stafford and Park Roads.	*23	*24
Maps are available for inspection at 1015 Pithon Street, Lake Charles, Louisiana.					
Send comments to The Honorable Allen August, Parish President, Calcasieu Parish Police Jury, 1015 Pithon Street, Lake Charles, Louisiana 70602.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: August 15, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–22943 Filed 8–27–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 96–98, FCC 97–295]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Further Notice of Proposed Rulemaking (Further NPRM) seeking comment on whether requesting carriers may use unbundled shared transport facilities in conjunction with unbundled switching, to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service. We also seek comment on whether similar use restrictions may apply to the use of unbundled dedicated transport facilities. The Commission's goal is to increase competition in the local exchange and exchange access market.

DATES: Comments are due on or before October 2, 1997 and Reply Comments are due on or before October 17, 1997. Written comments by the public on the proposed and/or modified information collections are due October 2, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before October 27, 1997.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St. NW., Washington, DC 20036. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street NW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Kalpak Gude, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Further NPRM contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking adopted and released August 18, 1997 (FCC 97–295). The full text of this Further NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St. NW., Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common

Carrier/Orders/fcc97295.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Further Notice of Proposed Rulemaking

I. Further Notice of Proposed Rulemaking

A. Discussion

1. In the *Local Competition Order* (61 FR 45476 (August 29, 1996)), we did not condition use of network elements on the requesting carrier's provision of local exchange service to the end-user customer. We recognized, however, that, as a practical matter, a requesting carrier using certain network elements would be unlikely to obtain customers unless it offered local exchange service as well as exchange access service over those network elements. In particular, we found that local loops are dedicated to the premises of a particular customer. Therefore, we stated that a requesting carrier would need to provide all services requested by the customer to whom the local loops are dedicated, and that, as a practical matter, requesting carriers usually would need to provide local exchange service over any unbundled local loops that it purchases under section 251(c)(3). We similarly held in our *Order on Reconsideration* (61 FR 52706 (October 8, 1996)) that the unbundled switch, as defined in the *Local Competition Order*, includes the line card, which is typically dedicated to a particular customer. We concluded that:

> Thus, a carrier that purchases the unbundled switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end user. A practical consequence of this determination is that the carrier that purchases the local switching element is likely to provide all available services requested by the customer served by that switching element, including switching for local exchange and exchange access.

2. Neither of the petitions for reconsideration expressly asked the Commission to determine whether requesting carriers may purchase shared transport facilities under section 251(c)(3) of the Act to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service. Moreover, the oppositions and replies to the two petitions for reconsideration, as well as the *ex partes*, focused on the issue of whether requesting carriers may use unbundled shared transport facilities, in conjunction with unbundled switching, to compete in the local exchange market. In fact, the issue of whether requesting carriers may purchase unbundled shared transport facilities to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service was specifically addressed only in two recent *ex parte* submissions. In order to develop a complete record on this issue, we issue this further notice of proposed rulemaking specifically asking whether requesting carriers may use unbundled dedicated or shared transport facilities in conjunction with unbundled switching, to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service. Absent restrictions requiring carriers to provide local exchange service in order to purchase unbundled shared or dedicated transport facilities, an IXC, for example, could request shared or dedicated transport under section 251(c)(3) for purposes of carrying originating interstate toll traffic between an incumbent LEC's end office and the IXC's point of presence (POP). Likewise, an IXC could request such transport network elements for purposes of terminating interstate toll traffic from its POP to an incumbent LEC's end office. Parties that advocate the use of transport network elements for the transmission of such access traffic should address whether that approach is consistent with our *Order on Reconsideration* regarding the use of the unbundled local switching element to provide interstate access service as well as recent appellate court decisions interpreting section 251(c)(2) and (3). Parties that advocate restricting the use of transport network elements should address whether such restrictions are consistent with section 251(c)(3) of the Act, which requires an incumbent LEC to provide access to unbundled network elements ''for the provision of a telecommunications service.'' Moreover, those parties should also address the technical feasibility of requiring an IXC to identify terminating toll traffic that is destined for customers that are not local exchange customers of the incumbent LEC.

B. Procedural Matters

1. Ex Parte Presentations

3. This *Further NPRM* is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required.

2. Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking (Further NPRM).* Written public comments are requested on the IRFA. These comments must be filed by the deadlines for comment on the remainder of the *Further Notice*, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *Further NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA, 5 U.S.C. § 603(a).

5. *Need for and Objectives of the Proposed Rules.* We seek comment on whether requesting carriers may use unbundled shared transport facilities in conjunction with unbundled switching, to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service. We also seek comment on whether similar use restrictions may apply to the use of unbundled dedicated transport facilities. We propose no new rules at this time. In light of comments received in response to the *Further NPRM*, we might issue new rules.

6. *Legal Basis.* The legal basis for any action that may be taken pursuant to the Further Notice is contained in Sections 1, 2, 4, 201, 202, 274, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 202, 274, and 303(r).

7. *Description and Estimate of the Number of Small Entities That May Be Affected by the Further Notice of Proposed Rulemaking.* In determining the small entities affected by our *Further NPRM* for purposes of this Supplemental FRFA, we adopt the analysis and definitions set forth in the FRFA in our *First Report and Order* (61 FR 45476 (August 29, 1996)). The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act. 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 SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees. Consistent with our FRFA and prior practice, we here exclude small incumbent local exchange carriers (LECs) from the definition of ''small entity'' and ''small business concern.'' While such a company may have 1,500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field of operations or are not independently owned and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this present analysis and use the term ''small incumbent LECs'' to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

8. In addition, for purposes of this IRFA, we adopt the FRFA estimates of the numbers of telephone companies, incumbent LECs, and competitive access providers (CAPs) that might be affected by the *First Report and Order.* In the FRFA, we determined that it was reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that might be affected. We further estimated that there are fewer than 1,347 small incumbent LECs that might be affected. Finally, we estimated that there are fewer than 30 small entity CAPs that might qualify as small business concerns.

9. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* It is probable that any rules issued pursuant to the Further NPRM would not change the projected reporting, recordkeeping, or other compliance requirements already adopted in this proceeding.

10. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Alternatives Considered.* As stated in our FRFA, we determined that our decision to establish minimum national requirements for unbundled elements would likely facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. National requirements for unbundling may allow new entrants, including small entities, to take advantage of economies of scale in network design, which may minimize the economic impact of our decision in the *First Report and Order.* This finding has not been challenged. We do not believe that any rules that may be issued pursuant to the *Further NPRM* will change this finding. We seek comment on this tentative conclusion.

11. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

3. Comment Filing Procedures

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before October 2, 1997, and reply comments on or before October 17, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C., 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C., 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., 20554.

13. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's Rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

14. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to, and not a substitute for, the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

15. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C., 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C., 20503 or via the Internet to fain__t@al.eop.gov.

II. Ordering Clauses

16. *It is further ordered,* that the Commission shall send a copy of this Third Order on Reconsideration and Further Notice of Proposed Rulemaking, including the associated Supplemental Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

17. *It is further ordered* that pursuant to sections 1, 2, 4, 201, 202, 274 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 202, 274, and 303(r), the further notice of proposed rulemaking is adopted.

List of Subjects in 47 CFR Part 51

Communications common carriers, Network elements, Transport and termination.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–22733 Filed 8–27–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–96–41; USDOT Docket No. FHWA–97–2289]

RIN 2125–AE05

Public Meeting To Discuss the Development of the North American Standard for Protection Against Shifting or Falling Cargo

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FHWA is announcing a public meeting concerning the development of the North American Standard for Protection Against Shifting or Falling Cargo. The meeting will be held on September 27, 1997, at the Renaissance Denver Hotel in Denver, Colorado. The meeting will begin at 9:00 a.m. and end at 5:00 p.m. The meeting will include a review of the most recent version of the North American Standard for Protection Against Shifting or Falling Cargo and a review of cargo securement research recently conducted by certain industry groups.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On October, 17, 1996, the FHWA published an advance notice of proposed rulemaking (ANPRM) concerning the development of the North American Standard for Protection Against Shifting or Falling Cargo (61 FR 54142). The ANPRM indicated that the FHWA is considering proposing amendments to its regulations concerning cargo securement requirements for commercial motor vehicles engaged in interstate commerce. Specifically, the agency is considering adopting new cargo securement guidelines that will be based upon the results of a multi-year comprehensive research program to evaluate current regulations and industry practices. The FHWA requested comments on the process to be used in developing the cargo securement guidelines.

Standard Development Process

The preliminary efforts at developing the North American Standard for Protection Against Shifting or Falling Cargo are currently being managed by a drafting group. The drafting group is developing a model set of cargo securement guidelines based upon the results from the multi-year research program. Membership in the drafting group includes representatives from the FHWA, Transport Canada, the Canadian Council of Motor Transport Administrators (CCMTA), the Ontario Ministry of Transportation, the Quebec Ministry of Transportation—Ontario and Quebec are conducting most of the research—and the Commercial Vehicle Safety Alliance (CVSA).

The meeting on September 27 is a follow-up to the May 3, 1997, public meeting and is intended to serve as part of a process for further developing the guidelines. A notice announcing the May 3, 1997, meeting was published in the **Federal Register** on April 21, 1997 (62 FR 19252). The September 27 meeting will involve a review of the work completed to date by the drafting group and the results of research recently completed by certain industry groups. The meeting is open to all interested parties. This process is intended to ensure that all interested parties have an opportunity to participate in the development of the guidelines, and to identify and consider the concerns of the Federal, State, and Provincial governments, carriers, shippers, industry groups, and associations as well as safety advocacy groups and the general public.

For individuals and groups unable to attend the meeting, the FHWA will publish the draft standard in the **Federal Register**. Further, the CCMTA has posted information on the INTERNET. The website is: *http://www.ab.org/ccmta/ccmta.html.*

With regard to future rulemaking notices, the FHWA will publish a separate notice concerning its review of the docket comments sent in response to the ANPRM. That notice will summarize the comments and identify any issues that warrant reconsideration of the standard development process.

Meeting Information

The meeting will be held on September 27, 1997, at the Renaissance Denver Hotel, 3801 Quebec Street, Denver, Colorado. The meeting is scheduled from 9:00 a.m. to 5:00 p.m. and is part of the Commercial Vehicle Safety Alliance's 1997 Annual Conference. Attendance for the cargo securement meeting is free of charge and open to all interested parties. However, anyone interested in attending any other session or committee meeting of the CVSA's 1997 Annual Conference must register with the CVSA and pay the appropriate registration fee. For further information about registration for other sessions or meetings of the CVSA's 1997 Annual Conference please contact the CVSA at (301) 564–1623.

The FHWA notes that since the CVSA's 1997 Annual Conference is being held at the Renaissance Denver Hotel, the availability of guest rooms at the hotel is very unlikely. Therefore, those needing hotel accommodations should attempt to make reservations at other hotels in the vicinity.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

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

Issued on: August 22, 1997.

John F. Grimm,

Acting Associate Administrator for Motor Carriers.

[FR Doc. 97–22859 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 630, 644 and 678

[I.D. 080597G]

Atlantic Tuna; Atlantic Swordfish; Atlantic Billfish; Atlantic Shark Fisheries

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

ACTION: Notice of intent to prepare two Environmental Impact Statement (EIS) documents, Fishery Management Plan (FMP) and FMP amendment documents; notice of receipt of petitions for rulemaking; and request for written comments.

SUMMARY: NMFS announces its intent to prepare two EIS documents to assess the impacts of potential future management options on the natural and human environment for the Atlantic tuna, Atlantic swordfish, and Atlantic shark fisheries and the Atlantic billfish fishery. NMFS also intends to prepare FMP and/or FMP amendment documents for Atlantic tunas, swordfish, sharks, and billfish to

address new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and, in the case of any species identified as overfished, develop rebuilding programs. The purpose of this notice is to: inform the interested public of the intent to prepare these EIS and FMP documents; provide information on new fishery management requirements of the Magnuson-Stevens Act, as amended; announce that NMFS is considering measures for the 1998 Atlantic tunas, Atlantic swordfish, Atlantic shark, and Atlantic billfish fisheries; announce the receipt of two petitions for rulemaking for Atlantic billfish; and request public comments on issues that NMFS should consider in preparing the EIS and FMP documents for the Atlantic tuna, Atlantic swordfish, Atlantic shark, and Atlantic billfish fisheries. Scoping meetings for the EIS and the FMP documents will be scheduled at a later date.

DATES: Public comments must be received on or before October 27, 1997. Public meetings will be announced at a later date.

ADDRESSES: Comments on the proposal to prepare two EISs and the FMP documents should be sent to: Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Liz Lauck or Jill Stevenson, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic tunas, swordfish, and billfish fisheries are managed under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The Magnuson-Stevens Act authorizes the Secretary of Commerce (Secretary) to prepare FMPs and FMP amendments for the highly migratory species (HMS) that require conservation and management within the geographical area of one or more of the following Fishery Management Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council. This includes Atlantic tunas, swordfish, sharks, and billfish. Furthermore, the Magnuson-Stevens Act requires the Secretary to develop a rebuilding program for each species identified as overfished. The ATCA authorizes the Secretary to issue regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue these regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA.

The Atlantic swordfish fishery is managed under the FMP for Atlantic Swordfish, and its implementing regulations published September 18, 1995, and found at 50 CFR part 630 issued under the authority of the Magnuson-Stevens Act and the ATCA. Regulations issued under the authority of ATCA carry out the recommendations of the ICCAT.

The fishery for Atlantic sharks is managed under the FMP prepared by NMFS under authority of section 304(g) of the Magnuson-Stevens Act, as amended, and implemented by regulations found at 50 CFR part 678. The previous Notice of Intent to prepare an EIS for the Atlantic shark fishery (62 FR 27585, May 20, 1997) is herein incorporated into this Notice of Intent to prepare an EIS for the Atlantic tunas, Atlantic swordfish, and Atlantic shark fisheries.

The Atlantic billfish fishery is managed under the FMP for Atlantic Billfish, and its implementing regulations published September 28, 1988, and found at 50 CFR part 644 under the authority of the Magnuson-Stevens Act. Recently, NMFS received two petitions for rulemaking to revise the FMP for Atlantic Billfish and its implementing regulations. These petitions seek amendments to the FMP and its implementing regulations that would: (1) Eliminate unnecessary and burdensome paperwork requirements; (2) improve data collection and monitoring of harvests; (3) minimize the economic incentives for recreational fishers to target overfished marlin stocks; and (4) identify blue and white marlin as overfished species. The first three issues, as well as new requirements of the Magnuson-Stevens Act, will be addressed by NMFS in coordination with the Billfish Advisory Panel. Resolution of the fourth issue depends largely on agency action based on the final rule concerning the NMFS National Standard Guidelines that address overfishing and overfished stocks. This rule has been proposed (62 FR 41907, August 4, 1997) and will be finalized this October. Also this fall, NMFS will submit a list of overfished fisheries to Congress. Once a fishery is identified as overfished, NMFS has 1 year to develop an FMP or amendment to address overfishing and rebuilding.

Magnuson-Stevens Act Requirements

On September 27, 1996, Congress passed the Sustainable Fisheries Act (SFA), Public Law 104–297, which amended the Magnuson Fishery Conservation and Management Act (and renamed it the Magnuson-Stevens Fishery Conservation and Management Act). The SFA was signed into law on October 11, 1996. It contains several changes that affect the management and management processes of marine fisheries by the Secretary. Specifically, by October 11, 1998, all FMPs, FMP amendments, and FMP regulations must be amended, where necessary, to include: Reporting methods to identify the type and amount of bycatch or bycatch mortality; identification and use of data on commercial, recreational, and charter fishing components of the fishery; description and identification of Essential Fish Habitat (EFH), minimization to the extent practicable of adverse impacts caused by fishing on EFH, and identification of actions that will encourage conservation of EFH; and assessment of the impact of FMP measures on the fishing community. Additionally, each FMP must contain specific criteria regarding overfishing including: Specification of elements for identifying whether a fishery is overfished and measures to prevent overfishing; measures to rebuild overfished stocks and to ensure that, if deemed necessary, restrictions are equitably distributed among user groups; and measures to minimize mortality in recreational catch and release programs. Note that these are some, but not all, of the new requirements of the SFA. Refer directly to the Act for details.

Management Measures Under Consideration

NMFS will consider additional measures for 1998 and beyond for managing the Atlantic tuna, Atlantic swordfish, Atlantic shark, and Atlantic billfish fisheries. These measures will constitute, in part, long-term rebuilding programs for any fisheries identified as overfished and may include commercial quotas, recreational bag limits, commercial trip limits, minimum size restrictions, time/area closures, regional quotas, consistency between state and Federal regulations, gear restrictions, limited access, and permitting and reporting requirements. Consistent with the amended Magnuson-Stevens Act, NMFS is establishing advisory panels (APs) to assist in the development of FMPs and FMP amendments for Atlantic tunas, swordfish, sharks, and billfish. The HMS AP will assist NMFS

in developing a single FMP that will establish a management plan for Atlantic tunas and will amend the existing plans for Atlantic swordfish and Atlantic sharks. The Billfish AP will assist NMFS in amending the Atlantic Billfish FMP. Scoping for the two EISs and the FMP documents will be held in conjunction with the APs.

NMFS has determined that preparation of one EIS is appropriate for the Atlantic tunas, Atlantic swordfish, and Atlantic shark fisheries due to the potentially significant impact of upcoming regulations on the human environment and because changes have occurred in the fisheries since the last EISs were prepared. In addition, NMFS has determined that one EIS is appropriate for these fisheries due to the high degree of overlap in the participants in HMS fisheries, and because regulatory actions affecting one fishery can directly or indirectly impact the other fisheries. Participants in the fishery, including processors, may be required to operate under alternative management measures that may redistribute fishing effort and/or mortality in order to facilitate recovery of these highly migratory resources. NMFS has determined that a separate EIS for Atlantic billfish is appropriate because of differences between the fishery for Atlantic billfish and the other Atlantic HMS fisheries.

Timing of the Analysis and Tentative Decisionmaking Schedule

Written comments on the intent to prepare the two EISs and the FMP documents will be accepted until October 27, 1997. Comments will be considered in the preparation of the draft EISs (DEIS) as part of FMP or FMP amendment documents addressing long-term rebuilding programs and other measures.

Dated: August 22, 1997.

George H. Darcy,

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

[FR Doc. 97–22879 Filed 8–25–97; 9:51 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 167

Thursday, August 28, 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

Submission for OMB Review; Comment Request

August 22, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (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 burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Animal Welfare Act, Part 3, Subparts A and D, Dogs, Cats, and Primates.

OMB Control Number: 0579–0093.

Summary of Collection: If the licensee and registrants intent is to temporarily tether a dog for a period to exceed three days, the licensee must obtain written approval from APHIS.

Need and Use of the Information: The information collected will be used to evaluate the licensee's and registrants request for temporary tethering of a dog to determine if tethering is justified for the duration of time requested.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 82,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Semi-annually; Annually.

Total Burden Hours: 44,313.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–22881 Filed 8–27–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Commission on Small Farms; Meetings

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Secretary of Agriculture by Departmental Regulation No. 1043–43 dated July 9, 1997, established the National Commission on Small Farms (Commission) and further identified the Natural Resources Conservation Service to provide support to the 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. The chair of the Commission has decided that the Commission may hold subcommittee meetings in order to gather public input from different regions of the country. The Commission's next meeting is September 10 and 11, 1997.

PLACE, DATE AND TIME OF MEETING: The Commission's third public meeting is September 10 and 11 at the Jefferson Auditorium, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C. The meeting is open to the public. On September 10, the Commission will meet from 1:00 p.m. to 5:00 p.m. to hear public testimony. On September 11, the Commission will meet from 8:00 a.m. to 5:00 p.m. to conduct Commission business. This will include subcommittees of the Commission meeting separately during the day. These meetings are open to the public and nearby locations will be announced and posted at the Jefferson Auditorium on September 11.

We are seeking testimony from various sources to arrive at conclusions and recommendations that will ensure the continued viability of small farms. The Commission requests that testimony and comments include ideas and recommendations based on the following questions. Concerns or problems of individual farms that relate to specific USDA programs should be addressed only in the context of a recommendation for the Commission to consider.

The questions are:

1. How are current USDA programs helping or hurting the viability of small farms?

2. What are the needs of small farms in terms of financing, research, extension, marketing and risk management and other areas? What recommendations would you make about these needs that could be part of a long-range strategy to ensure the continued viability of small farms?

3. Are there innovative non-governmental or state efforts to assist beginning and smaller independent farms that might be replicated or supplemented at the Federal level?

4. What changes in USDA policy or practices are needed to make USDA programs in the areas of credit, research, extension, marketing, risk management and other areas more effective in enabling small farms to survive and thrive?

5. What new programs could provide effective and affordable support for small farmers as commodity programs are phased out?

6. What can be done to assist beginning farmers and farm workers to become farm owners?

7. What role should the Federal government play to ensure a diversified, decentralized and competitive farm structure?

8. What do small farms contribute to your community and your state?

9. What other generic issues pertaining to small farms should the Commission consider?

Interested parties wishing to testify at these subcommittee meetings must contact the office of the National Commission on Small Farms by September 5, 1997, in order to be placed on a list of witnesses. Oral presentations will be limited to 5 minutes. Individuals will be accepted on a first come, first served basis. Due to limited time, each organization or group is asked to have only one representative testify before the Commission on September 10. Written statements will be accepted at the meeting or may be mailed or faxed to the Commission office by September 12, 1997.

ADDRESSES: Written statements should be sent to National Commission on Small Farms, USDA, P.O. Box 2890, Room 5237, 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 or (202) 690–0673. The fax number is (202) 720–0596.

SUPPLEMENTARY INFORMATION: 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.

Dated: August 25, 1997.

Pearlie S. Reed,

Acting Assistant Secretary for Administration.

[FR Doc. 97–22976 Filed 8–27–97; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–055–2]

Availability of an Addendum to the Environmental Assessment and Finding of No Significant Impact for Field Testing Vaccine Containing Canarypox-Vectored Rabies Fraction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an addendum to the environmental assessment and finding of no significant impact that were prepared for the shipment of an unlicensed veterinary vaccine containing a canarypox-vectored rabies fraction for field testing in cats. The availability of the original environmental assessment and finding of no significant impact was announced in the **Federal Register** on July 10, 1997. The addendum addresses the expansion of the scope of the field trials to include veterinary clinics in two additional States.

ADDRESSES: Copies of the addendum, as well as copies of the original environmental assessment and finding of no significant impact, may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number, date, and complete title of this notice when requesting copies. Copies of the original environmental assessment and finding of no significant impact and the addendum (as well as the risk analysis with confidential business information removed) are also available for public inspection 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 those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Technical Writer-Editor, Center for Veterinary Biologics, Licensing and Policy Development, Veterinary Services, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; telephone (301) 734–8400; fax (301) 734–8910; or e-mail: jgreenberg@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. Field trials are generally necessary to satisfy prelicensing requirements for veterinary biological products. In order to ship an unlicensed veterinary biological product for the purpose of conducting field trials, a sponsor must receive authorization from the Animal and Plant Health Inspection Service (APHIS).

On July 10, 1997, we published in the **Federal Register** (62 FR 37010–37011, Docket No. 97–055–1) a notice announcing the availability of an environmental assessment (EA) that had been prepared for the shipment of an unlicensed veterinary vaccine containing a canarypox-vectored rabies fraction for field testing. APHIS had concluded that such shipment would not significantly affect the quality of the human environment. Based on that finding of no significant impact (FONSI), we determined that there was no need to prepare an environmental impact statement.

With this notice, APHIS is announcing that the scope of the field trials has been expanded to include veterinary clinics in two more States—Arkansas and Indiana—in addition to the eight States indicated in the July 10, 1997, notice. The addition of these two States is addressed in an addendum to the original EA and FONSI. The EA and FONSI and the addendum were prepared by APHIS for the shipment of the following unlicensed veterinary biological product for field testing:

Requester: Rhone Merieux, Inc., Establishment License No. 298.

Product: Feline Leukemia-Rhinotracheitis-Calici-Panleukopenia-Chlamydia Psittaci-Rabies Vaccine, Modified Live and Killed Virus and Chlamydia, Canarypox Vector, (Code 16A9.R0).

Field test locations (including States added): Arkansas, California, Florida, Georgia, Illinois, Indiana, New York, Pennsylvania, Texas, and Wisconsin.

The EA and FONSI were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to authorize the shipment of the above product and the initiation of the field trials after 14 days from the date of this notice. Because the issues raised by authorization of field trials and by issuance of a license are identical, APHIS has concluded that the EA and FONSI that were generated for the field trials would also be applicable to the proposed licensing action. Provided that the field trial data support the conclusions of the original EA and FONSI and the addendum, APHIS does not intend to generate a separate EA to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. Therefore, APHIS intends to issue a veterinary biological product license for this product following the completion of the field trials, provided no adverse impacts on the human environment are identified as a result of field testing this product and provided the product meets all other requirements for licensure.

Simultaneously, APHIS intends to issue licenses for three additional combination vaccines produced by Rhone Merieux, Inc., also for use in cats. These three vaccines—each of which contains the same canarypox-vectored rabies fraction present in the above-mentioned product but lacks one or two components present in that product—are as follows:

Product: Feline Rhinotracheitis-Calici-Panleukopenia-Chlamydia Psittaci-Rabies Vaccine, Modified Live Virus and Chlamydia, Canarypox Vector (Code 1619.R1);

Product: Feline Rhinotracheitis-Calici-Panleukopenia-Rabies Vaccine, Modified Live Virus, Canarypox Vector, (Code 16T9.R0); and

Product: Feline Leukemia-Rhinotracheitis-Calici-Panleukopenia-Rabies Vaccine, Modified Live and Killed Virus, Canarypox Vector (Code 16S9.R0).

Except for the canarypox-vectored rabies fraction, all components of the four products discussed in this notice are represented in currently licensed products.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 22nd day of August 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–22930 Filed 8–27–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Babione Project, Bighorn National Forest, Sheridan and Johnson Counties, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to disclose the environmental impacts on a proposal to harvest timber in the South Babione area, located on the Bighorn National Forest within Sheridan and Johnson Counties, Wyoming.

The proposal provides for: (1) timber harvest of approximately 350 acres of forested land and would result in approximately 3 million board feet of sawlog and utility timber; (2) construction of approximately 8 miles of permanent and temporary road and reconstruction of approximately 2 miles of road; and (3) a change in travel management by closing the area to off-road motorized travel.

The Forest Service invites comments and suggestions on the draft environmental impact statement (DEIS) from federal, state and local agencies, as well as individuals and organizations who may be interested in, or affected by the proposed action.

DATES: Comments concerning the scope of the analysis should be received in writing by September 30, 1997.

ADDRESSES: Send written comments to Craig Yancy, District Ranger, Tongue Ranger District, 1969 South Sheridan Avenue, Sheridan, Wyoming 82801.

FOR FURTHER INFORMATION CONTACT: Trish Clabaugh, Interdisciplinary team leader, (307) 674–2683.

SUPPLEMENTARY INFORMATION:

Background

In 1991, the Babione Timber Sale Environmental Assessment was signed which included the South Babione area currently proposed for study. Since that time, a different road location has been proposed and revised harvest methods have been proposed to better meet the management area objectives in the 4B wildlife area within the project area.

The environmental impact statement for the South Babione Project will tier to the Final Environmental Impact Statement for the Bighorn National Forest Land and Resource Management Plan of 1985. The project area is located south of Forest Development Road 299 and west of Antler Creek. The project area covers approximately 5,000 acres.

Purpose and Need

The South Babione Project is being scheduled to provide supplemental environmental analysis for the South Babione area. The purpose and need for this project is: (1) to implement the direction contained in the Bighorn National Forest Land and Resource Management Plan of 1985, including goals, objectives, management prescriptions, and standards and guidelines; (2) to improve the overall diversity and wildlife habitat of management indicator species; (3) to maintain wood production from suitable timber lands; (4) to help provide a supply of timber from the Bighorn National Forest which meets existing and potential market demand and is consistent with sound multiple use and sustained yield objectives; and (5) to determine proper travel management in the area.

Public Comment

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.

Following the publication of this notice, a scoping letter will be mailed to interested people and organizations. The letter will briefly describe the project and area, purpose and need for the action and will invite public comment.

Following scoping, the interdisciplinary team will review comments received during scoping to determine which issues are significant. The team will then develop a range of alternatives including the ''no action'' alternative, in which no timber harvest or road construction is proposed. Other alternatives will consider various levels and locations of timber harvest.

The draft environmental impact statement is expected to be filed with

the Environmental Protection Agency in April 1998. The comment period on the draft is 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Agencies and other interested persons or groups are invited to write or speak with Forest Service officials at any time during the planning process until the 45 day comment period on the draft ends. The final environmental impact statement and record of decision is expected to be completed in June 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.

Decisions to be Made

Abigail Kimbell, Forest Supervisor, is the Responsible Official and will decide whether or not to authorize timber harvest within the South Babione Project Area. The Responsible Official will make a decision regarding this proposal after considering public comments and the information in the final environmental impact statement, and applicable laws, regulations and policies. The decision and supporting reason will be documented in the Record of Decision.

Dated: August 20, 1997.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 97–22901 Filed 8–27–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on September 17 and 18, 1997, in Garberville and Redway, CA. The PAC will take a field trip on September 17 to observe restoration and fisheries activities in the Garberville area. The field trip will begin at 9:00 a.m. at the parking lot of the Best Western Humboldt House, 701 Redwood Drive, Garberville, and conclude there at 4:00 p.m. A discussion of the field trip will be held at the breakfast room of the Best Western Humboldt House from 4:00 to 5:30 p.m. that day. A business meeting will be held September 18, from 8:00 a.m. to 5:30 p.m. at the Brass Rail meeting room, 3188 Redwood Drive, Redway, CA. Agenda items to be covered include: (1) Presentation on Northwest Forest Plan implementation concerns; (2) Presentation on Intergovernmental Advisory Committee (IAC)/PAC relations; (3) Presentation on the North Coast Geographic Information Cooperative; (4) Presentation on National Marine Fisheries Service steelhead listing announcement and clarification of consultation process/requirements for restoration projects RE: coho and steelhead; (5) Report and recommendations from the Public/Private/Tribal Partnership Opportunities Subcommittee; (6) Report and recommendations from the Monitoring Subcommittee; (7) Report and recommendations from the Work on the Ground Subcommittee to include the Pacific Southwest Research fuels research proposal; (8) Report and recommendations from the PAC/SCERT coordinating committee; (9) Report and recommendations from Recreation/Tourism Subcommittee; (10) Report and recommendations from the Coho Subcommittee and (11) Open public forum. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (916) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (916) 934–3316.

Dated: August 21, 1997.

Arthur Quintana,

Acting Forest Supervisor.

[FR Doc. 97–22885 Filed 8–27–97; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on September 11 and 12, 1997 at the Park Community Center, Crater Lake National Park, Steel Circle, Crater Lake, Oregon. On September 11, the meeting will begin at 10:00 a.m. and adjourn at 5:00 p.m. The meeting on September 12 will resume at 8:00 a.m. and adjourn at 3:00 p.m. Agenda items to be covered include: (1) Klamath PAC salvage subcommittee recommendation update; (2) Northwest Forest Plan Implementation; (3) Subcommittee Reports; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1309.

Dated: August 18, 1997.

Robert J. Anderson,

Planning Staff Officer.

[FR Doc. 97–22894 Filed 8–27–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Proposed Change to Section IV of the Tennessee Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service

AGENCY: U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in the NRCS Field Office Technical Guide for review and comment.

SUMMARY: It is the intention of the NRCS in Tennessee to issue new or revised conservation practice standards in Section IV of the FOTG, as follows: Contour Buffer Strip (Code 332); Riparian Forest Buffer (Code 391); Filter Strip (Code 393); Forage Harvest Management (Code 511); and Pasture and Hayland Planting (Code 512).

DATES: Comments will be received on or before September 29, 1997.

CONTACT FOR FURTHER INFORMATION: Inquire in writing to James W. Ford, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee, 37203. Copies of the practice standards will be made available upon written request.

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 Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made.

Dated: August 19, 1997.

James W. Ford,

State Conservationist, Natural Resources Conservation Service, Nashville, Tennessee.

[FR Doc. 97–23057 Filed 8–27–97; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, September 5, 1997, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of August 15, 1997 Meeting
III. Announcements
IV. Staff Director's Report
V. Advisory Committee Report Utah: ''Employment Discrimination in Utah''
VI. Response to Commissioners Comments on Illinois, Indiana and Michigan SAC Reports
VII. State Advisory Committee Appointments for Illinois and Wisconsin
VIII. Briefing on Regulatory Barriers Confronting Minority Business Entrepreneurs
IX. Equal Education Opportunity Reports
X. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–23124 Filed 8–26–97; 3:06 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Secretary's 2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a meeting of the Commerce Secretary's 2000 Census Advisory Committee. The meeting will convene on September 11–12, 1997, at the Embassy Suite Hotel, 1250 22nd Street NW., Washington, DC 20037. The Committee will discuss the Master Address File, the American Community Survey, and its work plans for Census 2000.

The Advisory Committee is composed of a Chair, Vice Chair, and up to 35 member organizations, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of Census 2000 and user needs for information provided by that census, and provide a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Advisory Committee will consider all aspects of the conduct of the 2000 census of population and housing and will make recommendations for improving that census.

On Thursday, September 11, 1997, the meeting will begin at 8:30 a.m. and adjourn for the day at 5:00 p.m. On Friday, September 12, 1997, the meeting will begin at 8:30 a.m. and adjourn at 4:30 p.m.

Anyone wishing additional information about this meeting, or who wishes to submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Building 3, Washington, DC 20233, telephone: 301–457–2308, TDD 301–457–2540.

A brief period will be set aside for public comment and questions. However, individuals with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Maney; her telephone number is 301–457–2308, TDD 301–457–2540.

Dated: August 21, 1997.

Lee Price,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 97–22886 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

DATES: August 28, 1997.

FOR FURTHER INFORMATION CONTACT:

Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on polyethylene terephthalate film (PET Film) from South Korea and sebacic acid from the People's Republic of China. The request for revocation in part with respect to PET Film from South Korea was inadvertently omitted from the previous initiation notice (62 FR 41339, August 1, 1997).

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 1998.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil:	
Industrial Nitrocellulose A–351–804	7/1/96–6/30/97
Companhia Nitro Quimica Brasileira	
Silicon Metal A–351–806	7/1/96–6/30/97
Ligas de Aluminio S.A.	
Germany: Industrial Nitrocellulose A–428–803	7/1/96–6/30/97
Wolff Walsrode AG	
Italy:	
Certain Pasta A–475–818	1/19/96–6/30/97
Castelletti S.p.A.	
Societa Transporti Castelletti	
Arrighi S.p.A. Industrie Alimentari	
Barilla G.e.R.F. Illi S.p.A.	
General Noli S.p.A.	
R. Queirolo & Co., S.p.A.	
Puglisi S.p.A.	
La Molisana Industrie Alimentari S.p.A.	
Pastificio Fratelli Pagani S.p.A.	
Rummo S.p.A. Molino e Pastificio	
Industria Alimentare Colavita S.p.A.	
F.lli De Cecco di Filippo Fara S. Martino S.p.A.	
Petrini S.p.A.	
Delverde, SrL	
Tamma Industrie Alimentari, SrL	
Colavita Pasta and Olive Oil Company	
Cylindrical Roller Bearings A–475–801	5/1/96–4/30/97
C.R. s.r.l*	
*Inadvertently omitted from AFB initiation notice published June 17, 1997 (62 FR 32754).	
Japan: Electric Cutting Tools A–588–823	7/1/96–6/30/97
Makita Corporation	
Russia: Ferrovanadium and Nitrided Vanadium A–821–807	7/1/96–6/30/97
Galt Alloys, Inc.	
Thailand: Canned Pineapple A–549–813	7/1/96–6/30/97
Dole Thailand	
The Thai Pineapple Public Co., Ltd.	
Siam Food Products Public Co., Ltd.	
Thai Pineapple Canning Industry	
The Prachaub Fruit Canning Co. Ltd.	
Vita Food Factory (1989) Co. Ltd.	
Malee Sampran Factory Public Co.	
Siam Fruit Canning (1988) Co. Ltd.	
The Peoples Republic of China: Sebacic Acid* A–570–825	7/1/96–6/30/97
Guangdong Chemicals Import & Export Corporation	
Sinochem International Chemicals Company	
Sinochem Jiangsu Import & Export Corporation	
Tianjin Chemicals Import & Export Corporation	
*If one of the above named companies does not quality for a separate rate, all other exporters of sebacic acid from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Turkey: Certain Pasta A–489–805	1/19/96–6/30/97
Filiz Gida Sanayi ve Ticaret	
Nuh Ticaret ve Sanayi A.S.	

	Period to be reviewed
Pastavilla Kartal Makarnacilik Sanayi Ticaret A.S.	
The United Kingdom: Industrial Nitrocellulose A–412–803	7/1/96–6/30/97
Imperial Chemical Industries PLC	
Countervailing Duty Proceedings	
Italy: Certain Pasta C–475–819	10/17/95–12/31/96
Audisio Industrie Alimentari S.r.l.	
Delverde, SrL	
Tamma Industrie Alimentari, SrL	
LaMolisana Industrie Alimentari S.p.A.	
F.lli De Cecco di Filippo Fara S. Martino S.p.A.	
Petrini S.p.A.	
Industria Alimentare Colavita, S.p.A.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 75(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 C.F.R. 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 22, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–22967 Filed 8–27–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

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 September 16, 1997 from 10:30 a.m. to 3 p.m. at the U.S. Department of Commerce in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, Office of Automotive Affairs, Trade Development, Room 4036, Washington, DC 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: August 21, 1997.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 97–22866 Filed 8–27–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–841]

Notice of Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 28, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Sunkyu Kim, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1777 or (202) 482–2613.

The 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 citations to the Department's regulations are to those codified at 19 CFR 353 (April 1, 1996).

Final Determination

We determine that vector supercomputers from Japan are being sold in the United States at less than fair value (''LTFV''), as provided in section 735(b) of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination of sales at less than fair value in this investigation on March 28, 1997, (62 FR 16544, April 7, 1997) (''*Preliminary Determination*''), the following events have occurred.

As discussed in the *Preliminary Determination*, on January 28, 1997, we initiated a sales below the cost of production (''COP'') investigation with respect to Fujitsu Ltd.'s (''Fujitsu'') home market sales. Section D of the Department's questionnaire requesting COP and constructed value (''CV'') data was issued to Fujitsu on February 12, 1997. Fujitsu submitted its response to Section D of the questionnaire on April 14, 1997. Based on our analysis of Fujitsu's response to Section D, we issued a supplemental questionnaire on April 28, 1997. The response to this supplemental questionnaire was due on May 12, 1997. On May 7, 1997, at Fujitsu's request, we met with Fujitsu's counsel and corporate representative concerning the Department's Section D supplemental questionnaire. At the May 7 meeting, Fujitsu raised concerns about the scope of the questions and the availability of requested information. On May 8, 1997, Fujitsu requested an extension of time until May 19, 1997, to submit its response to the supplemental questionnaire. In its letter, Fujitsu stated that it would file as much of its response as it could prepare by May 12, 1997, and file the remainder of its response by May 19, 1997. We granted this request on May 9, 1997.

On May 12, 1997, Fujitsu submitted a portion of its response to the supplemental cost questionnaire. Fujitsu, however, failed to submit the remainder of its response on May 19, 1997. On May 20, 1997, Fujitsu submitted a letter stating that it would no longer participate in the Department's investigation and that it would concentrate its opposition to the petition in the material injury investigation conducted by the International Trade Commission (''ITC''). In this letter, Fujitsu stated that it based its decision on the conclusion that it could not provide a complete response to the Department's supplemental cost questionnaire by the May 19, 1997 deadline and that the company's resources would be better served by participating in the ITC's investigation. As a result of Fujitsu's decision to not complete its response to the Department's supplemental questionnaire, we are applying facts otherwise available in our final determination. For a further discussion, see ''Facts Available'' section below.

As requested in the Preliminary Determination, comments on the suspension of liquidation instructions were submitted by Fujitsu and the petitioner, Cray Research, Inc. (''Cray''), on May 12, 1997. The petitioner submitted its responses to Fujitsu's comments on May 19, 1997. For a further discussion, see Comments 2, 3, and 4, below.

Both Fujitsu and the petitioner submitted case briefs on July 7, 1997, and rebuttal briefs on July 11, 1997. At the request of Fujitsu, a public hearing was held on July 16, 1997.

Scope of Investigation

The products covered by this investigation are all vector supercomputers, whether new or used, and whether in assembled or unassembled form, as well as vector supercomputer spare parts, repair parts, upgrades, and system software, shipped to fulfill the requirements of a contract entered into on or after April 7, 1997, for the sale and, if included, maintenance of a vector supercomputer. A vector supercomputer is any computer with a vector hardware unit as an integral part of its central processing unit boards.

In general, the vector supercomputers imported from Japan, whether assembled or unassembled, covered in this investigation are classified under heading 8471 of the Harmonized Tariff Schedules of the United States (''HTS''). Merchandise properly classifiable under HTS Number 8471.10 and 8471.30, however, is excluded from the scope of this investigation. These references to the HTS are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

This scope language has been modified from that issued in our preliminary determination. The reason for the modification is discussed in Comment 3, below.

Period of Investigation

The period of investigation (''POI'') is July 1, 1995 through June 30, 1996.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes an antidumping investigation, or (4) provides such information but the information cannot be verified, the Department is required to use facts otherwise available (subject to subsections 782(c)(1) and (e)) to make its determination. Section 776(b) of the Act provides that adverse inferences may be used against an interested party if that party failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). Fujitsu's decision not to respond fully to the Department's supplemental cost questionnaire or to other requests for information by the Department demonstrates that it failed to act to the best of its ability in this investigation. Therefore, the Department has determined that an adverse inference is appropriate. In addition, for the reasons described in the *Preliminary Determination*, we find that the application of adverse facts available is appropriate for NEC as well. Consistent with Departmental practice in cases where respondents refuse to participate, as facts otherwise available, we have considered assigning a margin stated in the petition.

A. Fujitsu

In its petition, Cray alleged that Fujitsu had delivered a four processor vector supercomputer system to a U.S. customer, Western Geophysical Co., for petroleum industry modeling applications. Cray alleged also that the U.S. customer had not paid for or contracted to purchase the system and, consequently, was unable to calculate an estimated dumping margin for this Fujitsu sale. (The only calculated estimated dumping margin in the petition concerned vector supercomputer systems offered to a different U.S. customer by NEC Corporation.) After the initiation of this investigation, the petitioner contacted the Department to report that Cray's allegation that Fujitsu had not been paid by Western Geophysical Co. for this sale

was mistaken. See, Memorandum to the File from the Case Analysts, dated August 11, 1997.

Section 776(c) provides that if the Department relies upon secondary information, such as the petition, when resorting to facts otherwise available, it must, to the extent practicable, corroborate that information using independent sources that are reasonably at its disposal. To corroborate the information the petitioner asserted with respect to Fujitsu's U.S. sale, the Department conducted a computerized search of published documents. See, Memorandum to the File, from the Case Analysts, dated August 12, 1997. This search disclosed that the October 23, 1995 issue of the Japan Economic Journal discussed Fujitsu's sale of a four-processor supercomputer to Western Geophysical Co. for a price of $2 million. The search also disclosed that the November 1, 1995 issue of Japan Economic Institute Report (''JEI Report'') discussed the Fujitsu sale of a four-processor supercomputer to Western Geophysical Co. The JEI Report stated that the Fujitsu supercomputer had a list price of $2 million. Both the Japan Economic Journal and JEI Report reported that the sale was made by Fujitsu; neither publication referred to the participation of a systems integrator. On the basis of this information, the Department adjusted the petition margin calculated for NEC to determine a margin for Fujitsu based on facts otherwise available.

For the export price, we used Fujitsu's $2 million price for the four-processor supercomputer sold to Western Geophysical Co. as the starting price. We adjusted this starting price to account for the absence of a systems integrator in the Western Geophysical Co. sale. We compared this export price to the CV of a vector supercomputer system calculated in the petition. We adjusted the petition CV to account for the number of processors in Fujitsu's sale to Western Geophysical Co. The resulting dumping margin of 173.08 percent was assigned to Fujitsu as facts otherwise available. See, Memorandum to the File from the Case Analyst, dated August 13, 1997.

B. NEC Corporation

As discussed in the *Preliminary Determination,* NEC Corporation (''NEC'') failed to answer the Department's questionnaire. Accordingly, the Department assigned to NEC the margin stated in the petition, 454 percent, as facts otherwise available. At the preliminary determination, the Department corroborated the information contained in the petition within the meaning of section 776(c) of the Act and found the information to have probative value; *i.e.,* it is both relevant and reliable. Since the preliminary determination, no party (including NEC) has presented to the Department any information to challenge the appropriateness of the information contained in the petition as the basis for a facts available margin for NEC. Accordingly, for the final determination, we continue to assign NEC the margin stated in the petition, 454 percent.

C. The All Others Rate

This investigation has the unusual circumstance of both foreign manufacturer/exporters being assigned dumping margins on the basis of facts otherwise available. NEC and Fujitsu are the only Japanese manufacturers of the subject merchandise which have made competing bids for sales to the United States. Section 735(c)(5) of the Act provides that where the dumping margins established for all exporters and exporters and producers individually investigated are determined entirely under section 776, the Department ''* * * may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.'' This provision contemplates that we weight-average the facts-available margins to establish the all others rate. Where the data is not available to weight-average the facts available rates, the SAA, at 873, provides that we may use other reasonable methods.

Inasmuch as we do not have the data necessary to weight average the NEC and Fujitsu facts–available margins, we have taken the simple average of these margins to apply as the all others rate. This calculation establishes an all others rate of 313.54 percent.

Interested Party Comments

Comment 1 Use of Facts Available for Fujitsu

The petitioner argues that Fujitsu's decision to end its participation in the Department's investigation gives the Department no option but to assign to Fujitsu a dumping margin based on facts available. Further, the petitioner asserts that Fujitsu has not cooperated with the Department in this investigation and that adverse inferences are appropriate in assigning a facts available margin to Fujitsu.

In choosing the appropriate adverse facts available margin, the petitioner notes that although a facts available margin based solely on the information contained in the petition would be consistent with both the statute and Department practice, an alternative approach based on certain data submitted by Fujitsu and adjusted by the petitioner would be more accurate and, therefore, preferred. Using certain data from Fujitsu's questionnaire responses, the petitioner calculated a facts available dumping margin of 388.74 percent. This margin is based on a comparison of an export price and constructed value for Fujitsu's single U.S. sale made during the POI. In calculating the export price, the petitioner made several adjustments to the export price information submitted by Fujitsu. These adjustments include (1) an estimate of U.S. indirect selling expenses based on SG&A expenses reported by Fujitsu's U.S. subsidiary, Fujitsu America, Inc.'s (''FAI'') Supercomputer Group; (2) use of a gross U.S. price which includes service revenues for a shorter period of time than that used by Fujitsu; and (3) a recalculation of freight charges, imputed credit, and inventory carrying costs. In calculating the CV for Fujitsu's U.S. sale, the petitioner calculated a value based on adjusted amounts for the cost of manufacture, research and development, general and selling expenses and profit.

Fujitsu acknowledges that the incompleteness of its unverified information on the record in this investigation requires that the Department establish a dumping margin on the basis of facts otherwise available. Fujitsu asserts that the Department has a great deal of discretion within which to assign a margin and requests that the Department either assign the dumping margin calculated for the preliminary determination or adjust the calculation in the petition that was used to determine an alleged dumping margin for NEC.

DOC Position

The Department has assigned a margin based on facts otherwise available for Fujitsu because Fujitsu refused to cooperate in our investigation and prevented our making an accurate margin calculation. We rejected Fujitsu's request to assign the dumping margin calculated for the preliminary determination as facts available. This preliminary margin was calculated before the Department had received Fujitsu's responses to the cost-of-production and constructed value section of our antidumping

questionnaire. For this final determination, the Department relied upon information in the petition, with appropriate adjustments, which Fujitsu suggested as an alternative to the preliminary determination margin. However, we did not accept adjustments to the petition information that Fujitsu made in its recalculation of the petition margin where we were unable to corroborate the adjustment or verify the data relied upon.

The Department also rejected the petitioner's estimated dumping margin for Fujitsu. The petitioner's estimate relied on unverified submissions as well as several of its own assumptions and adverse inferences. Although the petitioner asserts that its calculation is more accurate than relying on information in the petition, we believe that its approach is speculative.

Comment 2 Entries to be Used in the United States Exclusively by Fujitsu

Fujitsu asserts that the Department should not order the suspension of liquidation on entries of covered merchandise for the exclusive use of Fujitsu in the United States. Alternatively, Fujitsu suggests that liquidation be suspended for such entries and that the cash deposit rate for these entries be set at zero. Fujitsu argues that collecting deposits on these entries is unreasonable inasmuch as they will never be sold. The company cites to several Department determinations which excluded certain products from the scope of an investigation on the basis of end-use certificates.

The petitioner asserts that suspension of liquidation must be ordered for these entries. Without suspension of liquidation, the merchandise will enter the United States without the Department or the U.S. Customs Service being in a position to verify that they were used exclusively by Fujitsu. Similarly, the petitioner asserts that cash deposits in the amount of the assigned antidumping duty margin be collected to ensure that the merchandise is not sold after it's used by Fujitsu. The petitioner would have the cash deposits returned to Fujitsu only after the merchandise were reexported or destroyed under the supervision of the Customs Service.

DOC Position

The Department agrees with the petitioner that liquidation of these entries must be suspended because the merchandise is covered by the scope of the investigation and will enter the customs territory of the United States. In the event that merchandise were to be sold after entry, the suspension of liquidation would safeguard the government's ability to collect antidumping duties. With respect to the collection of cash deposits, the Department is not authorized to order the suspension of liquidation but then to set the cash deposit rate at zero in circumstances where the entered merchandise is clearly covered by the scope of the antidumping duty investigation.

We have examined the citations offered by Fujitsu. They are concerned with investigations in which the scope was defined by the use of the product and other uses were not covered by the scope of investigation. In this investigation, Fujitsu is claiming that vector supercomputer systems that it imports into the United States for its own use ought to be exempt from cash deposits from the order because a related company will be using the covered merchandise exclusively. This is not the situation where certain uses of a vector supercomputer were excluded from the scope of the investigation.

Comment 3 Contracts Entered Into Prior to Suspension of Liquidation

Fujitsu requests that the Department clarify that the suspension of liquidation instructions do not apply to ''follow on'' importations pursuant to contracts for the sale of vector supercomputers entered into prior to the date of suspension of liquidation in this investigation, April 7, 1997.

Although the petitioner did not address Fujitsu's request in its pre-hearing submissions, it objected to this request at the hearing.

DOC Position

The Department agrees with Fujitsu. We had intended that the suspension of liquidation instructions in our *Preliminary Determination* would apply to entries pursuant to any contract for the sale of a vector supercomputer system on or after the date of its their publication in the **Federal Register**.

Comment 4 Reporting Requirements

Both the petitioner and Fujitsu commented on the Department's requirements set forth in the *Preliminary Determination* for reporting information to the U.S. Customs Service and the Department on entry of the subject merchandise.

This information included copies of the contracts pursuant to which the entries were being made, a description of the merchandise being entered, the actual or estimated price of the complete vector supercomputer system, and a schedule of all future shipments to be made pursuant to the contract. Both parties were concerned that much of the information requested by the Department in the *Preliminary Determination* was not necessary.

DOC Position

On the basis of these comments and consultations with the U.S. Customs Service, the Department is requiring only that the U.S. importer submit with its entry summary a detailed description of the merchandise included in the entry with documentation that identifies the contract pursuant to which the merchandise is being imported. After examining this documentation for consistency with the entry summary, the Customs Service will forward the documentation to the Department. Detailed descriptions of entries and the identification of the relevant sales contracts are necessary for the Department to be apprised of entries subject to the order independent of administrative reviews and scope inquiries. We expect, also, that the petitioner will inform the Department when it becomes aware of U.S. vector supercomputer contracts being awarded to Japanese manufacturers.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of vector supercomputers from Japan, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after April 7, 1997, the date of publication of our preliminary determination in the **Federal Register**. For these entries, the Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below.

MFR/producer exporter	Margin percentage
Fujitsu Ltd.	173.08
NEC Corp.	454.00
All Others	313.54

Entry summaries covering merchandise within the scope of this investigation must be accompanied by documentation provided by the U.S. importer which identifies the vector supercomputer contract pursuant to which the merchandise is imported and describes in detail the merchandise included in the entry. After examining this documentation for consistency with

the entry summary, the Customs Service will forward the documentation to the Department.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry within 45 days of its receipt of this notification.

If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: August 20, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–22968 Filed 8–27–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of an Opportunity To Join a Cooperative Research and Development Consortium on Optical Properties of Materials

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on October 7, 1997, to discuss setting up a cooperative research consortium. The goal of the consortium is to identify critical industrial needs for NIST to be involved in performing high accuracy measurements, developing necessary standards and critically evaluating existing data on the optical properties of materials that are important for the evolving optical industries in the USA.

DATES: The Meeting will take place at 10 a.m. on October 7, 1997. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: The meeting will take place at and inquiries should be sent to Room B268, Building 221, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: Raju Datla, 301–975–2131; FAX 301–840–8551.

SUPPLEMENTARY INFORMATION: The program will be within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities—but no funds—to the cooperative research program.

Members will be expected to make a contribution to the consortium's efforts in the form of personnel, data, and/or funds. This is not a grant program.

The R&D staff of each industrial partner in the Consortium will be able to interact with NIST researchers on generic measurement needs in the industry for specific optical properties of materials. The industrial partners will also be able to schedule at NIST collaborative projects in which they could participate. All partners will receive a copy of all data on all materials measured. All partners will have a certain amount of NIST measurements made on materials they request. All partners have some influence as to the type and accuracy of the measurements pursued by the consortium.

Dated: August 22, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–22931 Filed 8–27–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 970620147–7147–01]

National Voluntary Conformity Assessment System Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice: Proposal To Establish Recognition Program.

SUMMARY: NIST hereby proposes to establish a recognition program under NVCASE that will recognize accreditors of Quality System Registrars. NIST recognized accreditors may then accredit companies (Registrars) which in turn may register organizations that operate under applicable quality system standards that satisfy specific foreign regulatory requirements. The resulting recognition program will allow NIST to designate qualified U.S. conformity assessment bodies and assure their competence to other governments.

The action being taken under this notice only addresses development of generic program requirements. Once a generic program is established, applicants will be required to specify the specific mandated foreign regulation(s) covered by the application. In cases where a Mutual Recognition Agreement (MRA) covering the mutual recognition of conformity assessment has been negotiated between the United States and another country, the sectors which may be included in an application may be limited to those covered by the MRA.

NIST proposes to apply the requirements contained in the *ISO/IEC Guide 61—''General requirements for assessment and accreditation of certification/registration bodies'' to all applicant accreditation bodies. If further proposes that registrars applying for accreditation be assessed against the requirements of *ISO/IEC Guide 62—''General requirements for bodies operating assessment and certification/registration of quality systems''. These generic requirements will be supplemented with specific sectoral requirements as necessary. Such specific sectoral requirements will be developed through consultation with appropriate experts in the affected sector. Organizations needing to be registered shall be registered to a quality management system standard appropriate for the regulation/sector involved.

*ISO documents available from: International Organization for Standardization, Casa postale 56, CH–1211, Geneve 20, Switzerland.

DATES: Comments on this notice must be received by September 29, 1997.

ADDRESSES: Comments should be submitted in writing to Robert L. Gladhill, NVCASE Program Manager, NIST, Bldg. 820, Room 282, Gaithersburg, MD 20899, by fax 301–963–2871 or E-mail at robert.gladhill@nist.gov.

FOR FURTHER INFORMATION CONTACT: Robert L. Gladhill, NVCASE Program Manager, at NIST, Bldg. 820, Room 282, Gaithersburg, MD 20899, by telephone at 301–975–4273 or by telefax at 301–963–2871.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology received letters dated May 10, 1994, and October 31, 1994, from the American National Standards Institute requesting to have the ANSI–RAB American National Accreditation Program for Registrars of Quality Systems recognized under NVCASE. The request seeks U.S. Government assurance of the competency of the ANSI–RAB program to accredit registrars so that they can in turn register organizations in satisfaction of foreign mandatory regulatory requirements.

The NVCASE procedures at 15 CFR Part 286 require NIST to seek public consultation when it receives requests for evaluation. The original request was published in the **Federal Register** at Vol. 60, No. 20/Tuesday, January 31, 1995, page 5901. A 30-day public comment period ended on March 2, 1995. The comments received are discussed below.

No action was taken on the request until now, pending conclusion of U.S.-EU MRA negotiations. The MRA was initiated on June 20, 1997. NIST is now proceeding with establishment of criteria and initiation of the application process.

NIST received responses from 15 different organizations during the public comment period on the original ANSI request and also considered an additional letter received after the official period closed.

Of the 16 letters considered, nine indicated general support, five opposed specific sectoral areas included in the request, one indicated general non-support and one provided only a general comment. The specific sectors to which the five commenters voiced opposition are not planned for inclusion under the proposed NVCASE program. The pressure vessel sector is not presently part of the U.S.-EU negotiations (three opponents), and the medical device sector is under the jurisdiction of the Food and Drug Administration (FDA); NIST will not take action in that sector without full agreement from FDA (two opponents). Further, NIST will not accept any application for recognition in these two sectors without notifying the opposing entities and other members of the sectoral community.

Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: August 22, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–22928 Filed 8–27–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080697D]

Request for Nominations of Individuals for the Federal Investment Task Force

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

ACTION: Notice of request for nominations.

SUMMARY: The Sustainable Fisheries Act (SFA) requires the Secretary of Commerce (Secretary) to establish a task force to study the role of the Federal Government in subsidizing fleet capacity and influencing capital investment in fisheries. NMFS requests nominations of qualified individuals to serve on the task force.

DATES: Nominations will be accepted through September 5, 1997.

ADDRESSES: Nominations should be sent to Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, ATTN: Federal Investment Task Force. Nominations may be submitted by fax, (202) 289–6051.

FOR FURTHER INFORMATION CONTACT: Robert Beal, Atlantic States Marine Fisheries Commission, (202) 289–6400.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with section 116(b) of the SFA (Public Law 104–297), the Secretary is establishing a task force of interested parties to study the role of the Federal Government in (1) subsidizing the expansion and contraction of fishing capacity in fishing fleets managed under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and (2) otherwise influencing the aggregate capital investment in fisheries. The task force will report the findings of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.

The Atlantic States Marine Fisheries Commission (ASMFC) has contracted with NMFS to establish the Federal Investment Task Force and complete the tasks necessary to prepare and submit the report to Congress. ASMFC is in the position of being knowledgeable about the issues associated with the Federal Investment Study, while lacking a vested interest in the outcome of the task force's work.

Procedures and Guidelines

A. *Procedures for Establishing the Task Force.*

Individuals with definable interests in fisheries will be considered as members of the task force. Nominations may include, but are not limited to, individuals who are associated with commercial or recreational fishing, environmental organizations, academia, or quasi-governmental entities. Selection of task force members will not be limited to individuals who are nominated.

Nominations are invited from all individuals and constituent groups. The nomination should include:

1. The name of the applicant or nominee and description of his/her interest in or association with the role of the Federal Government in subsidizing fleet capacity and influencing capital investment in fisheries.
2. A statement of background and/or qualifications.
3. A written commitment that the applicant or nominee will actively participate in good faith in the duties of the task force.

B. *Participants.*

The task force will consist of no more than 15 individuals who have a substantial interest in fisheries. Nominations will be accepted to represent commercial and recreational fishing interests, the conservation community, and the academic community. ASMFC and NMFS believe that all interests should be represented on the task force. The intent is to have a group that, as a whole, represents all interests fairly and supplies the necessary expertise to complete all assigned tasks. Current employees of NOAA will not be considered for the task force.

ASMFC will provide the necessary administrative support, including technical assistance, for the task force. ASMFC will also reimburse all travel expenses that are directly related to the activities of the task force. However, ASMFC will be unable to compensate participants with additional monetary support of any kind.

C. *Tentative Schedule.*

The task force is tentatively scheduled to meet five times between September 1997 and May 1998. These meetings will focus on programs that both

directly and indirectly increase the capacity and capitalization of commercial and recreational fishing fleets. The task force will also evaluate the extent to which Federal programs have been successful at reducing the capacity and capitalization of fishing fleets managed under the Magnuson-Stevens Act. U.S. Coast Guard vessel mortgage records will be reviewed to evaluate the influence of the Federal Government on vessel financing. The final report of this task force will be submitted to Congress by September 1, 1998.

Dated: August 22, 1997.

George H. Darcy,

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

[FR Doc. 97–22860 Filed 8–22–97; 4:51 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072597B]

Advisory Panel on Highly Migratory Species Fisheries

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

ACTION: Notice of intent; request for nominations.

SUMMARY: NMFS solicits nominations for the Highly Migratory Species (HMS) advisory panel (AP). The purpose of the AP will be to assist NMFS in the collection and evaluation of information relevant to the development of a comprehensive HMS management plan for Atlantic tunas, swordfish, and sharks. The AP will include representatives from all interests in HMS fisheries.

DATES: Nominations must be submitted on or before September 29, 1997.

ADDRESSES: Nominations should be submitted to Rebecca Lent, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may be submitted by fax; 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Liz Lauck (301) 713–2347.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, an Advisory Panel (AP) will be established to consult with NMFS in the collection and evaluation of information relevant to the development of a comprehensive HMS fishery management plan (FMP) for Atlantic tunas, swordfish and sharks.

The purpose of the AP is to assist NMFS in the development of an FMP for the Atlantic shark, swordfish, and tuna fisheries. Among the first issues to consider will be the development of rebuilding programs for those species that are overfished. The AP will assist NMFS in meeting requirements of the Magnuson-Stevens Act throughout the FMP development process.

In response to a *Federal Register* notice of April 4, 1997 (62 FR 16132) NMFS received comments that supported the establishment of separate APs for sharks, swordfish, and tunas. Other comments suggested various combinations of APs. NMFS has concluded that one AP with an extended meeting period, species working groups (composed of AP members with particular species interests), and a detailed agenda by species will allow members to address their species-of-concern at relevant portions of the meeting and will be more effective in addressing the overlapping issues in these related fisheries. One of the long-term goals of HMS management has been to better coordinate the management of Atlantic tunas, swordfish and sharks. There is considerable species overlap in several recreational (e.g., rod and reel fisheries for sharks, yellowfin tuna, bluefin tuna, and billfish) and commercial HMS fisheries (e.g., longlining for yellowfin tuna, bigeye tuna and sharks; purse seining for bluefin tuna, yellowfin tuna, and albacore tuna). Preparation of one HMS FMP is consistent with the Presidential Regulatory Reform Initiative and will lead to a more holistic approach to fishery management, consistent with the National Environmental Policy Act. Furthermore, a single HMS AP reflects the structure of the U.S. Advisory Committee to the International Commission for the Conservation of Atlantic Tunas (ICCAT) which also has one panel for all HMS species with supporting species working groups. Finally, combination of tunas, swordfish and sharks under one management plan and one AP will minimize the financial and time burden on the affected constituency. The overlap in fisheries could result in considerable repetition in representation on separate panels. NMFS wishes to minimize the time and financial burdens to panel members while simultaneously promoting better integration of Atlantic tuna, swordfish and shark management.

Procedures and Guidelines

A. *Procedures for Establishing the Advisory Panel.*

Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental and quasi-governmental entities will be considered as members of the AP. Selection of AP members will not be limited to those that are nominated. Individuals previously nominated to the Atlantic Tunas Negotiated Rulemaking Advisory Committee will be considered for membership on the HMS AP.

Nominations are invited from all individuals and constituent groups. The nomination should include:

1. The name of the applicant or nominee and a description of their interest in or connection with highly migratory species (HMS) or one species in particular from among sharks, swordfish, and tunas;
2. A statement of background and/or qualifications;
3. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP.

B. *Participants.*

The AP shall consist of not less than seven (7) members who are knowledgeable about the pelagic fisheries for Atlantic HMS, particularly fisheries. Nominations will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community. NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each interest must be adequately represented. The intent is to have a group that, as a whole, reflects an appropriate balance and mix of interests given the responsibilities of the AP. Criteria for membership include one or more of the following: (a) Experience in the recreational fishing industry involved in catching swordfish, tunas, or sharks; (b) experience in the commercial fishing industry for HMS; (c) experience in connected industries (marinas, bait and tackle shops); (d) experience in the scientific community working with HMS; (e) former or current representative of a private, regional, state, national, or international organization representing marine fisheries interests dealing with HMS.

NMFS will provide the necessary administrative support, including technical assistance, for the AP.

However, NMFS will be unable to compensate participants with monetary support of any kind, because no funds were appropriated to support this activity in fiscal year 1997. Members will be expected to pay for travel costs related to the AP.

C. *Tentative Schedule.*

Meetings of the AP will be held twice yearly or more frequently as necessary. The first meeting of the HMS AP is tentatively scheduled for October 14–16, 1997 in Silver Spring, Maryland. The initial activities include consideration of definitions of overfishing, etc., to be developed for a comprehensive HMS fishery management plan. Under the MSFCMA FMP amendments and regulations must be submitted for Secretarial review by October 11, 1998.

Dated: August 22, 1997.

George H. Darcy,

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

[FR Doc. 97–22880 Filed 8–25–97; 9:51 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request—Amended Interim Safety Standard for Cellulose Insulation

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of cellulose insulation. The collection of information is in regulations implementing the Amended Interim Safety Standard for Cellulose Insulation (16 CFR Part 1209). These regulations establish testing and recordkeeping requirements for manufacturers and importers of cellulose insulation subject to the amended interim standard. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than October 27, 1997.

ADDRESSES: Written comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland. Alternatively, comments may be filed by telefacsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned ''Cellulose Insulation.''

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR Part 1204, call or write Robert E. Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0416, extension 2264.

SUPPLEMENTARY INFORMATION: Cellulose insulation is a form of thermal insulation used in houses and other residential buildings. Most cellulose insulation is manufactured by shredding and grinding used newsprint and adding fire-retardant chemicals.

In 1978, Congress passed the Emergency Interim Consumer Product Safety Standard Act of 1978 (Pub. L. 95–319, 92 Stat. 386). That legislation is contained in section 35 of the Consumer Product Safety Act (15 U.S.C. 2080). This law directed the Commission to issue an interim safety standard incorporating the provisions for flammability and corrosiveness of cellulose insulation set forth in a purchasing specification issued by the General Services Administration (GSA). The law provided further that the interim safety standard should be amended to incorporate the requirements for flammability and corrosiveness of cellulose insulation in each revision to the GSA purchasing specification.

In 1978, the Commission issued the Interim Safety Standard for Cellulose Insulation in accordance with section 35 of the CPSA. In 1979, the Commission amended that standard to incorporate the latest revision of the GSA purchasing specification. The Amended Interim Safety Standard for Cellulose Insulation is codified at 16 CFR Part 1209.

The amended interim standard contains performance tests to assure that cellulose insulation will resist ignition from sustained heat sources, such as smoldering cigarettes or recessed light fixtures, and from small open-flame sources such as matches or candles. The standard also contains tests to assure that cellulose insulation will not be corrosive to copper, aluminum, or steel if exposed to water.

Certification regulations implementing the standard require manufacturers, importers, and private labelers of cellulose insulation subject to the standard to perform tests to demonstrate that those products meet the requirements of the standard, and to maintain records of those tests. The certification regulations are codified at 16 CFR Part 1209, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of cellulose insulation subject to the standard to help protect the public from risks of injury or death associated with fires involving cellulose insulation. More specifically, this information helps the Commission determine whether cellulose insulation subject to the standard complies with all applicable requirements. The Commission also uses this information to obtain corrective actions if cellulose insulation fails to comply with the standard in a manner which creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations under control number 3041–0022. OMB's most recent extension of approval will expire on November 30, 1997. The Commission now proposes to request an extension of approval without change for the collection of information in the certification regulations.

Estimated Burden

The Commission staff estimates that about 45 firms manufacture or import cellulose insulation subject to the amended interim standard. The Commission staff estimates that the certification regulations will impose an average annual burden of about 1,320 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of cellulose insulation is approximately 59,400 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is about $15, for an estimated annual cost to the industry of approximately $891,000.

The Commission will expend approximately one week of professional staff time each year reviewing and evaluating the records maintained by manufacturers and importers of cellulose insulation. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $1,400.

Request for Comments

The Commission solicits written comments from all interested persons about the proposed extension of approval of the collection of information in the certification regulations implementing the Amended Interim Safety Standard for Cellulose Insulation. The Commission specifically solicits information about the hourly burden and monetary costs imposed by the collection of information on firms subject to this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: August 22, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–22851 Filed 8–27–97; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prevents military recruiter access to the campus or students or maintains a policy against ROTC. It also implements the requirements set forth in the Omnibus Consolidated Appropriations Act of 1997 and 32 CFR part 216. The institutions of higher education so identified are:

Washington College of Law of American University, Washington, DC
University of Oregon School of Law, Eugene, Oregon
Willamette University College of Law, Salem, Oregon
St. Mary's University School of Law, San Antonio, Texas
William Mitchell College of Law, St. Paul, Minnesota

Recently, officials from the following institutions of higher education reported modifications to school policies sufficient to merit removal from the list of ineligible schools.

City College of San Francisco, San Francisco, California
Hamline University School of Law, St. Paul, Minnesota
Kenyon College, Gambier, Ohio
Mills College, Oakland, California
Ohio Northern University College of Law, Ada, Ohio

The Omnibus Consolidated Appropriations Act of 1997 provides that schools prohibited by state laws or court rulings from providing the requisite degree of access for ROTC or military recruiting would not be denied funding prior to one year following the effective date of that law (i.e., not until March 29, 1998). However, that provision applies only to funds from agencies other than the Department of Defense, which is bound by provisions of the National Defense Authorization Acts for Fiscal Years 1995 and 1996. Therefore, the Secretary of Defense has determined that the following institutions of higher education prevent recruiter access to campuses, students, or student information and are ineligible for DoD contracts and grants.

Asnuntuck Community-Technical College, Enfield, Connecticut
Capital Community-Technical College, Hartford, Connecticut
Central Connecticut State University, New Britain, Connecticut
Charter Oak State College, Newington, Connecticut
Connecticut Community-Technical College, Winsted, Connecticut
Eastern Connecticut State University, Willimantic, Connecticut
Gateway Community-Technical College, North Haven, Connecticut
Housatonic Community-Technical College, Bridgeport, Connecticut
Manchester Community-Technical College, Manchester, Connecticut
Middlesex Community-Technical College, Middletown, Connecticut
Naugatuck Community-Technical College, Waterbury, Connecticut
Norwalk Community-Technical College, Norwalk, Connecticut
Quinebaug Valley Community-Technical College, Danielson, Connecticut
Southern Connecticut State University, New Haven, Connecticut
Three Rivers Community-Technical College, Norwich, Connecticut
Tunxis Community-Technical College, Farmington, Connecticut
Western Connecticut State University, Danbury, Connecticut

ADDRESSES: Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: William J. Carr, (703) 697–8444.

SUPPLEMENTARY INFORMATION: On April 8, 1997 (62 FR 16694), the Department of Defense published 32 CFR part 216 as an interim rule. This rule and the Omnibus Consolidated Appropriations Act of 1997, requires the Department of Defense semi-annually to publish a list of the institutions of higher education ineligible for Federal funds. 32 CFR part 216 and the Secretary of Defense under 108 Stat. 2663, 10 U.S.C. 983, and 110 Stat. 3009 and/or this part identifies institutions of higher education that have a policy or practice that either prohibits, or in effect prevents, the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, access to directory information on students or that has an anti-ROTC policy. On July 15, 1997 (62 FR 37890), the Department of Defense published a list of the institutions of higher education ineligible for Federal Funding; this listing updates and supersedes that listing.

Dated: August 21, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–22863 Filed 8–27–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DoD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on September 15 and 16, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0830–1700, September 15 and 16, 1997 in order for the Panel to discuss classified material.

DATES: September 15 and 16, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0830–1700 on September 15 and from 0830–1700 on September 16, 1997. During the closed session on September 15 the Panel will meet with Deborah R. Lee, Assistant Secretary of Defense for Reserve Affairs at the Crystal Mall 3 office. On September 16 during the closed session the Panel will meet with Gen. Anthony Zinni, CINCCENT MacDill, AFB, FL at the Crystal Mall 3 office. On September 16 during the closed session the National Defense Panel staff will present updates on Force Structure Analysis and Special Issues at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: August 22, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–22864 Filed 8–27–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Underground Facilities

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Underground Facilities will meet in closed session on September 16–17, 1997 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the threat to U.S. interests posed by the growth of underground facilities in unfriendly nations. The Task Force should investigate technologies and techniques to meet the international security and military strategy challenges posed by these facilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: August 25, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–22905 Filed 8–27–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Stealth Technology and Future S&T Investments

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Stealth Technology and Future S&T Investments will meet in closed session on September 25–26, October 14, November 20–21, and December 3–4, 1997 at Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will explore the relationship between low observable and electronic warfare technologies in providing future weapon system survivability.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: August 25, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–22906 Filed 8–27–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Year 2000

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Year 2000 will meet in closed session on September 15–16, 1997 at Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will determine if the priorities assigned, resources allocated and funding strategy used to implement and Department's Y2K five phase process are sufficient to ensure all mission critical systems will function properly on, before and after January 1, 2000.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: August 25, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–22907 Filed 8–27–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: September 23–25, 1997 from 0800 to 1700.

Place: National Highway Institute Conference Room 302, 901 North Stuart Street, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Amy Levine, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: August 22, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–22862 Filed 8–27–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse Final Environmental Impact Statement for McClellan Air Force Base (AFB), California (CA)

On August 19, 1997, the Air Force issued a ROD for the disposal of McClellan Air Force Base (AFB), CA. The decisions included in this ROD have been made in consideration of the Final Programmatic Environmental Impact Statement for the Disposal and Environmental Impact Report for Reuse (FPEIS/EIR) of McClellan AFB, CA, which was filed with the Environmental Protection Agency on July 3, 1997, and other relevant considerations.

McClellan AFB will officially close on July 13, 2001, pursuant to the Defense Base Closure and Realignment Act of 1990, (Pub. L. 101–510) and the recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This ROD documents the McClellan AFB disposal decisions.

The Air Force has decided to dispose of the approximately 3,452 acres fee and 93 acres of easements of McClellan AFB and associated off base sites in the following manner: Parcel A (approximately 6 acres), Parcel B (approximately 8 acres), Parcel C (approximately 13 acres), Parcel D1 (approximately 1 acre), Parcel E (approximately 14 acres), Parcel F (approximately 3 acres) will be retained by Department of Defense; Parcel G (approximately 5 acres) and Camp Kohler Annex (approximately 35 acres) will be transferred to the Department of Transportation Federal Aviation Administration for aviation use; Parcel H (approximately 39 acres) will be transferred to the County of Sacramento Board of Supervisors which is the official Local Redevelopment Authority (LRA) for federal leaseback for the Department of Transportation United States Coast Guard for air rescue operations; Parcel I (approximately 1 acre) and McClellan Hospital Complex (approximately 26 acres) will be transferred to the Department of Veterans Affairs for a hospital and dental clinic; Parcel J (approximately 2,415 acres) will be transferred to the LRA for the establishment of an aviation technology center; Parcel K (approximately 1 acre) will be offered as a negotiated sale to Sacramento Area Federal Employees (SAFE) Credit Union; Parcel DC–1 (approximately 115 acres) will be transferred to the Department of Interior United States Fish and Wildlife Service to protect and manage natural habitats and wetlands; and Parcel DC–2 (approximately 5 acres) will be transferred to the Department of Commerce National Oceanic and Atmospheric Administration National Weather Service for weather surveillance. The decision on the remaining land and facilities has been deferred until a later date.

The uses proposed for the property by the prospective recipients of the property under the ROD are included in the proposed action in the FPEIS/EIR and are consistent with the community's revised redevelopment plan for the base. The LRA prepared the plan with the assistance of the broader community.

By this decision, the Air Force adopts certain mitigation measures, as described in this ROD, to protect public health and the environment. In response to the existing or forecasted environmental impacts to or in the area of McClellan AFB, subsequent property owners should consider implementation of the more specific mitigation measures associated with reuses they may undertake, as set forth in Chapter 4 of the PFEIS.

Any questions regarding this matter should be directed to Mr. Charles R. Hatch, Program Manager, Division C. Correspondence should be sent to AFBCA/DC, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2809.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–22965 Filed 8–27–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning ''Bacterial Superantigen Vaccines''

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with 38 CFR 404.6, announcement is made of the availability of U.S. Patent Application SN 08/882,431 entitled ''Bacterial Superantigen Vaccines.'' This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, 301–619–7807, Fax 301–619–5034.

SUPPLEMENTARY INFORMATION: ''Recombinant vaccines for control of bacterial superantigen-associated diseases have been developed. These include vaccines of staphylococcal enterotoxin A, staphylococcal enterotoxin B, staphylococcal enterotoxin C1, toxic-shock syndrome toxin-1, and streptococcal pyrogenic exotoxin-A. Engineered changes in the proteins have attenuated receptor binding and biological activity to an essentially nonspecific level. The vaccines retain a high degree of antigenicity and have been successfully tested in murine and nonhuman primate animal models for protective immunity and safety. These vaccines offer the safety and advantages of defined recombinant proteins and may be useful for controlling toxic-shock syndromes and certain autoimmune diseases associated with these bacterial superantigens.''

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–22872 Filed 8–27–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Science and technology Advisory Board has been scheduled as follows.

DATES: 15 September 1997 (800 am to 1600 pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: August 25, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–22904 Filed 8–27–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the National Science Foundation and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Proposed computer matching program between the National Science Foundation and the Defense Manpower Data Center of the Department of Defense (DoD).

SUMMARY: DMDC, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a proposed computer matching program between the National Science Foundation (NSF) and DMDC that their records are being matched by computer. The record subjects are delinquent debtors of the National Science Foundation, who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by the National Science Foundation so as to permit the National Science Foundation to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective September 29, 1997, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the National Science Foundation and DMDC have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations held by the National Science Foundation under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal government so that the Foundation can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between the National Science Foundation and DMDC is available to the public upon request. Requests should be submitted to the address caption above or to the Debt Management Officer, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice were submitted on August 15, 1997, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6435, February 20, 1996). This matching program is subject to review by OMB and Congress and shall not become effective until that review period of 40 days has elapsed.

Dated: August 25, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the National Science Foundation, and the Defense Manpower Data Center of the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the National Science Foundation (NSF) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The National Science Foundation is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate any matched Federal personnel, employed or retired, who owe deliquent debts to the Federal Government under certain programs administered by NSF. NSF will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514, as amended, Installment Deduction for

Indebtedness (Salary Offset); 10 U.S.C. 136, as amended, Under Secretary of Defense for Personnel Readiness; 10 U.S.C. 138, as amended, Assistant Secretaries of Defense; section 101(1) of Executive Order 12731; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 – 550.1108, Collection by Offset from Indebted Government Employees (OPM); 45 CFR part 607 (NSF).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, from which records will be disclosed for the purpose of this computer match are as follows:

1. NSF will use personal data from the following Privacy Act record system for the match: NSF-57, 'Delinquent Debtors' File,' which was published in the **Federal Register** at 58 FR 33674 on June 18, 1993.

2. DOD will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at 61 FR 32779 on June 25, 1996.

The categories of records in the NSF record system are delinquent debtors. The categories of records in the DoD system consists of employment records of active and retired military members, including the Reserve and Guard, and the OPM government-wide Federal active and retired civilian records. Both record systems contain an appropriate routine use disclosure provision required by the Privacy Act permitting the disclosure of the affected personal information between the National Science Foundation and DoD. The routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. *Description of computer matching program:* NSF, as the source agency, will provide DMDC with an electronic file containing the names and SSN of its delinquent debtors. Upon receipt of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the NSF list against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of non-postal Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to NSF. NSF is responsible for verifying and determining that the data on the DMDC reply hard copy list are consistent with NSF's source file and for resolving any discrepancies or inconsistencies on an individual basis. NSF will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

F. *Individual notice and opportunity to contest:* Due process procedures will be provided by the NSF to those individuals matched (hits) consisting of the NSF's verification of debt; a minimum of 30–day written notice to the debtor explaining the debtor's rights; provision for debtor to examine and copy NSF's documentation of the debt; provision for debtor to seek the NSF's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the NSF for repayment. Only when all of the steps have been taken will the NSF disclose, pursuant to a routine use, to effect an administrative or salary offset. Unless the individual notifies the Foundation otherwise within 30 days from the date of the notice, NSF will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt. Failure to respond to the notice will be construed as to the correctness of the notice and justification for taking the next step to collect the debt under the law.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 40 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, unless OMB or the National Science Foundation request a match twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between the National Science Foundation and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 97–22908 Filed 8–27–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Federal Energy Technology Center; Notice of Inventions Available for Licensing

AGENCY: Department of Energy (DOE), Federal Energy Technology Center (FETC).

ACTION: Notice.

SUMMARY: The United States Department of Energy, Federal Energy Technology Center hereby announces that the inventions listed below are available for licensing in accordance with 35 U.S.C. 207–209 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents rights have been retained on selected inventions to extend market coverage and may also be available for licensing. A copy of issued patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

ADDRESSES: Technology Transfer Program Manager, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26505.

FOR FURTHER INFORMATION CONTACT: R. Diane Manilla, Technology Transfer Program Manager, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26505; Telephone (304) 285–4086; E-mail: RMANIL@FETC.DOE.GOV.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR Part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for licensing has been announced in the **Federal Register**.

Issued Patents

Number and Title

5,613,244—Process for Preparing Liquid Wastes
5,593,593—Process for Removing Sulfate Anions From Waste Water
5,560,420—Process for Casting Hard-Faced, Lightweight Camshafts and Other Cylindrical Products
5,474,364—Shotgun Cartridge Rock Breaker
5,404,764—Polyport Atmospheric Gas Sampler
5,369,214—Method for Selective Dehalogenation of Halogenated Polyaromatic Compounds
5,333,044—Fluorescent Image Tracking Velocimeter
5,312,462—Moist Caustic Leaching of Coal
5,260,640—Method of and System for Producing Electrical Power
5,254,697—Method of and System for Producing Electrical Power
5,214,015—Synthesis on Iron Based Hydrocracking Catalysts
5,168,088—Method for Dispersing Catalyst onto Particulate Material
5,139,991—Improved Catalysts and Method
5,139,958—A Device for Determination of Low Concentrations of Oxygen in Carbonaceous Materials
5,104,520—Apparatus and Method for Separating Constituents
5,096,570—Method for Dispersing Catalyst onto Particulate Material
5,061,363—Method for Co-Processing Waste Rubber and Carbonaceous Material
5,022,892—Fine Coal Cleaning Via Micro-Mag Process
5,020,457—Destruction of Acid Gas Emissions
5,019,652—Catalysts and Method
5,015,366—Process and Apparatus for Coal Hydrogenation
5,008,083—Apparatus for Centrifugal Separation of Coal Particles
4,878,442—NO_x Control for High Nitric Oxide Concentration Flows Through Combustion-Driven Reduction
4,867,868—Selective Flotation of Inorganic Sulfides from Coal
4,829,246—Apparatus for Measuring Slay or Ash in a Furnace
4,820,391—Exhaust Gas Cleanup Process
4,775,387—Clean Coal by Explosive Comminution with Alkali and Supercritical Water
4,769,504—Process for Converting Light Alkanes to Higher Hydrocarbons
4,695,372—Conditioning of Carbonaceous Material Prior to Physical Beneficiation
4,675,101—Step Wise Supercritical Extraction of Carbonaceous Residua
4,615,780—Method of Removing Oxides of Sulfur and Oxides of Nitrogen from Exhaust Gases
4,615,712—Fuel Agglomerates and Methods of Agglomeration
4,587,113—Removal of Sulfur and Nitrogen Containing Pollutants from Discharge Gases
4,526,272—Laterally Bendable Belt Conveyor

Patent Applications Filed

Separation of Catalyst from Fischer-Tropsch Slurry
Method for Producing Iron-Based Acid Catalysts
Method for the Photocatalytic Conversion of Methane
A Portable Tester for Determining Gas Content Within a Core Sample
Mobile Machine Hazardous Working Zone Warning System
Gas Fluidized-Bed Stirred Media Mill
Method of Making Multi-Layered Titanium Ceramic Composites
Expandable Mixing Section Gravel and Cobble Eductor
Cable Load Sensing Device

Rita A. Bajura,

Director, FETC.

[FR Doc. 97–22956 Filed 8–27–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Technology Center; Notice of Intent To Grant Exclusive Patent License

AGENCY: Department of Energy (DOE), Federal Energy Technology Center (FETC).

ACTION: Notice.

SUMMARY: Notice is hereby given of an intent to grant to Harrison Material Consulting Services, Inc. of Minnetonka, Minnesota, an exclusive license to practice the invention described in U.S. Patent No. 5,474,364, titled ''Shotgun Cartridge Rock Breaker.'' The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated.

DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. § 209(c), unless within 60 days of publication of this Notice the Assistant Counsel for Intellectual Property, Department of Energy, Federal Energy Technology Center, Morgantown, WV 26505, receives in writing any of the following, together with the supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than sixty (60) days after the date of this published Notice.

ADDRESSES: Assistant Counsel for Intellectual Property, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26505.

FOR FURTHER INFORMATION CONTACT: Lisa A. Jarr, Assistant Counsel for Intellectual Property, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26505; Telephone (304) 285–4555.

SUPPLEMENTARY INFORMATION: 35 U.S.C. § 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR § 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Harrison Material Consulting Services, Inc. of Minnetonka, Minnesota, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 5,474,364, and has a plan for commercialization of the invention.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. § 209(c), that the license grant is in the public interest.

Rita A. Bajura,

Director, FETC.

[FR Doc. 97–22955 Filed 8–27–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–213–000, et al.; Docket No. CP96–559–000]

Columbia Gas Transmission Corporation and Texas Eastern Transmission Corporation; Notice of Site Visit

August 22, 1997.

On August 27 and 28, 1997, the Office of Pipeline Regulation (OPR) will conduct a site visit, with representatives of Texas Eastern Transmission Corporation, of the Marietta Compressor Station in Lancaster County, Pennsylvania and the Windridge, Uniontown, and Bedford Discharge replacement projects in Greene, Somerset, and Fulton Counties, Pennsylvania, respectively; all part of the Market Expansion Project.

On August 29, 1997, OPR will conduct a site visit, with representatives of Columbia Gas Transmission Corporation, of the Line V–50 Replacement portion of the Market Expansion Project in Mahoning County, Ohio.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22916 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–213–000, et al.]

Columbia Gas Transmission Corporation; Notice of Site Visit

August 22, 1997.

On September 3, 4, and 5, 1997, the Office of Pipeline Regulation (OPR) will conduct a site visit, with representatives of Columbia Gas Transmission Corporation, of the Crawford and Laurel Storage Field facilities in Hocking County, Ohio and the McArthur Storage Field facilities in Vinton County, Ohio; all part of the Market Expansion Project.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22917 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3669–000]

Connecticut Light & Power Company; Notice of Filing

August 22, 1997.

Take notice that on July 29, 1997, Connecticut Light & Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene 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 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22918 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–62–000]

Equitrans, L.P.; Notice of Refund Report

August 22, 1997.

Take notice that on August 19, 1997, Equitrans, L. P. (Equitrans) filed a Report summarizing the refunds of GRI overcollections which were credited to the July billing invoices of Equitrans' customers.

Equitrans states that on May 30, 1997 it received a refund from GRI of $364,777 for collections in excess of 105% of Equitrans of 1996 GRI funding level. Equitrans states that it credited this amount to its eligible firm customers in billing invoices which were mailed out on October 18, 1995. The credits were allocated to Equitrans' eligible firm customers pro-rata based on GRI rate collections during the 1996 billing year.

Equitrans states that a copy of its report has been served on its 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 Section 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 29, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22911 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–126–003]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

August 22, 1997.

Take notice that on August 20, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective August 11, 1997:

First Revised Sheet No. 60b

Iroquois states that this sheet was submitted in compliance with the provisions of the Commission's August 5, 1997 Order on Rehearing in the captioned proceeding. In that Order, the Commission required Iroquois to revise Section 5(d) of the General Terms and Conditions of its tariff to eliminate language permitting Iroquois to curtail service to secondary points on the basis of the rate paid.

Iroquois also states that copies of this filing were served upon all customers and interested state regulatory agencies.

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 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22909 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–696–000]

MIGC, Inc.; Notice of Request Under Blanket Authorization

August 22, 1997.

Take notice that on August 15, 1997, MIGC, Inc. (MIGC), 12200 North Pecos Street, Suite 230, Denver, Colorado 80234, filed in Docket No. CP97–696–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate two delivery taps for the delivery of gas for Western Gas Resources, Inc. (Western)—to coal processing plants of Antelope Coal Company (ACC) and Power River Coal Company (PRCC) in Campbell and Converse Counties, Wyoming. MIGC makes such request under its blanket certificate issued in Docket No. CP82–409–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

MIGC proposes to construct and operate a 103,000 foot 4-inch lateral pipeline which will run due east off of MIGC's mainline system to the coal processing plants of ACC and PRCC. MIGC requests authorization to add two new delivery taps to enable the delivery to these two coal processing plants of up to 7,000 Mcf of natural gas on a peak, and an estimated maximum annual volume of 109,500 Mcf. MIGC indicates that it currently provides transportation service for Western under its blanket open-access transportation certificate issued in Docket No. CP86–596, and states that it will provide transportation service for the natural gas to be delivered to ACC and PRCC pursuant to the terms and conditions of its FTS–1 Rate Schedule.

MIGC avers that its tariff does not prohibit the addition of new delivery points. It is further stated that such service for Western will be within Western's existing entitlements.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22915 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–700–000]

National Fuel Gas Supply Corporation; Notice of Application for Abandonment

August 22, 1997.

Take notice that on August 18, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon by sale three certificated gathering lines to Greenridge Oil Company (Greenridge). In addition, National Fuel seeks a finding that the facilities to be sold to Greenridge will be non-jurisdictional, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, National Fuel proposes to abandon Line Q–14 (641 feet of 4-inch pipeline), Line Q–15 (4,693 feet of 4-inch pipeline), and a portion of Line Q–16 (12,360 feet of 4-inch pipeline), located in Erie County, Pennsylvania. National Fuel has agreed to sell these facilities to Greenridge for $7,500. Currently, Lines Q–14 and Q–15 are inactive, but were previously used to feed locally produced gas into National Fuel's system. Line Q–16 is connected to three inactive wells and one active well. National Fuel receives gas produced by the Meridian Oil and Gas at Station P–2560 on Line Q–16. National Fuel states that these facilities are no longer needed to purchase and gather gas for its system supply. National Fuel states that after conveyance of the facilities, Greenridge intends to drill wells in the area and use the lines as gathering lines to feed gas to National Fuel Gas Distribution Corporation.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 12, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, 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 protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for National Fuel to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22912 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–5–000, ER97–412–000 and ER97–413–000]

Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company; Notice of Compliance Filing and Notice Shortening Comment Date on Compliance Filing

August 22, 1997.

On August 8, 1997, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (hereinafter Applicants) filed a motion requesting a thirty-day comment period on the compliance filing the Applicants made on August 8, 1997, in accordance with the Commission's Order Accepting For Filing And Suspending Proposed Tariffs, Establishing Optional Procedures And Consolidating Dockets issued July 16, 1997, in the above-docketed proceedings. The compliance filing includes proposed Mitigation Measures and attachments, a revised Appendix A screen analysis, and supporting testimony.

In their motion, Applicants state that a thirty-day comment period will afford any interested participants a sufficient opportunity to comment on the compliance filing and will permit the Commission to resolve competition issues without unnecessary delay and accord ratepayers the opportunity to begin to achieve cost savings. On August 11, August 14, and August 18, 1997, the Ohio Consumers' Counsel, the Ohio Rural Electric Cooperatives, Inc., Buckeye Power, Inc., the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, the Western Reserve Alliance, and the Public Utilities Commission of Ohio filed answers in support of the Applicants' motion. On August 12, 1997, the Industrial Energy Users-Ohio filed an answer in opposition to the Applicant's request.

Upon consideration, notice is hereby given that the Applicants' motion requesting a thirty-day comment period is granted in part. Comments on the Applicant's compliance filing shall be filed on or before September 22, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22914 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG97–10–002]

Pacific Interstate Transmission Company; Notice of Filing

August 22, 1997.

Take notice that on August 8, 1997, Pacific Interstate Transmission Company (PITCO) submitted a revised standards of conduct in response to the Commission's June 2, 1997 order.[1] PITCO states that it has established an electronic bulletin board that it will post releases of capacity by other shippers to any PITCO marketing affiliate.

PITCO states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22910 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–M

[1] 79 FERC ¶61,287 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–81–000, et al.]

Denver City Energy Associates, L.P., et al.; Electric Rate and Corporate Regulation Filings

August 21, 1997.

Take notice that the following filings have been made with the Commission:

1. Denver City Energy Associates, L.P.

[Docket No. EG97–81–000]

On August 15, 1997, Denver City Energy Associates, L.P. (Applicant), a Delaware limited partnership with a principal place of business at Sixth & Tyler Streets, P.O. Box 12033, Amarillo, TX 79101, filed with the Federal Energy Regulatory Commission (Commission), an application for a new determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant will begin constructing an approximately four hundred eighty-nine (489) megawatt combined-cycle, natural gas-fired, electrical generation facility near Denver City, Texas (the Facility). The Facility is scheduled to commence commercial operation by Winter, 1998–1999 for simple cycle operation, and Summer, 1999 for combined cycle operation. The Applicant is engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy from the Facility at wholesale.

Comment date: September 11, 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. First Energy System, Ohio Edison Company

[Docket No. ER97–412–001]

Take notice that on August 8, 1997, First Energy System and Ohio Edison Company tendered for filing its revised Open Access Transmission Tariff in the above-referenced docket.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER97–1200–000]

Take notice that on August 15, 1997, Western Resources, Inc., tendered for

filing a letter withdrawing its filing in the above-referenced docket.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. UtiliCorp United Inc.

[Docket No. ER97–3217–000]

Take notice that on August 14, 1997, UtiliCorp United Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: September 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Company

[Docket No. ER97–3358–000]

Take notice that on August 7, 1997, Montaup Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER97–3991–000]

Take notice that on July 30, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Stand Energy Corporation (Stand Energy).

Cinergy and Stand Energy are requesting an effective date of July 21, 1997.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER97–3993–000]

Take notice that on July 30, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Virginia Electric and Power Company (Transmission Customer), dated as of June 30, 1997 (TSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide the Transmission Customer firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of June 30, 1997.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER97–3994–000]

Take notice that on July 30, 1997, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and Morgan Stanley Capital Group, Inc., dated as of June 23, 1997. The parties commenced transactions under the Service Agreement on July 11, 1997. Duke requests that the Service Agreement be made effective as of July 11, 1997.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER97–3995–000]

Take notice that on July 30, 1997, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission a Letter Agreement for the Sale and Purchase of Firm Energy under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Energy Services, Inc.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Interstate Power Company

[Docket No. ER97–3996–000]

Take notice that on July 30, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Central Minnesota Municipal Power Agency. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Central Minnesota Municipal Power Agency.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Interstate Power Company

[Docket No. ER97–3997–000]

Take notice that on July 30, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Constellation Power Source, Inc. (Constellation). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Constellation.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Delmarva Power & Light Company

[Docket No. ER97–3998–000]

Take notice that on July 30, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing a summary of short-term transactions made during the second quarter of calendar year 1997 under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96-2571–000.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Midwest Energy, Inc.

[Docket No. ER97–3999–000]

Take notice that on July 29, 1997, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission its Quarterly Market Sales Report. This informational filing identifies Midwest's short-term market based sales transactions for the period April 1, 1997 through June 30, 1997.

Midwest states that it is serving copies of the instant filing on its customers, State Commissions and other interested parties.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Energy Corporation

[Docket No. ER97–4000–000]

Take notice that on July 30, 1997, Duke Energy Corporation (Duke), tendered for filing Schedule MR quarterly transaction summaries for service under Duke's FERC Electric Tariff, Original Volume No. 3 for the quarter ended June 30, 1997.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER97–4001–000]

Take notice that on July 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Louisiana, Inc. (Entergy Louisiana), tendered for filing an Interconnection and Operating Agreement between Entergy Louisiana and CII Carbon, L.L.C.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER97–4002–000]

Take notice that on July 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively the Entergy Operating Companies), tendered for filing a Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Entergy Services.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER97–4003–000]

Take notice that on July 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Municipal Energy Agency of Mississippi.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Central Illinois Light Company

[Docket No. ER97–4004–000]

Take notice that on July 31, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreements for two new customers.

CILCO requested an effective date of July 31, 1997.

Copies of the filing were served on all affected customers and the Illinois Commerce Commission.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Arizona Public Service Company

[Docket No. ER97–4005–000]

Take notice that on July 31, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3 with NP Energy, Inc. and Rainbow Energy Marketing Corporation.

A copy of this filing has been served on the Arizona Corporation Commission, NP Energy, Inc. and Rainbow Energy Marketing Corporation.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. John W. Rowe

[Docket No. ID–2093–003]

Take notice that on July 29, 1997, John W. Rowe (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following position: Director, BankBoston Corporation.

Comment date: September 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22927 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3962–000, et al.]

Western Resources, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 20, 1997.

Take notice that the following filings have been made with the Commission:

1. Western Resources, Inc.

[Docket No. ER97–3962–000]

Take notice that on July 30, 1997, Western Resources, Inc., tendered for filing three firm transmission agreements between Western Resources and Utilicorp dba Missouri Public Service. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective July 21, 1997, July 22, 1997, and July 23, 1997.

Copies of the filing were served upon Utilicorp dba Missouri Public Service and the Kansas Corporation Commission.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket No. ER97–3963–000]

Take notice that on July 30, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and PECO Energy Company. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective July 10, 1997.

Copies of the filing were served upon PECO Energy Company and the Kansas Corporation Commission.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Pool

[Docket No. ER97–3964–000]

Take notice that on July 30, 1997, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by EnergyVision, LLC (EnergyVision). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit EnergyVision to join the over 120 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make EnergyVision a Participant in the Pool. NEPOOL requests an effective date on or before September 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by EnergyVision.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp

[Docket No. ER97–3965–000]

Take notice that on July 30, 1997, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Non-Firm Transmission Service Agreement with LG&E Energy Marketing Inc., TransAlta Energy Marketing under PacifiCorp's FERC Electric Tariff, First Revised 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: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER97–3966–000]

Take notice that on July 30, 1997, Florida Power & Light Company (FPL) tendered for filing proposed service agreements with Southern Energy Trading and Marketing, Inc., for Short-Term Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on June 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The Cleveland Electric Illuminating Company

[Docket No. ER97–3967–000]

Take notice that on July 30, 1997, The Cleveland Electric Illuminating Company filed an Electric Power Service Agreement between CEI and Southern Energy Trading and Marketing, Inc.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. The Toledo Edison Company

[Docket No. ER97–3968–000]

Take notice that on July 30, 1997, The Toledo Edison Company filed an Electric Power Service Agreement between TE and Southern Energy Trading and Marketing, Inc.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Dayton Power and Light Company

[Docket No. ER97–3976–000]

Take notice that on July 30, 1997, The Dayton Power and Light Company (Dayton) tendered for filing a summary of 2nd quarter market based sales.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER97–3977–000]

Take notice that on July 30, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Constellation Power Source (Constellation).

Cinergy and Constellation are requesting an effective date of July 25, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER97–3978–000]

Take notice that on July 30, 1997, Arizona Public Service Company (APS), tendered for filing a Notice of Cancellation of APS' FERC Rate Schedule No. 130, Power Coordination Agreement and FERC Rate Schedule No. 93, Interruptible Transmission Service Agreement between APS and San Diego Gas & Electric Company.

APS requests that this cancellation become effective September 15, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Maine Power Company

[Docket No. ER97–3979–000]

Take notice that on July 30, 1997, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with the New England Power Pool. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER97–3980–000]

Take notice that on July 30, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Illinois Power Company (Illinois).

Cinergy and Illinois are requesting an effective date of August 15, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER97–3981–000]

Take notice that on July 30, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and The Energy Authority, Inc.

Cinergy and The Energy Authority, Inc., are requesting an effective date of July 15, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Kentucky Utilities Company

[Docket No. ER97–3983–000]

Take notice that on July 30, 1997, Kentucky Utilities Company (KU), tendered for filing a service agreement between KU and Aquila Power Corporation under its Transmission Services (TS) Tariff. KU requests an effective date of June 18, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Tucson Electric Power Company

[Docket No. ER97–3984–000]

Take notice that on July 30, 1997, Tucson Electric Power Company (TEP), tendered one (1) service agreement for firm transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreement to become effective as of July 1, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. The Detroit Edison Company

[Docket No. ER97–3985–000]

Take notice that on July 30, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and AIG Trading Corporation, dated as of July 9, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 9, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. The Detroit Edison Company

[Docket No. ER97–3986–000]

Take notice that on July 30, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Duke/Louis Dreyfus, L.L.C., dated as of July 16, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 16, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. The Detroit Edison Company

[Docket No. ER97–3987–000]

Take notice that on July 30, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Pennsylvania Power & Light Company, dated as of July 10, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 10, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. The Detroit Edison Company

[Docket No. ER97–3988–000]

Take notice that on July 30, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and Duke/Louis Dreyfus L.L.C., dated as of July 16, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 16, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Detroit Edison Company

[Docket No. ER97–3989–000]

Take notice that on July 30, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and AIG Trading Corporation, dated as of July 9, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 9, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER97–3990–000]

Take notice that on July 30, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Virginia Electric & Power Company (Virginia Power).

Cinergy and Virginia Power are requesting an effective date of August 1, 1997.

Comment date: September 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22926 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–809–000, et al. and CP96–810–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Amended Route by Maritimes & Northeast Pipeline, L.L.C. to be Included in the Environmental Impact Statement for the Proposed Maritimes Phase II Project and Second Request for Comments on Environmental Issues

August 22, 1997.

The purpose of this second notice of intent (NOI) to prepare an Environmental Impact Statement (EIS) is to inform the public of amended pipeline routes that will be analyzed in the EIS and to request comments on the current route. We are issuing this NOI to avoid any confusion over the currently proposed route of the Maritimes Phase II Project.

On July 11, 1997, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) amended its application to reflect reroutes along 104 miles of its proposed mainline and 40 miles of its lateral facilities and the relocation of one of the compressor stations. Maritimes states that these reroutes were identified as a result of efforts to address and resolve concerns and comments from landowners and others. Appendix 1 lists the proposed facilities by county; appendix 2 includes a general location map and detailed maps showing the location of the original route and the currently proposed route (labeled as the ''PRIMARY ROUTE'') and alternate routes.[1]

Background

On May 16, 1997, we issued our first NOI stating that the staff of the Federal Energy Regulatory Commission (FERC or Commission) is preparing an environmental impact statement (EIS) that will discuss the environmental impacts of the Maritimes Phase II Project. The project now involves construction and operation, in Maine, of about 346.1 miles of natural gas pipeline and compression.[2] The facilities consist of 198.7 miles of 24- and 30-inch-diameter mainline between Westbrook and the Canadian border near Woodland (Baileyville), Maine; 147.4 miles of 4- to 16-inch-diameter laterals, 31,160 horsepower (hp) of compression at two new compressor stations, 12 new meter stations, and 35 block valves. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of Proposed Route Changes

Maritimes identified reroutes along about 53 percent of the mainline and 27 percent of the laterals. The most significant changes include those at:

- Mainline mileposts (MP) 138.0 to 151.0 in the towns of Bowdoinham, Richmond, and Pittston in Sagadahoc and Kennebec Counties, including the relocation of the Richmond Compressor Station from Beedle to Pitts Road (Mainline MP 143.OR);
- Mainline MPs 217.3 to 236.5 in the towns of Bucksport, Holden, Clifton, and Mariaville in Hancock and Penobscot Counties;
- Mainline MPs 247.7 to 290.7 in unnamed townships in Hancock and Washington Counties;

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[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] Maritimes & Northeast Pipeline, L.L.C.'s application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

- Cousins Island Lateral MPs 8.5 to 10.3 in the town of Yarmouth, Cumberland County;
- Skowhegan Lateral MPs 13.3 to 16.6 in the towns of China and Albion, Kennebec County;
- Skowhegan Lateral MPs 34.4 to 35.7R in the town of Skowhegan, Somerset County;
- Brewer (Eastern Fine) Spur MPs 0.0 to 2.1R in the town of Brewer, Penobscot County; and
- Lincoln (Eastern Fine) Spur MPs 0.0 to 2.7R in the town of Lincoln, Penobscot County.

The remaining reroutes are less than 2 miles in length and less than 1,000 feet from the originally proposed route. We have not listed them above, but they are all shown in Appendix 2. On the maps the currently proposed route is the ''PRIMARY ROUTE''.

Land Requirements for Construction

Construction of the proposed mainline and Cousins Island Laterals (75-foot-wide nominal construction right-of-way) and the other laterals (65-foot-wide nominal construction right-of-way) would affect about 2,980 acres of land. About 71 percent of the mainline and 86 percent of the laterals would be adjacent to or within existing powerline or road rights-of-way. Appendix 3 identifies by milepost those locations where all of the construction right-of-way would be within existing rights-of-way. Additional land disturbance would be needed for extra work spaces at road, railroad and certain waterbody and wetland crossings, as well as for pipeyards and contractors yards, and temporary topsoil storage.

Following construction, about 1,931 acres of the land affected by the project would be retained for operation of the pipeline. A permanent 50 foot-wide right-of-way would be maintained for the mainline and Cousins Island Lateral; a permanent 40-foot-wide right-of-way would be maintained for the remaining laterals. In addition, about 60 acres of land would be fenced for the Richmond and Baileyville Compressor Stations and about 2.4 acres would be required for the meter stations (0.2 acre for each meter station). Block valves would be within the permanent right-of-way. Existing land uses on the remainder of the disturbed area would continue following construction.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities, comments received, and the environmental information provided by Maritimes. This preliminary list of issues may be changed based on your comments and our analysis.

- Effects on watersheds, including Floods Pond (Bangor Water District), Hatcase Pond (Brewer Water District), Sheepscot River, and China Lake;
- Effects of proposed open trench crossings on waterbody over 100 feet wide including the Androscoggin River, Kennebec River, Penobscot River, West Branch Union River, Jordan Brook, and St. Croix River on the mainline; and Casco Bay, Sebasticook River, Kennebec River (2 crossings), Otter Stream (2 crossings), Passadumkeag River, Penobscot River (3 crossings), West Branch Penobscot River (2 crossings) and Millinocket Stream on the laterals;
- Effects on river segments listed on either national or state inventories of sensitive waterbodies, or both (Abagadasset, Kennebec, West Branch Sheepscot, Sheepscot, St. George, West Branch Union, Middle Branch Union, Narragaugus, Machias, West Branch Machias, West Branch Penobscot, and St. Croix Rivers and Marsh Stream);
- Crossing of 240 perennial waterbodies, including 33 waterbodies considered important for their commercial or recreational fisheries, or protected species habitat;
- Effect on anadromous fisheries (including Atlantic salmon), deer wintering areas, waterfowl and wildlife habitat (including a proposed crossing of Sunkhaze Meadows National Wildlife Refuge);
- Effects on 2 federally listed species (bald eagle, shortnose sturgeon);
- Effects of crossing 4 active gravel pits;
- Clearing of about 2,061 acres of forest;
- Crossing of about 26.5 miles of wetlands;
- Effects of 62 residences within 100 feet of the pipeline centerline;
- Crossings of tribal land (Penobscot Indian Nation) and impact on fishing rights (Passamaquoddy Natural Resource Committee);
- Alternatives including the Northern Alternate near Richmond and Gardiner, Maine, minor route changes for site-specific concerns, and compressor station site alternatives.

Our independent analysis of the issues will be in a Draft EIS which will be mailed to Federal, state, and local agencies, newspapers, libraries, the Commission's official service list for these proceedings, and individuals and public interest groups who requested to remain on our mailing list. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes or compressor station sites), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Send *two* copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch II, PR 11.2;
- Reference Docket No. CP96–809–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 26, 1997.

In addition to sending written comments, you may attend a public scoping meeting that we will conduct in Gardiner, Maine at the following time and location:

Date: Tuesday, Sept. 16, 1997.

Time: 7:00 p.m.

Location: Middle School Gymnasium, State Route 126 (near Water Street), Gardiner, Maine, (207) 582–1326.

The purpose of the scoping meeting is to obtain additional input from state and local governments and from the public, especially about the Northern Alternative. See the map in Appendix 2. Federal agencies have formal channels for input into the Federal process (including separate meetings where appropriate) on an interagency basis. Federal agencies are expected to transmit their comments directly to the FERC and not use the scoping meetings for this purpose. Local agencies are requested to provide information on other plans and projects which might conflict with, or have cumulative effects, when considered in combination with the Maritimes Phase II Project.

Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. A list will be available at the public meetings to allow speakers to sign up. Priority will be given to those persons representing groups. A transcript will be made on the meetings and comments will be used to help determine the scope of the Draft EIS.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents such as data requests and filings by other intervenors. We will provide our EIS to anyone who follows the instructions which appear later in this NOI. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). If you already intervened in this proceeding you do not need to do so again because of the amended routes.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested and/or potentially affected by the proposed project. To solicit focused comments regarding environmental considerations related to the proposed project and alternatives, it is also being sent to all potential right-of-way grantors (i.e., landowners whose property would be crossed), landowners along the alternative routes, landowners and abuttors at the aboveground facility sites, and abuttors along powerline rights-of-way that would be used for installation of the pipeline.

If you do not want to send comments at this time but still want to remain on our mailing list and receive a copy of our Draft and Final EISs, please return the form in appendix 4. PLEASE NOTE: IF WE HAVE NOT HEARD FROM YOU, EITHER BY COMMENT LETTER, RESPONSE TO ONE OF THE TWO NOIs, OR REGISTERING AT THE SCOPING MEETINGS, YOU WILL BE DROPPED FROM THE MAILING LIST. If you have previously provided us with your name and address, you do not need to send in the form in appendix 4.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22913 Filed 8–27–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5884–5]

Availability of Guidance for Utilization of Small, Minority and Women's Business Enterprises in Procurement Under Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of guidance document.

SUMMARY: EPA is announcing the availability of its ''Guidance for Utilization of Small, Minority and Women's Business Enterprises in Procurement Under Assistance Agreements—6010 1997 Edition.'' This document, issued on July 22, 1997, revises previous Agency guidance dated May 1996. EPA prepared the Guidance for use by Agency personnel, State, Tribal and local government officials, and business persons interested in participating in EPA financial assistance programs. The Guidance provides information on the use of Small, Minority and Women's Business Enterprises in procurement under EPA grants and cooperative agreements. It will assist individuals in their efforts to understand and implement EPA policies codified at 40 CFR part 30.31 and 35 and ensure consistency with the Supreme Court's decision in *Adarand Constructors. Inc.* v. *Pena.* 115 S. Ct. 2097 (1995).

ADDRESSES: An electronic version of the Guidance is accessible on EPA's Office of Small and Disadvantaged Business Utilization home page on the Internet at http://www.epa.gov/osdbu/pubs.htm. A limited number of paper copies are also available. Requests for a paper copy should be addressed to the Office of Small and Disadvantaged Business Utilization (1230C), U.S. Environmental Protection Agency, Crystal Mall 2, Room 1110, 1921 Jefferson Davis Highway., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Rebecca D. Neer, Office of Small and Disadvantaged Business Utilization (1230C), U.S. Environmental Protection Agency, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone (703) 305–5030.

Dated: August 22, 1997.

Peter D. Robertson,

Chief of Staff, Office of The Administrator.

[FR Doc. 97–22946 Filed 8–27–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5884–3]

Variance and Exemption Regulation Stakeholder Meeting

Notice is hereby given that a public meeting of interested stakeholders will be held concerning the variance and exemption provisions of the 1996 Amendments to the Safe Drinking Water Act (SDWA). This meeting will be held on September 16, 1997 from 8:30 am to 5:15 pm, at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, Washington, DC 20024.

The purpose of this meeting is to review and discuss the variance and exemption provisions of the 1996 Safe Drinking Water Act Amendments (sections 1415–16) and the requirements for rulemaking to implement these provisions. EPA is soliciting input as to what these regulations should consider and contain. The 1996 SDWA requires that EPA promulgate regulations specifying:

- Procedures to be used by the Administrator or a State to grant or deny variances, including requirements relating to public notification and hearings prior to issuance of a variance;

• Requirements for the installation and proper operation of variance technologies for small systems, (identified pursuant to section 1412(b)(15));

• Eligibility criteria for a variance for each NPDWR, including requirements for quality of the source water; and

• Information requirements for variance applications.

To register for this meeting, please call the Safe Drinking Water Hotline at 1–800–426-4791. A limited number of teleconference lines will be available for persons unable to attend the meeting. When you call the hotline to register, please specify whether you will attend the meeting in person or via teleconference. Participants will be accommodated on a first-come, first-serve basis.

For more information, please contact Andrew C. Hanson, U.S. EPA, Office of Ground Water and Drinking Water (4606) , 401 M Street SW, Washington, D.C. 20460. The telephone number is 202–260–4320 and the email address is hanson.andrew@epamail.epa.gov.

Dated: August 22, 1997.

Robert Blanco,

Office of Ground Water and Drinking Water.

[FR Doc. 97–22947 Filed 8–27–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5883–8]

Workshop on Water Conservation Plan Guidelines and Water Conservation Plan Guidelines Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a Workshop on September 22, 1997 in Denver, CO, to discuss issues related to the water conservation plan provision of the 1996 Safe Drinking Water Act, and to provide a forum for stakeholder input in the development of these guidelines. On September 23, 1997, the Water Conservation Plan Guidelines Subcommittee of the Local Government Advisory Committee, formed to obtain input on the guidelines, will also meet.

The Workshop and Subcommittee meeting are open and all interested persons are invited to attend on a space-available basis. Minutes will be available after both sessions and can be obtained by written request from the Designated Federal Officer (DFO). To register for the Workshop, members of the public are requested to call Rudd Coffey, with The Cadmus Group, Inc., at (617) 894–9830, or fax at (617) 894–7238, or e-mail at rcoffey@ziplink.net. Those individuals interested in the Subcommittee meeting should call John Flowers at (202) 260–7288.

DATES: The Workshop will be held from 9:00 a.m. to 5:00 p.m. on Monday, September 22, 1997. The Subcommittee meeting will be held from 8:30 a.m. to 12:00 noon on September 23, 1997.

ADDRESSES: Both meetings will be held at the Sheraton Denver West Hotel, 360 Union Boulevard, Lakewood, CO.

Requests for minutes and other information can be obtained by writing to John E. Flowers, U.S. Environmental Protection Agency, Office of Wastewater Management (Mail Code 4204), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Subcommittee is John E. Flowers. He is the point of contact for information concerning any Subcommittee matters and can be reached by calling (202) 260–7288. For further information regarding the Workshop, individuals should contact Rudd Coffey at the numbers provided above.

Dated: August 18, 1997.

Alfred W. Lindsey,

Acting Director, Office of Wastewater Management.

[FR Doc. 97–22951 Filed 8–27–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5884–7]

Parramore Fertilizer Site/Tifton, Georgia; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Parramore Fertilizer Site (Site) located in Tifton, Georgia, with Minnesota Mining & Manufacturing Company and Electroless Nickel Plating of Louisiana. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Program Services Branch, Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: August 21, 1997.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 97–22952 Filed 8–27–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5884–8]

Peak Oil Superfund Site; Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed *de minimis* settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered approximately 650 *de minimis* parties at the Peak Oil Superfund Site (Site) an opportunity to enter into an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. The following list of 140 parties have returned signature pages accepting EPA's settlement offer:

A&M Union 76 Station, Aamco Transmission, Allied Discount Tires; Altisa Corp. f/k/a Allied Tire Sales, Inc., Alturas Packing Co., Inc., Anderson Auto Parts Co., Inc., Arco Polymers, Inc. a/k/a Atlantic Richfield Company, Automatic Machinery and Electronics, Inc., Bill Weikert Ford, Inc., Black Gold Compost Company, Bott's Chevron Service (Leyman Bott's Standard), Bowan Brothers, Inc., Bucket Mart n/k/a B.M., Inc., BW 10 Minute Oil Change, Candy Auto Shop, Inc., Carver Diesel Service, Castellano Family Enterprises, Inc., Central Florida Gas Company n/k/a Chesapeake Utilities Corp., Chas Kurz & Co., Inc., Checkpoint, Incorporated, Chitwood's Thrill Show (Joie Chitwood), Cities Transit, Inc., City of Auburndale—Water Dept., City of St. Petersburg, City of Zephyrhills, The Clorox Company, Colonial Oil

Industries, Inc., Commercial 76 Auto Truck Stop, Cooper & Son, Inc., Maritrans Operating Partners L.P., f/k/a Sonet Marine and Sonat Marine, Cortez Shell, Inc., Cypress Tire & Auto Service, D&R Truck Service, Inc., Daniel Chrysler-Plymouth, Inc., Dart Container Corporation, De Soto County Board of County Commissioners, Dick Smith Motors, Inc., Dodge City, Inc., Don Olson Firestone, Dunson Harvesting, Inc., East Bay Sanitation, Edward's Asphalt, Inc., Ekiert Tire Center, Ernie's Amoco Station, Evans Automotive, F.W. Woolworth, Co., Farrell Lines Incorporated/Austral Patriot, Firestone—M.R. Lambert Firestone, Flohl's Service Station, Florida—Department of Agriculture, Florida Favorite Fertilizer, Inc., Florida Refuse Service, Inc., Florida West Coast Distributors, Inc., FMC Corporation, Freeman & Sons, Inc. n/k/a Brungart Equipment Co., Inc., G&B Oil Products, Gadd Concrete, Inc., Gator Concrete n/k/a Metro Concrete Co., Gene's '66' Service, Goochland Nurseries, Inc., Gray Enterprises of Tampa, Inc., Green Acres R.V. Center, Inc., Griffin's Concrete, Inc., Growers Service Co., Inc., Gulf Coast Lead Company n/k/a Gulf Coast Recycling, Inc., Hanna Transfer Company, Hendry County School Board, Henkels & McCoy Equipment Co., Inc., Herman's Auto Clinic, Hertz Penske Truck Leasing, Inc., Highland County School District, Hillsborough County Aviation Authority, Hunt Refining Company f/k/a Hunt Oil Company, Hydraulic Equipment Co., Import City, J.C. Penney Co., Inc., J.H. Williams Oil Company, Inc., Jim's Gulf Station, John Deere Industrial Equipment Co., Johnson's Chevron, Joie Chitwood Chevrolet, Inc., Jones Oil & Tire, Inc., Kash N' Karry, Kent Oil Company, Inc., Kings Point Vehicle Storage Club, Inc., Krispy Kreme Doughnuts, Larkin Contracting, Inc., Lee Myles Associates Corp., Linder Industrial Machinery, M&M Lawn Mower Sales and Service, Inc., Macasphalt Corporation n/k/a Ashland-Warren, Inc., Masons Concrete of Crystal River, Inc., McGinnes Lumber Company at Plant City, McLeods 66 Service, Moran Towing Corp., National Guard Amory, Tag-Fl, National Sea Products (U.S.) Corps. Ltd., John H. Patterson, On Site Truck Services, Inc., Orange Co. of Florida, Inc., Orange State Oil Co., Parcel Delivery of Tampa, Inc., Parkwood Auto Service, Paul Bundy Exxon Station, Peace River Electric Cooperative, Inc., Pennington Auto Service Center, Pepsico Truck Leasing Co., L.P./General Electric Capital Co., Plant City Steel Corporation n/k/a Harsco Corporation, Precision Automotive Limited, Precision Toyota, Inc. f/k/a University Toyota, Inc., Pride Manufacturing Company, Ram Industries, Inc., Reco-Tricote, Inc., Richens and Son, Inc., Roberts Motor Company, Inc., Roundtree Transport & Rigging, Inc., Roy's Gulf Station, Royal Caribbean Cruises, Ltd., Schwend, Inc., Sorrells Bros. Packing Co., Inc., South Dale Mabry Exxon (Britt's Exxon), South Howard Auto Service (pre-83), Southland Industries, Southside Shell Service, Standard Marine Supply Corp., Standard Sand & Silica Company, Stauffer Chemical Co., Suncoast Helicopters, Inc., Tampa Maid Sea Products, Inc., Ullrich's, Union Carbide Corporation, Utility Trailer & Brake Service, Inc., Vassallo, Inc. f/k/a Forder Vassallo, Inc., Venice Flying Service, Inc., Virgil's ''66'', Inc., West Trucking Company, Inc., Wilson Davis Ford, Inc., Winter Garden Citrus Growers Association, Winter Haven Citrus Growers Assoc., Woodcook's Gulf, and Yarbrough Tire Service, Inc.

EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Program Services Branch, Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: August 21, 1997.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 97–22953 Filed 8–27–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

August 21, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0742.

Expiration Date: 12/31/99.

Title: Number Portability—47 CFR Part 52, Subpart C, Sections 52.21–52.31.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 237 respondents; 4.74 hours per response (avg.); 1125 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In the First Memorandum Opinion and Order on Reconsideration (First Reconsideration Order) issued in CC Docket No. 95–116, the Commission generally affirms and clarifies rules promulgated in the First Report and Order issued in this proceeding which implements the statutory requirement that local exchange carriers (LECs) provide number portability as set forth in Section 251 of the Telecommunications Act of 1996 (1996 Act). The Commission requires the following information to be collected from various entities: a. Field Test report: The First Report and Order requires carriers participating in a field test of number portability in the Chicago, Illinois area to jointly file with the Commission a report of their findings within 30 days after completion of the test. At this time, it is not clear how many carriers will be participating, but it is likely to include several new entrant local exchange carriers (LECs) and the dominant incumbent LEC in the region. See 47 CFR Section 52.23(g). (11 respondents=20 hours per respondent=220 annual burden hours). b. Requests for long-term number portability in areas inside or outside the 100 largest MSAs: The First Memorandum Opinion and Order on Reconsideration requires that long-term number portability must be provided by LECs and CMRS providers inside the 100 largest Metropolitan Statistical Areas (MSAs) in switches for which another carrier has made a specific

request for number portability, according to the Commission's deployment schedule. A carrier must make its specific requests for deployment of number portability in particular switches at least nine months before the deadline for completion of number portability in that MSA. After carriers have submitted requests for number portability, a wireline carrier or CMRS provider must make readily available upon request, to any interested parties, a list of its switches for which portability has been requested, and those for which portability has not been requested. (80 respondents=3 hours per response=240 total annual hours). States will have the option of aggregating switch requests in the 100 largest MSAs. (50 respondents=3 hours per response=150 total annual hours). After the deadline for deployment in an MSA, carriers must deploy number portability in additional switches in that MSA upon request within certain time frames. After December 31, 1998, for LECs and after June 30, 1999, for CMRS providers outside the 100 largest MSAs, the First Report and Order continues to require deployment within six months after a specific request by another telecommunications carrier. The request must specifically request long-term number portability, identify the area covered by the request, and provide a tentative date six or more months in the future when the carrier expects to need number portability in order to port prospective customers. See 47 CFR Sections 52.23(b) and 52.31(a). (80 respondents×3 hours per response=240 hours). c. State notification of intention to ''opt out'' of regional database system: The First Report and Order requires state regulatory commissions to file with the Commission a notification if they opt to develop a state-specific database for the provision of number portability in lieu of participating in a regional database system. See 47 CFR Section 52.25(g). (5 respondents×3 hours=15 annual hours). d. Carrier petitions challenging state decision to ''opt out'' of regional database system: The First Report and Order permits carriers to challenge decisions made by states to develop a state-specific number portability database in lieu of participating in the regional databases by filing a petition with the Commission. Such carrier petitions must demonstrate that the state decision to opt out would significantly delay deployment of permanent number portability or result in excessive costs to carriers. See 47 CFR Section 52.25(g). (2 respondents×10 hours=20 hours). e. Proposal to administer database(s): The item requires any administrator selected by a state prior to the release of the First Report and Order, that wishes to bid for administration of one of the regional databases, must submit a new proposal in accordance with the guidelines established by the NANC. See 1st Report and Order, paragraph 97. (1 respondent=160 hours=160 annual hours). f. Petitions to extend implementation deadline: The First Report and Order requires carriers that are unable to meet the deadlines for implementing a long-term number portability solution to file with the Commission at least 60 days in advance of the deadline a petition to extend the time by which implementation in its network will be completed. See 47 CFR Sections 52.23(3) and 52.31(d). (8 respondents×10 hours=80 annual hours). The information collected by the Commission under the field test report requirement will be used by the Commission to evaluate the implementation of long-term number portability measures and to safeguard the reliability of the public switched network. The specific request requirements will serve to trigger the obligation of LECs to provide long-term number portability. The requirement that states notify the Commission of their intention to opt out of the regional database system will assist the Commission in monitoring the nationwide implementation of number portability. The option for states to aggregate switch requests in the top 100 MSAs will also enable the states and Commission to monitor nationwide implementation. The requirement that any administrator selected prior to the First Report and Order's release must submit a new proposal to administer other databases ensures that such proposals conform with the requirements specified by the NANC, consistent with the principles enunciated by the Commission in the First Report and Order. Petitions to extend implementation deadlines will be used by the Commission to determine whether circumstances exist which warrant extension of any of the deadlines announced by the Commission in the First Report and Order. The list of switches for which portability has been requested as required by the First Memorandum Opinion and Order on Reconsideration in the top 100 MSAs will enable the Commission, states and carriers to monitor implementation of nationwide number portability. You are required to respond.

OMB Control No.: 3060–0777.

Expiration Date: 08/31/2000.

Title: Access Charge Reform—CC Docket No. 92–262 (Further Notice of Proposed Rulemaking).

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 26 respondents; 360 hours per response (avg.); 9360 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $289,000.

Frequency of Response: On occasion.

Description: In the Further Notice of Proposed Rulemaking (FNPRM) issued in CC Docket No. 263, Access Charge Reform, the FCC proposes to make changes in the allocation of price cap LECs' interstate costs between regulated interstate services and nonregulated billing and collection activities. The Commission proposes collection of information under the following regulatory framework. a. General Purpose Computer Assets Study: Under this proposal, a price cap LEC would study the uses of the general purpose computer assets recorded in Account 2124 to determine the percentage of investment in that account that is used for billing collection activities. That percentage multiplied by the ratio of the dollar amount in Account 2124 to the dollar amount in Account 2110, which accumulates the total General Support Facilities (GSF) investment, would be applied to the interstate portion of Account 2110 to determine a dollar amount that represents general purpose computer assets used for interstate billing and collection category. The remainder of the interstate portion of Account 2110 shall be apportioned among the access elements and the interexchange category using the current investment allocator. General purpose computer expenses recorded in Account 6124 would be treated in a similar fashion to Account 2124. The interstate portion of Account 6124 would be allocated between (a) the billing and collection category and (b) all other elements and categories using the percentage derived for Account 2124. The remainder of Account 6120 (GSF expense) would be apportioned based on current GSF allocators. Appropriate downward exogenous cost adjustments would be made to all price cap baskets. We recognize that there are costs attached to a special study approach. To remedy this concern, we propose that each price cap LEC add to its cost allocation manual (CAM) a new section entitled ''Interstate Billing and Collection.'' That section would describe: (1) the manner in which the price cap LEC provides interstate billing and collection services, and (2) the

study it uses to determine the portion of Account 2124 investment that it attributes to the billing and collection category. The special study would then be subject to the same independent audit requirements as other regulated and nonregulated cost allocations. In addition, to obtain an independent certification of the validity of the procedures adopted by the price cap LEC, we would instruct the independent auditors to examine the design and execution of the study during the first independent audit following the addition of the billing and collection section to the CAM and to report their conclusions on the validity of the study. We also note, that price cap LECs may already be required to study the use of computer investment in Account 2124 as part of the process of allocating that investment between regulated and nonregulated activities pursuant to the Part 64 joint cost rules. (13 respondents × 700 hours per response = 9100 total annual hours). b. Tariff Filings: The FNPRM contains a proposal that may require the filing of tariffs with the Commission. The Commission proposes to permit price cap LECs to assess a PICC on special access lines to recover revenues for the common line basket. The special access PICC would be no higher than the PICC that an incumbent LEC could charge of a multi-line business line. Under our proposal, the special access PICC would not recover TIC or marketing expense. Consistent with our approach to reform the interstate access charge regime, however, we tentatively conclude that the scope of this proceeding should be limited to incumbent price cap LECs. (13 respondents × 20 hours per response=260 hours). Our authority to collect this information is provided under 47 U.S.C. §§ 201–205 and 303(r). The information collected under this FNPRM would be used by the FCC by incumbent LECs for use in determining the proper allocation of general purpose computer costs to the billing and collection category. Your response would be mandatory. Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–22850 Filed 8–27–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1186–DR]

Colorado; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado (FEMA–1186–DR), dated August 1, 1997, and related determinations.

EFFECTIVE DATE: August 12, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 12, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–22944 Filed 8–27–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1177–DR]

Idaho; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Idaho, (FEMA–1177-DR), dated June 13, 1997, and related determinations.

EFFECTIVE DATE: August 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Idaho, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 1997: The county of Bonneville for Individual Assistance (already designated for Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–22945 Filed 8–27–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS97–1]

Appraisal Subcommittee; Rules of Operation; Amendment

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of amended expedited vote procedures.

SUMMARY: The Appraisal Subcommittee (''ASC'') of the Federal Financial Institutions Examination Council is amending Section 3.13 of its Rules of Operation, which governs the transaction of business by circulation of written items, i.e., by notation vote. As amended, the Section will allow each ASC member to vote in one of three ways: to approve, to disapprove or to veto. A vote to veto will require the issue to be placed on the agenda for the next scheduled ASC meeting. If a veto is not exercised, a majority will decide the matter, provided a quorum of ASC members participates in the voting process. In general, the Section previously required unanimous approval by all ASC members. A single member's ''no'' vote or failure to vote within a reasonable time operated as a veto.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT: Ben Henson, Executive Director, or Marc L. Weinberg, General Counsel, at (202) 634–6520, via Internet e-mail at benh1@asc.gov and marcw1@asc.gov, respectively, or by U.S. Mail at Appraisal Subcommittee, 2100 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20037.

SUPPLEMENTARY INFORMATION: The ASC, on May 29, 1991, adopted Rules of Operation, which were published at 56 FR 28561 (June 21, 1991). The Rules of Operation describe, among other things, the organization of ASC meetings, notice requirements for meetings, quorum requirements and certain practices regarding the disclosure of information. The ASC, at its August 13, 1997 meeting, approved a total, substantive revision of Section 3.13 of the Rules of Operation, which deals with notation voting.

The ASC is publishing new Section 3.13 to conform with 5 U.S.C. 552(a)(1)(C), which requires the publication of agency rules of operation in the **Federal Register**. The notice and publication requirements of 5 U.S.C. 553 do not apply to the adoption of Section 3.13 because it is a ''rule of agency organization, procedure, or practice'' exempt from the public notice and comment process under 5 U.S.C. 553(b)(3)(A).

Based on the foregoing, the ASC adopts new Section 3.13 of the Rules of Operation, as follows, effective immediately:

Rules of Operation

* * * * *

Article III—Members of the Subcommittee

* * * * *

Section 3.13. Transaction of Business by Circulation of Written Items. Any other provision of these Rules to the contrary notwithstanding, business may be conducted by the Subcommittee by the circulation of written items to all members. The Secretary [the Executive Director], in consultation with the Chairperson: (1) Shall determine whether items qualify for this expedited voting method because they are routine, recurring or previously discussed at an ASC meeting; and (2) shall specify a deadline for the receipt of members' responses. Qualifying items may be transmitted in paper or electronic format. The Secretary (or the Secretary's designee) shall confirm each member's actual receipt of items, and the response period shall be measured from the day of actual receipt. Members may vote in one of three ways: approve, disapprove or veto.

The matter shall be approved or disapproved by a majority vote of the members participating in the voting process, so long as the voting members comprise a quorum, as generally defined in Section 3.08(a). A vote to veto will cause the matter to be placed on the agenda of the next scheduled ASC meeting, as governed by Section 3.09. The disposition of each written item circulated for vote, including the vote of each member, shall be recorded in the minutes of the Subcommittee.

* * * * *

By the Appraisal Subcommittee.

Dated: August 21, 1997.

Herbert S. Yolles,

Chairman.

[FR Doc. 97–22966 Filed 8–27–97; 8:45 am]

BILLING CODE 6201–01–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, on or before September 8, 1997.

Agreement No.: 202–011456–022.
Title: South Europe American Conference (''SEAC'').
Parties:
DSR Senator Lines GmbH
Evergreen Marine Corporation (Taiwan) Ltd.
''Italia'' di Navigazione, S.p.A.
A.P. Moller-Maersk Line
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.
Synopsis: The proposed modification would authorize the parties to continue to discuss, exchange information and agree upon matters relating to the performance of existing SEAC service contracts subsequent to the dissolution of the Conference. The parties have requested expedited review.

Agreement No.: 202–011576–001.
Title: South American Independent Lines Association.
Parties:
Interocean Lines, Inc.
Seaboard Marine, Ltd.
Trinity Shipping Line, S.A.
Synopsis: The proposed amendment would permit the Agreement parties to discuss and agree with other members of the West Coast of South America Discussion Agreement (FMC Agreement No. 203–011426) on the terms and conditions of service contracts and to aggregate the volume of cargo shipped under their respective contracts.

Agreement No.: 202–011587.
Title: United States South Europe Conference.
Parties:
A. P. Moller-Maersk Line
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Synopsis: The proposed Agreement would permit the parties to discuss and agree upon rates, rules, charges, and practices for the transportation of cargo in the trade between United States Atlantic and Gulf Coast ports, and inland points served by those ports, and ports in Italy, Spain and Portugal, and Mediterranean French ports and inland points in Europe served by such ports. The parties have requested expedited review.

Agreement No.: 224–200229–004.
Title: Manchester/Empire Freight Handling Agreement.
Parties:
Manchester Terminal Corporation
Empire Stevedoring (Houston) Inc.
Synopsis: This modification changes the name of the freight handling party from Empire Scott Stevedoring, Inc. to Empire Stevedoring (Houston) Inc.

By order of the Federal Maritime Commission.

Dated: August 22, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–22853 Filed 8–27–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[File No. 962–3279]

Mid-South PCM Group, P.C.; Eye and Vision Clinic, P.C.; International Computerized Orthokeratology Society, Inc.; J. Mason Hurt, O.D.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 27, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christa Vecchi, Federal Trade Commission, H–200, 6th St. and Pa. Ave., NW., Washington, DC 20580. (202) 326–3166. Matthew Daynard, Federal Trade Commission, H–200, 6th St. and Pa. Ave., NW., Washington, DC 20580. (202) 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C.

46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for August 21, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order (''proposed order'') from Mid-South PCM Group, P.C., Eye and Vision Clinic, P.C., the International Computerized Orthokeratology Society, Inc., and J. Mason Hurt, O.D., the sole owner and President of the corporations.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns print, broadcast and Internet advertisement provided directly to consumers, and to optometrists for distribution under their own name to consumers, for proposed respondents' ''Precise Corneal Molding'' orthokeratology (''PCM ortho-k'') service. PCM ortho-k is an eye care service involving the use of a series of contact lenses purportedly to reshape the cornea gradually for the treatment of myopia, or nearsightedness (difficulty seeing at a distance), hyperopia, or farsightedness (difficulty seeing up close), and astigmatism (blurred vision).

The Commission's complaint charges that the proposed respondents engaged in deceptive advertising in violation of sections 5 and 12 of the FTC Act by making false and unsubstantiated claims that: (1) PCM ortho-k provides a cure for any refractive vision deficiency thereby permanently eliminating the need for all corrective eyewear, including eyeglasses and contact lenses; and (2) all people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear PCM ortho-k devices occasionally or at night.

The complaint further alleges that proposed respondents made false claims that: (1) PCM ortho-k has been approved by the Federal Aviation Administration and all branches of the United States military for use in correcting refractive vision deficiencies; (2) four named University studies prove that PCM ortho-k is safe and effective in correcting nearsightedness, farsightedness, and astigmatism; and (3) consumer testimonials for respondents' PCM ortho-k services reflect the typical or ordinary experience of members of the public who receive those services, which experience is that PCM ortho-k patients typically achieve 20/20 vision and no longer need corrective eyewear.

The complaint further alleges that proposed respondents made unsubstantiated claims that: (1) A significant number of people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear PCM ortho-k devices occasionally or at night; (2) all or most people will experience stabilized vision after only a few weeks or months of PCM ortho-k treatments; (3) PCM ortho-k prevents and reverses deteriorating nearsightedness in children; (4) PCM ortho-k is safer than contact lenswear; (5) PCM ortho-k is more effective than refractive surgical methods in eliminating nearsightedness, farsightedness, and all forms of astigmatism; and (6) PCM ortho-k has helped thousands of people achieve normal vision.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from claiming that PCM ortho-k, or any substantially similar service (defined as any ophthalmic service or procedure using contact lenses or similar devices to modify the shape of the cornea and reduce or eliminate refractive vision deficiencies): (1) Provides a cure for any refractive vision deficiency thereby permanently eliminating the need for all corrective eyewear, including eyeglasses and contact lenses: and (2) has been approved by the Federal Aviation Administration and all branches of the United States military for use in correcting refractive vision deficiencies. Paragraph I further prohibits proposed respondents from representing that: (1) All people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear devices used with PCM ortho-k or any substantially similar service occasionally or at night; and (2) four named University studies prove that PCM ortho-k or any substantially similar service is safe and effective in correcting nearsightedness, farsightedness, and astigmatism.

Paragraph II of the proposed order prohibits proposed respondents from making any representation for PCM ortho-k, or any substantially similar service, about: (1) The number of people who can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear devices used with such service occasionally or at night; (2) the number of people who will experience stabilized vision after only a few weeks or months of treatments under such service; (3) the ability of such service to prevent or reverse deteriorating nearsightedness in children; (4) the comparative safety of such service and contact lenswear; (5) the comparative effectiveness of such service and refractive surgical methods in eliminating nearsightedness, farshghtedness, or any form of astigmatism; and (6) the number of people whom such service has helped achieve normal vision, unless, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph III of the proposed order prohibits respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Paragraph IV of the proposed order prohibits proposed respondents from representing that any service, procedure, or product is endorsed or approved by any governmental or professional organization or association, or complies with or meets standards or guidelines for such services, procedures, or products established by any such organization or association, unless such is the case.

Paragraph V of the proposed order prohibits respondents from representing that the experience represented by any user testimonial or endorsement of any

service, procedure, or product represents the typical or ordinary experience of members of the public who use the service, procedure, or product, unless the representation is true, and competent and reliable scientific evidence substantiates that claim, or respondents clearly and prominently disclose either: (1) What the generally expected results would be for program participants; or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to achieve similar results.

Paragraph VI of the proposed order prohibits respondents from making any representation about the relative or absolute efficacy, performance, benefits, safety, or success of any ophthalmic service, procedure, or product purporting to treat, mitigate, or cure any refractive vision deficiency, unless the representation is true and, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph VII of the proposed order requires that proposed respondents: (1) Not disseminate to any optometrist or eye care provider any material containing any representations prohibited by the order; (2) send a required notice to each optometrist or eye care provider with whom proposed respondents have done business since January 1, 1994, requesting that the optometrist cease using any materials previously received from proposed respondents that contain any claims violative of the order, informing the optometrist of this settlement, and attaching a copy of this proposed compliant and order; (3) in the event that proposed respondents receive any information that subsequent to receipt of the required notice any optometrist or eye care provider is using or disseminating any advertisement or promotional material that contains any representation prohibited by the order, immediately notify the optometrist or eye care provider that proposed respondents will terminate the optometrist or eye care provider's right to market and/or perform PCM ortho-k if he or she continues to use such advertisements or promotional materials; (4) terminate any optometrist or eye care provider about whom proposed respondents receive any information that such person has continued to use advertisements or promotional materials that contain any representation prohibited by the order after receipt of the required notice; and (5) for a period of three (3) years following service of the order, send the required notice to each optometrist or eye care provider with whom proposed respondents do business after the date of service of the order who has not previously received the notice; the notices shall be sent no later than the earliest of: (1) The execution of a sales or training agreement or contract between proposed respondents and the prospective optometrist or eye care provider; or (2) the receipt and deposit of payment from a prospective optometrist or eye care provider of any consideration in connection with the sale of any service or rights associated with PCM ortho-k. The mailing shall not include any other documents.

Paragraph VIII of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, Paragraph IX requires distribution of a copy of the consent decree to current and future officers and agents. Further, Paragraph X provides for Commission notification upon a change in the corporate respondents. Paragraph XI requires proposed respondent J. Mason Hurt, O.D. to notify the Commission when he discontinues his current business or employment and of his affiliation with any new business or employment. The proposed order, in paragraph XII, also requires the filing of a compliance report.

Finally, Paragraph XIII of the proposed order provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–22902 Filed 8–27–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 809]

Grants for Injury Control Research Centers; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces that grant applications are being accepted for Injury Control Research Centers (ICRCs) for fiscal year (FY) 1998.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. (To order a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301, 391, 392, 393, and 394 of the Public Health Service Act (42 U.S.C. 241, 280b, 280b–1, 280b–1a, and 280b–2). Program regulations are set forth in 42 CFR part 52.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

This announcement will provide funding for applicants in regions which do not have funded ICRCs and for applicants in regions which have funded centers which must recompete for funding.

Eligible applicants are limited to organizations in Region 1 (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont), Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands), Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia), Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Region 6 (Louisiana, New Mexico, Oklahoma, Texas, Arkansas), and Region 8 (Colorado,

Montana, North Dakota, South Dakota, Utah, and Wyoming).

Eligible applicants include all nonprofit and for-profit organizations in Regions 1, 2, 3, 5, 6, and 8. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Applicants from non-academic institutions should provide evidence of a collaborative relationship with an academic institution.

The currently funded centers in Regions 4, 7, 9, and 10 are eligible for supplemental funding.

Note: ICRC grant awards are made to the applicant institution/organization, not the Principal Investigator.

Availability of Funds

Approximately $1,500,000 is expected to be available FY 1998 to fund at least two re-competing research centers or a combination of recompeting and new research center projects, depending on the outcome of the review process.

It is expected that the awards will begin on or around September 1, 1998, and will be made for a 12 month budget period within a project period of up to three years for developing research centers and five years for re-competing research centers.

Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Developing research center awards will not exceed $500,000 per year (*total of direct* and *indirect costs*) with a project period not to exceed three years. Depending on availability of funds, re-competing research center awards may range from $750,000 to $1,500,000 per year (*total of direct* and *indirect costs*) with a project period not to exceed five years. The range of support provided is dependent upon the degree of comprehensiveness of the center in addressing the *phases of injury control (i.e., Prevention, Acute Care, and Rehabilitation)* as determined by the Injury Research Grants Review Committee (IRGRC).

Incremental levels within this range for successfully re-competing research centers will be determined as follows:

Base funding (included in figures below)	Up to $750,000.
One phase ICRC (addresses one of the three phases of injury control)	Up to $1,000,000.
Two phase ICRC (addresses two of the three phases of injury control)	Up to $1,250,000.
Comprehensive ICRC (addresses all three phases of injury control)	Up to $1,500,000.

The existing funded centers in Regions 4, 7, 9, and 10 may submit proposals for supplemental awards to expand/enhance existing projects, to add a new phase(s) to an existing ICRC grant, or to add biomechanics project(s) that support one or more phases. The request should not exceed $250,000 (direct and indirect cost) per year. Funding is subject to program need and the availability of funds.

Use of Funds

Prohibition on use of CDC Funds for Certain Gun Control Activities

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997 specifies that: None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.

Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a Member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence Members of Congress with regard to specific legislation or appropriation by Congress. In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the new language in the CDC's 1997 Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

Background and Definitions

A. Background

By nearly every measure, injury ranks as one of the nation's most pressing health problems. Injuries result from unintended events such as car crashes, falls, drownings, fires, and from intentional acts such as interpersonal violence and suicide. The annual toll includes the loss of more than 150,000 lives. Brain injury, spinal cord injury, and burns requiring extensive rehabilitative services number more than 400,000 annually. Injuries are the country's leading cause of years of potential life lost (YPLL) before age 65 (more than 3,600,000 YPLL annually in 1994). They are the leading cause of death and disability in children and young adults. Older Americans also suffer unduly from the severe consequences of injury. Many of the resources of the nation's health care system are devoted to attending to victims of injury, who occupy one of every eight hospital beds. Injury is also a primary cause of visits to physicians; it accounted for 66 million such visits in 1992. More than one-fourth of persons who visit emergency departments are seeking treatment for injuries. For the United States the aggregate lifetime cost of injuries occurring in 1994 was estimated to be $224 billion.

As telling as it is, the litany of injury statistics ignores less quantifiable, but equally important concerns—pain and suffering, fear of injury among older persons, grief over loss or disablement of loved ones, and the inestimable societal loss of unrealized future contributions by children and young adults who suffer fatal or incapacitating injuries.

Fortunately, opportunities to understand and prevent injuries and reduce their effects are available. To exploit these opportunities will require a comprehensive approach to injury control, utilizing many disciplines that heretofore have not always been an integral part of public health efforts. However, it is not CDC's intention that all centers be individually comprehensive, but that the comprehensiveness of a priority-driven injury control effort be achieved in the national aggregate, building on the individual strengths and geographic balance of the various centers.

Many of these opportunities are discussed in the National Research Council and Institute of Medicine report, *Injury In America* (National Academy Press—ISBN 0–309–03545–7). Research priorities are also discussed in *Injury Prevention: Meeting the*

Challenge (supplement to the *American Journal of Preventive Medicine*, Vol. 5, no. 3, 1989), *Cost of Injury* (Dorothy P. Rice, Ellen J. Mackenzie, and Associates, San Francisco, California: Institute for Health and Aging, University of California, and Injury Prevention Research Center, The Johns Hopkins University, 1989), *Position Papers from The Third National Injury Control Conference* (Centers for Disease Control, Atlanta, Georgia, 1992), and *Injury Control in the 1990's: A National Plan for Action* (Centers for Disease Control and Prevention, Atlanta, Georgia, 1993). Information on these reports may be obtained from the individuals listed in the section Where to Obtain Additional Information.

B. Definitions

1. *Injury* is defined as physical damage to an individual that occurs over a short period of time as a result of acute exposure to one of the forms of physical energy in the environment, or to chemical agents, or the acute lack of oxygen. The three phases of injury control are defined as prevention, acute care, and rehabilitation. The major categories of injury are intentional, unintentional, and occupational. Intentional injuries result from interpersonal or self-inflicted violence, and include homicide, assaults, suicide and suicide attempts, child abuse, spouse abuse, elder abuse, and rape. Unintentional injuries include those that result from motor vehicle collisions, falls, fires, poisonings, drownings, recreational, and sports-related activities. Occupational injuries occur at the worksite and include unintentional trauma (for example, work-related motor-vehicle injuries, drownings, and electrocutions), and intentional injuries in the workplace. Not included in this definition of occupational injuries are cumulative trauma disorders, back injuries caused by acute trauma, and effects of repeated exposure to chemical or physical agents.

2. An *Injury Control Research Center (ICRC)* is defined as a scientifically-based organizational unit, generally, but not exclusively, established within an academic institution, which reports at an organizational level high enough to clearly demonstrate strong institutional support for the development of an interdisciplinary approach to the injury problem (e.g., dean of a school, university vice president, or commissioner of health).

A comprehensive ICRC is designed to allow the phases of injury control (i.e., research in prevention, acute care, and rehabilitation) to be addressed by a single organizational unit and managed by an experienced research director (dedicated investigator at no less than 30 percent effort with an anticipated range of 30 percent-50 percent). The design of the core should be the basis on which both the research and practices of the ICRC are built, further allowing for in-depth application of key disciplines (e.g., physicians, epidemiologists, engineers, biomechanicists, social and behavioral scientists, biostatisticians, public health workers, and others) to the phases of injury control. Expertise (defined as: conducting ongoing high quality injury research and publication in peer reviewed scientific and technical journal(s)) from appropriate disciplinary groups must be included so as to address the injury problem phases chosen by the applicant.

A comprehensive ICRC can address all three phases of injury control within a single theme. For example, an ICRC with a rehabilitation theme can address prevention, acute care, and rehabilitation within the overall theme of rehabilitation.

A less comprehensive ICRC may be designed to allow one or two of the phases of the injury problem to be addressed by a single organizational unit; in such situations the remaining phase(s) of the injury problem may be addressed through collaborative arrangements with other institutions or organizations.

In keeping with CDC's mission as the nation's prevention agency, ICRC research is intended to progress from basic research to applied research to the development of interventions as described in: *Centers for Disease Control, A Framework for Assessing the Effectiveness of Disease and Injury Prevention. MMWR 1992;41(RR–3).*

While high quality research is to be considered an essential ingredient of the ICRC, equally important activities include: information gathering and dissemination; the ongoing provision of training opportunities to students, researchers, and voluntary, community-based, and State and local health department personnel; and implementation of projects relating to the development and evaluation of injury surveillance or injury prevention programs.

Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in: *Healthy People 2000; Injury Control in the 1990's: A National Plan for Action; Injury in America; Injury Prevention: Meeting the Challenge;* and *Cost of Injury: A Report to the Congress;*

B. To support ICRCs which represent CDC's largest national extramural investment in injury control research and training, intervention development, and evaluation;

C. To integrate collectively, in the context of a national program, the disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral and social sciences in order to prevent and control injuries more effectively;

D. To identify and evaluate current and new interventions for the prevention and control of injuries;

E. To bring the knowledge and expertise of ICRCs to bear on the development and improvement of effective public and private sector programs for injury prevention and control; and

F. To facilitate injury control efforts supported by various governmental agencies within a geographic region.

Program Requirements

The following are applicant requirements:

A. Applicants must demonstrate and apply expertise in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) as a core component of the center. The second and/or third phases do not have to be supported by core funding but may be achieved through collaborative arrangements. Comprehensive ICRCs must have all three phases supported by core funding.

B. Applicants must document ongoing injury-related research projects or control activities currently supported by other sources of funding.

C. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, e.g., dean of a school, vice president of a university, or commissioner of health. The director must have no less than 30 percent effort devoted solely to this project with an anticipated range of 30 to 50 percent.

D. Applicants must demonstrate experience in successfully conducting, evaluating, and publishing injury research and/or designing, implementing, and evaluating injury control programs.

E. Applicants must provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

F. Applicants must provide evidence of involvement of specialists or experts in medicine, engineering, epidemiology,

law and criminal justice, behavioral and social sciences, biostatistics, and/or public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRCs. An ICRC is encouraged to involve biomechanicists in its research. This, again, may be achieved through collaborative relationships as it is no longer a requirement that all ICRCs have biomechanical engineering expertise.

G. Applicants must have an established curricula and graduate training programs in disciplines relevant to injury control (e.g., epidemiology, biomechanics, safety engineering, traffic safety, behavioral sciences, or economics).

H. Applicants must demonstrate the ability to disseminate injury control research findings, translate them into interventions, and evaluate their effectiveness.

I. Applicants must have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the State or region in which the ICRC is located. Cooperation with private-sector programs is encouraged.

Applicants should have an established or documented planned relationship with organizations or individual leaders in communities where injuries occur at high rates, e.g., minority health communities.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

Reporting Requirements

An original and two copies of the financial status and progress reports are due 90 days after the end of each budget period. A final financial status and progress reports are due 90 days after the end of the project period.

Application Content

Applications for support of an ICRC should follow the PHS–398 (Rev. 5/95) application and Errata sheet, and should include the following information:

1. Face page.
2. Description (abstract) and personnel.
3. Table of contents.
4. Detailed budget for the initial budget period: The budget should reflect the composite figures for the grant as well as breakdown budgets for individual projects within the grant.
5. Budget for entire proposed project period including budgets pertaining to consortium/contractual arrangements.
6. Biographical sketches of key personnel, consultants, and collaborators, beginning with the Principal Investigator and core faculty.
7. Other support: This listing should include all other funds or resources pending or currently available. For each grant or contract include source of funds, amount of funding (indicate whether pending or current), date of funding (initiation and termination), and relationship to the proposed program.
8. Resources and environment.
9. Research plan including:

a. A proposed theme for the ICRC's injury control activities. The proposed activities should be clearly described in terms of need, scientific basis, expected interactions, and anticipated outcomes, including the expected effect on injury morbidity and mortality. In selecting the theme, applicants should consider the findings in *Injury In America* and the *Year 2000 Objectives for the Nation*.

b. A detailed research plan (design and methods) including hypothesis and expected outcome, value to field, and specific, measurable, and time-framed objectives consistent with the proposed theme and activities for each project within the proposed grant.

c. A detailed evaluation plan which should address outcome and cost-effectiveness evaluation as well as formative, efficacy, and process evaluation.

d. A description of the core faculty and its role in implementing and evaluating the proposed programs. The applicant should clearly specify how disciplines will be integrated to achieve the ICRC's objectives.

e. Charts showing the proposed organizational structure of the ICRC and its relationship to the broader institution of which it is a part, and, where applicable, to affiliate institutions or collaborating organizations. These charts should clearly detail the lines of authority as they relate to the center or the project, both structurally and operationally. ICRC's should report to an appropriate organizational level (e.g. dean of a school, vice president of a university, or commissioner of health), demonstrating strong institution-wide support of ICRC activity and ensuring oversight of the process of interdisciplinary activity.

f. Documentation of the involved public health agencies and other public and private sector entities to be involved in the proposed program, including letters that detail commitments of support and a clear statement of the role, activities, and participating personnel of each agency or entity.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by the Injury Research Grant Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Awards will be made based on priority scores assigned to applications by the IRGRC, programmatic priorities and needs determined by a secondary review committee (the Advisory Committee for Injury Prevention and Control), and the availability of funds.

A. Review by the Injury Research Grants Review Committee

Peer review of ICRC grant applications will be conducted by the IRGRC, which may recommend the

application for further consideration or not for further consideration. As a part of the review process the committee may conduct a site visit to the applicant organization for re-competing ICRCs. New applicants may be asked to travel to CDC for a meeting with the committee.

Factors to be considered by IRGRC include:

1. The specific aims of the application, e.g., the long-term objectives and intended accomplishments.
2. The scientific and technical merit of the overall application, including the significance and originality (e.g., new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.
3. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives.
4. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.
5. The soundness of the proposed budget in terms of adequacy of resources and their allocation.
6. The appropriateness (e.g., responsiveness, quality, and quantity) of consultation, technical assistance, and training in identifying, implementing, and/or evaluating intervention/control measures that will be provided to public and private agencies and institutions, with emphasis on State and local health departments, as evidenced by letters detailing the nature and extent of this commitment and collaboration. Specific letters of support or understanding from appropriate governmental bodies must be provided.
7. Evidence of other public and private financial support.
8. Details of progress made in the application if the applicant is submitting a re-competing application. Documented examples of success include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; impact on injury control outcomes including legislation, regulation, treatment, and behavior modification interventions.

B. Review by CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Factors to be considered by ACIPC include:

1. The results of the peer review.
2. The significance of the proposed activities as they relate to national program priorities and the achievement of national objectives.
3. National and programmatic needs and geographic balance.
4. Overall distribution of the thematic focus of competing applications; the nationally comprehensive balance of the program in addressing the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including racial/ethnic minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control (such as biomechanics and epidemiology).
5. Budgetary considerations, the ACIPC will establish annual funding levels as detailed under the heading, Availability of Funds.

C. Applications for Supplemental Funding

Existing CDC Injury Centers may submit an application for supplemental grant awards to support research work or activities. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the ACIPC.

D. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly workplans are being met;
2. The objectives for the new budget period are realistic, specific, and measurable;
3. The methods described will clearly lead to achievement of these objectives;
4. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan;
5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds; and
6. Progress has been made in developing cooperative and collaborative relationships with injury surveillance and control programs implemented by State and local governments and private sector organizations.

Funding Preference

Special consideration will be given to re-competing Injury Control Research Centers. These centers as established and on-going and serve as a resource for Injury Control related issues for their States and regions.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Other Requirements

A. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

B. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions.'' An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

C. Women, Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic.

Applicants shall ensure that women, racial and ethnic minority populations

are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application.

In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

D. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this grant program will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadlines

A. Preapplication Letter of Intent

In order to schedule and conduct site visits as part of the formal review process, potential applicants are encouraged to submit a nonbinding letter of intent to apply. It should be postmarked no later than one month prior to the submission deadline of October 5, 1997, for the application. The letter should be submitted to the Grants Management Specialist whose address is given in Part B of this Section. The letter should identify the relevant announcement number for the response, name the principal investigator, and specify the injury control theme or emphasis of the proposed center (e.g., acute care, biomechanics, epidemiology, prevention, intentional injury, or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

B. Applications

Applicants should use application Form PHS–398 (OMB No. 0925–0001 Revised 5/95) and adhere to the ERRATA Instruction Sheet contained in the Grant Application Kit. The narrative section for *each* project within an ICRC should not exceed 25 typewritten pages. Refer to the instruction in section 1, page 6, of PHS–398 for font type and size. *Applications not adhering to these specifications may be returned to applicant.*

Applicants must submit an original and five copies on or before November 5, 1997, to Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305.

C. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the peer review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria in C.1. or C.2. above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 809. You will receive a complete program description, information on application procedures and application forms. Business management technical assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305, telephone (404) 842–6796 or internet: lgt1.cdc.gov.

Programmatic technical assistance may be obtained from Tom Voglesonger, Program Manager, Injury Control Research Centers, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, MS–K58, Atlanta, GA 30341–3724, telephone (770) 488–4265 or internet address: tdv1.cdc.gov.

This and other CDC announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov.

CDC will not send application kits by facsimile or express mail (even at the request of the applicant).

Please refer to Announcement 809 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1), referenced in the Introduction, through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: August 22, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–22900 Filed 8–27–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Intent To Reallot Part C—Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of intent to reallot Fiscal Year 1997 Funds, pursuant to Section 125 and Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (Act).

SUMMARY: The Administration on Developmental Disabilities herein gives notice of intent to reallot funds which were set aside in accordance with Section 142(c)(5) of the Act. Of the $806,682 which was set aside for technical assistance and Indian Consortiums, $534,360 was utilized for technical assistance and $136,161 was awarded to an Indian Consortium. Therefore, the balance of $136,161 has been released for reallotment.

Any State or Territory which wishes to release funds or cannot use the additional funds under Part C—Protection and Advocacy program for Fiscal Year 1997 should notify Joseph Lonergan, Director, Division of Formula, Entitlement and Block Grants, Office of Management Services, Office of Program Support, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, in writing within thirty (30) days of the date of this promulgation. Reallotment awards are anticipated to

be dated 30 days from the date of this notice. This notice is hereby given in accordance with Sections 125 and 142 of the Act.

FOR FURTHER INFORMATION CONTACT: Joanne Moore on (202) 205–4792.

The proposed reallotment for Part C—Protection and Advocacy program are set forth below:

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FISCAL YEAR 1997 REALLOTMENT

	Protection & advocacy	Reallotment	Revised allotment
Total	[1] $26,047,479	$136,161	$26,183,640
Alabama	439,048	2,301	441,349
Alaska	254,508	1,334	255,842
Arizona	344,561	1,806	346,367
Arkansas	258,072	1,353	259,425
California	2,211,563	11,590	2,223,153
Colorado	276,741	1,450	278,191
Connecticut	260,970	1,368	262,338
Delaware	254,508	1,334	255,842
Dist. of Columbia	254,508	1,334	255,842
Florida	1,070,357	5,610	1,075,967
Georgia	603,004	3,160	606,164
Hawaii	254,508	1,334	255,842
Idaho	254,508	1,334	255,842
Illinois	906,534	4,751	911,285
Indiana	506,712	2,656	509,368
Iowa	264,834	1,388	266,222
Kansas	254,508	1,334	255,842
Kentucky	405,708	2,126	407,834
Louisiana	466,720	2,446	469,166
Maine	254,508	1,334	255,842
Maryland	341,643	1,791	343,434
Massachusetts	451,170	2,365	453,535
Michigan	833,321	4,368	837,689
Minnesota	357,383	1,873	359,256
Mississippi	315,443	1,653	317,096
Missouri	460,588	2,414	463,002
Montana	254,508	1,334	255,842
Nebraska	254,508	1,334	255,842
Nevada	254,508	1,334	255,842
New Hampshire	254,508	1,334	255,842
New Jersey	516,527	2,707	519,234
New Mexico	254,508	1,334	255,842
New York	1,384,297	7,255	1,391,552
North Carolina	635,552	3,331	638,883
North Dakota	254,508	1,334	255,842
Ohio	997,392	5,227	1,002,619
Oklahoma	307,034	1,609	308,643
Oregon	263,782	1,383	265,165
Pennsylvania	1,047,473	5,490	1,052,963
Rhode Island	254,508	1,334	255,842
South Carolina	366,434	1,921	368,355
South Dakota	254,508	1,334	255,842
Tennessee	495,147	2,595	497,742
Texas	1,512,208	7,926	1,520,134
Utah	254,508	1,334	255,842
Vermont	254,508	1,334	255,842
Virginia	505,699	2,650	508,349
Washington	385,932	2,023	387,955
West Virginia	275,697	1,445	277,142
Wisconsin	448,512	2,351	450,863
Wyoming	254,508	1,334	255,842
American Samoa	136,161	714	136,875
Guam	136,161	714	136,875
Puerto Rico	800,722	4,197	804,919
Virgin Islands	136,161	714	136,875
Northern Mariana Islands	136,161	714	136,875
Palau [2]	68,750	0	68,750
AZ DNA People's. Legal Services	136,161	714	136,875

[1] Includes the award of $131,161 to an Indian Consortium (AZ DNA People's Legal Services) in accordance with Section 142(b).

[2] Palau's allotment is reduced to 50% of its Fiscal Year 1995 allotment, in accordance with the Compact of Free Association with the Republic of Palau.

Dated: August 25, 1997.

Reginald F. Wells,

Deputy Commissioner, Administration on Developmental Disabilities.

[FR Doc. 97–22962 Filed 8–27–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Altered System of Records

AGENCY: Office of Child Support Enforcement, ACF, DHHS.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Privacy Act, the Office of Child Support Enforcement (OCSE) is publishing a notice of proposal to amend one of its Systems of Records, ''The Federal Parent Locator System and Federal Tax Offset System (FPLS), DHHS/OCSE No. 09–90–0074. We are also proposing to amend the routine uses for this system.

DATES: HHS invites interested parties to submit comments on the proposed internal and routine uses within September 29, 1997. HHS has submitted a report of a notice of an altered system to the Congress and to the Office of Management and Budget on August 22, 1997. The alteration to the system will be effective 40 days from the date submitted to OMB unless HHS receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: Donna Bonar, Director, Division of Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447, (202) 401–9271. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, Division of Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447, (202) 401–9271. The numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Child Support Enforcement (OCSE) is amending one of its Systems of Records, ''The Federal Parent Locator System and Federal Tax Offset System (FPLS)'', DHHS/OCSE No. 09–90–0074. Information on this system was last published at 61 FR 38754, July 25, 1996.

OCSE wishes to advise the public that OCSE is changing the name of this system to the ''Federal Parent Locator and Federal Tax Refund/Administrative Offset System'' (FPLS). Furthermore, the uses of the FPLS are being expanded pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and pursuant to Pub. L. 104–134, the Debt Collection Improvement Act of 1996 (DCIA) and Executive Order 13019, dated September 28, 1996.

The system is divided into two subsystems: Parent Locator Service and Tax Refund/Administrative Offset (TROP/ADOP). The Parent Locator portion of the system is being expanded consistent with section 316 of the PRWORA, which authorizes the establishment of a National Directory of New Hires (NDNH) effective no later than October 1, 1997. The NDNH will be comprised of three components. First, the NDNH will maintain employment data on newly-hired employees (new hire reporting) submitted by the State Directories of New Hires (SDNH) pursuant to section 453A(g)(2)(A) of the Social Security Act (the Act) and by Federal agencies pursuant to section 453A(B)(1)(c) of the Act. Second, the NDNH will maintain quarterly wage information on individual employees, submitted by States under the authority of sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code (IRC) of 1986, as well as quarterly wage information on Federal employees pursuant to section 453(n) of the Act. Third, the NDNH will maintain unemployment compensation claims data submitted by States under the authority of sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code of 1986. Federal agencies and States will transmit new hire and quarterly wage and data electronically to the NDNH and States will transmit claim information electronically as well.

The TROP/ADOP portion of the system is expanding the current use of Federal tax refund intercepts to assist families in collecting past-due child support, intercept certain other Federal payments owed by child support obligors, and divert the payment to obligees/States for the payment of past-due child support. Specifically, the TROP/ADOP will: (1) Combine the Federal Tax Refund Offset program with the Administrative Program operated by Department of Treasury's Financial Management Service (FMS); (2) periodically match cases from the TROP/ADOP system with the NDNH; (3) conduct crossmatches with the State Department for denial of passports; (4) conduct crossmatches for asset identification with the Department of Treasury (Project 1099) against States' obligor file(s); (5) disclose information to additional sources; and (6) allow access to new authorized users.

The Social Security Act, as amended by PRWORA and the DCIA require an expansion of the uses of the FPLS. The Parent Locator portion of the FPLS will now be used to obtain and transmit information to any authorized person, for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, investigating parental kidnapping cases, or making or enforcing child custody or visitation orders. Additonally, PRWORA replaced the AFDC programs with TANF programs, and routine uses are being updated to reflect that change.

The Federal TROP/ADOP portion of the system will be used for the purposes of: Collecting past-due child support from Federal tax refunds and from certain Federal payments otherwise owed to child support obligors; identifying assets of obligors; and enforcing child support orders by assisting the State Department in preventing delinquent obligors from travelling outside the country by the denial, restriction and/or revocation of passports.

Section 370 of PRWORA established a new section 452(k) of the Act which requires that after October 1, 1997, the Secretary of HHS shall transmit to the Secretary of the Department of State, certifications from State child support enforcement (CSE) agencies of individuals who owe arrearages of child support exceeding $5000 and that the Department of State may revoke, restrict or deny passports to such individuals.

Project 1099 provides State CSE agencies access to all earned and unearned income information reported to the Department of Treasury by employers and financial institutions. This information is used to locate noncustodial parents and to verify income and employment, which is essential to establishing and enforcing child support obligations.

Sections 452 and 453 of the Social Security Act require the Secretary of HHS to establish and conduct the Federal Parent Locator Service, a computerized national location network which provides address and social security number (SSN) information to State and local child support enforcement agencies (CSEAs) for purposes of locating parents to establish

or enforce a child support order and to assist authorized persons in resolving parental kidnapping and child custody cases.

Pursuant to section 124(a) of the Family Support Act of 1988 (Pub. L. 100–485), the FPLS obtained access to wage and unemployment compensation claims information maintained for or by the Department of Labor (DOL) or the State Employment Security Agencies (SESAs). In January 1990, the FPLS began conducting periodic crossmatches in which the names and SSNs of child support obligors are run against SESA wage and unemployment files. OCSE is currently limited to 250,000 cases per State per bi-weekly crossmatch. The information generated from crossmatches between quarterly wage, claims and child support data, both at the State level and in the more limited FPLS context, has proven extremely beneficial for the location of child support obligors and their wages. The inclusion of quarterly wage and unemployment compensations claims data in the NDNH allows for a substantially higher volume of interstate crossmatching than is currently possible.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires the Secretary to develop an expanded Federal Parent Locator Service to improve the States' ability to locate and collect child support. The OCSE, within ACF, is charged with the task of developing, implementing, and maintaining the FPLS. The Secretary will house the expanded FPLS in the Social Security Administration's National Computer Center. The Secretary and SSA believe that locating the expanded FPLS there will provide the most efficient and cost-effective mechanism for developing the expanded FPLS, as well as ensuring state-of-the-art standards for system security and confidentiality of the expanded FPLS data.

The expanded FPLS will include the NDNH (operational no later than October 1, 1997), The Federal Case Registry (FCR) (operational no later than October 1, 1998), and the capability to continue matching against existing FPLS data sources, including but not limited to, the Internal Revenue Service, Social Security Administration, Department of Defense/Office of Personnel Management, Department of Veterans Affairs, and the Federal Bureau of Investigation. The expanded FPLS will perform crossmatches between the NDNH, the FCR, and specified additional external databases. With these new expanded FPLS resources, the interstate matching of child support obligors and employment, earnings, and benefits data will flow more efficiently and quickly between States.

In addition to performing automatic matching, the system accepts and processes automated or manual information requests from State and local CSE agencies as well as the FBI, the National Center for Missing and Exploited Children, the State Department, and the Attorney General. The following information is available from Federal agencies (including the Postal Service) and the SESAs:

(1) The Social Security Administration (SSA) provides three types of information on the noncustodial or custodial parent per locate request. SSA can also provide social security number information (including identification, verification, nonverification or correction) pertaining to the noncustodial or custodial parent. When SSA is the specified agency queried, SSA provides the name and address of employers, address where the benefits check is being delivered, and date of death, as well as SSN and address information;

(2) The SESAs provide two types of information. If the noncustodial parent is employed, the SESAs provide the name and address of the most recent employer and the amount of the wages earned in the previous quarter. If the noncustodial or custodial parent is unemployed, the SESAs provide the home address where the unemployment check is or was most recently mailed;

(3) The Department of Treasury (Treasury) provides several types of information. If the noncustodial or custodial parent has filed a tax return in the last three years, provides the address reported on the most recent return. Treasury also provides the SSNs of parents listed on the tax return. Additionally, the Project 1099 provides information to State CSE agencies to access all earned and unearned income information reported to the Treasury by employers and financial institutions. The FPLS conducts matches on with data from IRS forms 1098 and 1099;

(4) The Department of Defense (DoD) provides information on noncustodial or custodial parents who are in the Army, Navy, Air Force, Marine Corps, and the National Oceanic and Atmospheric Administration (NOAA). DoD provides the military unit address, pay grade, and date of separation from the service. FPLS conducts matches with Office of Personnel Management (OPM) through DoD. OPM provides the name and address of the payroll office for non-military and non-postal noncustodial or custodial parents who work for the Federal government, or receive retirement benefits;

(5) The Postal Service provides information on noncustodial or custodial parents who are employed by the U.S. Postal Service; and

(6) The Department of Veterans Affairs (VA) provides information on those individuals who are receiving VA benefits. The VA indicates if the noncustodial or custodial parent is receiving compensation, pension, or educational benefits, the amount of the benefit, and where the check is being delivered.

Furthermore, pursuant to the DCIA, and pursuant to Executive Order 13019, the Department of Treasury's FMS is charged with the responsibility of increasing the collection of non-tax debts owed to the Federal Government and/or States, and collecting past-due child support through administrative offsets. The OCSE will match its records against Federal payment certification records and Federal financial assistance records maintained by FMS. The purpose is to facilitate the collection of delinquent child support obligations from persons who may be entitled or eligible to receive certain Federal payments or Federal assistance. State CSE agencies submit names of delinquent child support debts to the OCSE for submission to FMS.

These cases are sent on-line, dial-up access via personal computer, tape and cartridge via mail, file transfer, or electronic data transmission. OCSE serves as a conduit between State CSE agencies and the FMS by processing weekly updates of collection data and distributing the information back to the appropriate State CSE agency. The information will be disclosed by OCSE to State CSE agencies for use in the collection of child support debts, through locate, wage withholding, or other enforcement actions.

The system of records is used for the collection of past-due child support via administrative offset, (offset of certain funds payable to an individual by the Federal Government.) (Not all Federal funds will be subject to administrative offset; see 62 FR 36205, dated July 7, 1997.) The FMS serves as the lead agency in this debt collection initiative. The FMS has a Debt Collection Operations System to maintain records of individuals and entities that are indebted and will match these records against the payment certification records of Federal departments and agencies.

In addition, the system of records is used to determine which delinquent obligors are appropriate for referral to the U.S. State Department for

revocation/restriction/denial of a U.S. Passport. OCSE extracts cases with arrearages of $5,000 or greater from the certified case file. These cases are electronically submitted to SSA with name and SSN. SSA returns the file with date of birth, SSN, name, place of birth, and sex. These cases are then forwarded to the State Department via tape with date of birth, place of birth, sex, SSN, and name. These files are matched against individuals who make application for passport. Passports may be denied to those obligors owing $5,000 or greater. The State Department's system is called the Consular and Support System (CLASS) (State 26, Passport Records, published at 60 FR 148, August 2, 1995).

If there is a match, the Passport Office will notify the applicant to contact the State CSE agency that submitted his/her name. If, as a result of payment, the applicant's child support arrearage falls below the $5,000 threshold, the CSE office will issue a Notice of Withdrawal of Passport Denial requesting that the Passport Office issue a passport to the noncustodial parent if otherwise qualified.

The FPLS system of records will be comprised of records that contain the name of noncustodial or custodial parent or child, Social Security number (when available), date of birth, place of birth, sex code, State case identification number, local identification number (State use only), State or locality originating request, date of origination, type of case (TANF, non-TANF full-service, non-TANF locate only, parental kidnapping), home address, mailing address, type of employment, work location, annual salary, pay rate, quarterly wages, medical coverage, benefit amounts, type of military service (Army, Navy, Marines, Air Force, not in service), retired military (yes or no), Federal employee (yes or no), recent employer's address, known alias (last name only), offset amount, date requests sent to Federal agencies or departments (SSA, Treasury, DoD/OPM, VA, USPS, FBI, and SESAs), dates of Federal agencies' or departments' responses, date of death, record identifier, employee date of hire, employee State of hire, Federal EIN, State EIN, employer name, employer address, employer foreign address, employer optional address, and employer optional foreign address; employee SSN, employee name, employee wage amount, reporting period, claimant SSN, claimant name, claimant address, SSA/VA benefit amount, reporting period, State code, local code, case number, arrearage amount, collection amount, adjustment amount, return indicator, transfer State, street address, city and State, zip code, zip code 4, total debt, number of adjustments, number of collections, net amount, adjustment year, tax period for offset, type of offset, State code, submitting State FIPS, locate code, case ID number, case type, and court/administrative order indicator.

Safeguarding

All requests from the State IV–D Agency must certify that: (1) They are being made to locate noncustodial or custodial parents for the purpose of establishing paternity or securing child support, or in cases involving parental kidnapping or child custody determinations and for no other purpose; (2) the State IV–D agency has in effect protective measures to safeguard the personal information being transferred and received from the FPLS; and (3) the State IV–D Agency will use or disclose this information for the purposes prescribed in 45 CFR 302.70.

The records in the FPLS will be maintained in a secure manner compatible with their content and use. All Federal and State personnel and contractors will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act regulations at 45 CFR part 5b. The System Manager will control access to the data. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are: (1) Any State or Federal government department or agency charged with the responsibility of locating custodial or noncustodial parents; (2) State agencies under agreements covered by title IV–D of the Social Security Act for the purposes of locating non-custodial and custodial parents in connection with establishing or enforcing child support obligations; (3) State agencies under agreements covered by section 463 of the Act for the purpose of locating custodial parents or children in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody and visitation determinations or conducting investigations, enforcement proceedings or prosecutions concerning the unlawful taking or restraint of children; and (4) agents and attorneys of the United States involved in activities in States which do not have agreements under section 463 of the Act for the purpose of locating custodial parents in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody and visitation determinations or conducting investigations, enforcement proceedings or prosecutions concerning unlawful taking or restraint of children.

All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties. Safeguards for automated records have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook.

Storage

Records are maintained on disk and magnetic tape, and hard copy.

Retrievability

System records can be accessed by either a State assigned case identification number or Social Security Number. Data stored in computers will be accessed through the use of ''passwords'' known only to authorized users. Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Information will not be disclosed to any person if the disclosure would contravene the national or security interest of the United States or the confidentiality of census data.

Information will not be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent.

Information received or transmitted pursuant to this section shall be subject to the safeguard provisions contained in section 454(26) of the Act.

Retention and Disposal

Quarterly wage data supplied to the FPLS will be retained for eight calendar quarters and then destroyed. New hire information supplied to the FPLS will be kept in an active file for two years. New hire information will then be stored for an additional three years before being destroyed.

Tax refund and administrative offset information will be maintained for six years in an active master file for purposes of collection and adjustment. After this time, records of cases for which there was no collection will be destroyed. Records of cases with a collection will be stored on-line in an inactive master file.

Records pertaining to passport denial will be updated and/or deleted as obligors meet satisfactory restitution or other State approved arrangements.

Records of information provided by the FPLS to authorized users will be maintained only long enough to communicate the information to the appropriate State or Federal agent.

Thereafter, the information provided will be destroyed. However, records pertaining to the disclosures, which include information provided by States, Federal agencies contacted, and an indication of the type(s) of information returned, will be stored on a history tape and in hard copy for five years and then destroyed.

System Manager(s) and Address

Director, Program Operations Division, Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade, SW, 4th Floor, Washington, DC 20447.

Record Access Procedures

Same as notification procedures. Requesters should also specify the record contents being sought.

Contesting Record Procedures

Contact the official at the address specified under system manager above, and identify record and specify the information to be contested.

Record Source Categories

Information is obtained from departments, agencies, or instrumentalities of the United States or any State.

Systems Exempted From Certain Provisions of the Privacy Act

None.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Users

The current routine uses for this system of records are: (1) Request the most recent home and employment addresses and SSN of the noncustodial parents from any State or Federal government department, agency or instrumentality which might have such information in its records; (2) Provide the most recent home and employment addresses and SSN to State CSE agencies (including the FBI and the Center for Missing and Exploited Children) for the purpose of locating noncustodial parents in connection with establishing or enforcing child support obligations; (3) Provide the most recent home and employment addresses and SSN to State CSE agencies under agreements covered by section 463 of the Social Security Act (42 U.S.C. 663) for the purpose of locating noncustodial parents or children in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody determinations or conducting investigations, enforcement proceedings or prosecutions concerning the unlawful taking or restraint of children; (4) Provide the most recent home and employment addresses and SSN to agents and attorneys of the United States, involved in activities in States which do not have agreements under section 463 of the Act for purposes of locating noncustodial parents or children in connection with Federal investigations, enforcement proceedings or prosecutions involving the unlawful taking or restraint of children; and (5) provide to the State Department the name and SSN of noncustodial parents in international child support cases, and in cases involving the Hague Convention on the Civil Aspects of International Child Abduction.

The PRWORA amends Federal law and authorizes new uses and disclosures for the expanded FPLS. The new routine uses proposed for this system are compatible with the stated purposes of the system and include the following:

(1) Pursuant to section 453(j) (2) and (3) of the Social Security Act, State agencies may access data in the NDNH for the purpose of administering the Child Support Enforcement Program and the Temporary Assistance for Needy Families (TANF) program; (2) Pursuant to section 453(j)(4) of the Act, the Commissioner of Social Security may access information in the NDNH for the purpose of verifying reported SSNs and other purposes; (3) Pursuant to section 453(i)(3) of the Act, the Secretary of the Treasury may access information in the NDNH for purposes of administering advance payment of the earned income tax credit and verifying a claim with respect to employment in a tax return; (4) Pursuant to section 453(j)(5) of the Act, the Secretary of Health and Human Services may provide researchers with access to the new hire data for research efforts that would contribute to the TANF and CSE programs. Information disclosed may not contain personal identifiers; (5) Under section 6103(el)(6) of the Internal Revenue Code of 1986, records may be disclosed to any agent of an agency that is under contract with the State CSE agency to assist in locating individuals for the purposes of establishing, modifying, and enforcing child support obligations; (6) Under section 453(j) of the Act, records in the NDNH may be disclosed to State CSE agencies in order to locate individuals for the purpose of establishing paternity and for establishment, modification, or enforcement of a support order; (7) Pursuant to section 453(a) of the Act, records may be disclosed to State CSE agencies for the purpose of locating individuals for the purpose of enforcing child custody and visitation orders; (8) Pursuant to section 453(j) of the Act, new hire information may also be disclosed to the State agency administering the Medicaid, Unemployment Compensation, Food Stamp, SSI, and territorial cash assistance programs for income eligibility verification, and to State agencies administering unemployment and workers' compensation programs to assist determinations of the allowability of claims; (9) OCSE will disclose information to the Treasury Department for the offset of certain Federal payments in order to collect past due child support obligations. The Federal payments included in the Administrative Offset System are: Federal salary, wage and retirement payments; vendor payments; expense reimbursement payments; and travel payments; and (10) Pursuant to section 452(k) of the Act, information from the FPLS may be disclosed to the Secretary of State to revoke, restrict, or deny a passport to any person certified by State CSE agencies as owing a child support arrearage greater than $5,000.

Dated: August 21, 1997.

David Gray Ross,

Deputy Director.

09–90–0074

SYSTEM NAME:

Federal Parent Locator and Federal Tax Refund/Administrative Offset System (FPLS), HHS, OCSE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Child Support Enforcement, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447;

Social Security Administration, 6200 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained to locate individuals for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders: (1) Information on, or facilitating the discovery of, or the location of any individual: (A) who are under an obligation to pay child support or

provide child custody or visitation rights; (B) against whom such an obligation is sought; and (C) to whom such an obligation is owed including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer; and (2) information on the individual's wages (or other income) from, and benefits of, employment (including rights to enrollment in group health care coverage); and (3) information on certain Federal disbursements payable to a delinquent obligor which may be offset for the purpose of collecting past-due child support.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will comprise records that contain the name of noncustodial or custodial parent or child, Social Security number (when available), date of birth, place of birth, sex code, State case identification number, local identification number (State use only), State or locality originating request, date of origination, type of case (TANF, non-TANF full-service, non-TANF locate only, parental kidnapping), home address, mailing address, type of employment, work location, annual salary, pay rate, quarterly wages, medical coverage, benefit amounts, type of military service (Army, Navy, Marines, Air Force, not in service), retired military (yes or no), Federal employee (yes or no), recent employer's address, known alias (last name only), offset amount, date requests sent to Federal agencies or departments (SSA, IRS, DoD/OPM, VA, USPS, FBI, and SESAs), dates of Federal agencies' or departments' responses, date of death, record identifier, employee date of hire, employee State of hire, Federal EIN, State EIN, employer name, employer address, employer foreign address, employer optional address, and employer optional foreign address; employee SSN, employee name, employee wage amount, reporting period, claimant SSN, claimant name, claimant address, SSA/VA benefit amount, reporting period, State code, local code, case number, arrearage amount, collection amount, adjustment amount, return indicator, transfer State, street address, city and State, zip code, zip code 4, total debt, number of adjustments, number of collections, net amount, adjustment year, tax period for offset, type of offset, State code, submitting State FIPS, locate code, case ID number, case type, and court/administrative order indicator.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 452 and 453 of the Social Security Act required the Secretary of HHS to establish and conduct the Federal Parent Locator Service, a computerized national location network which provides address and SSN information to State and local Child Support Enforcement Agencies (CSE).

Section 124(a) of the Family Support Act of 1988 authorized the Secretary of HHS to obtain access to wage and unemployment compensation claims information maintained for or by the Department of Labor (DOL) or the State Employment Security Agencies (SESAs).

The FPLS is being expanded pursuant to: Social Security Act amendments promulgated as section 316 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); the Debt Collection Improvement Act of 1996 (DCIA); and Executive Order 13019. These provisions give the Secretary of Health and Human Services the authority to expand the Federal Parent Locator Service to improve the States' ability to locate and collect child support.

PURPOSE(S):

The purpose of the system is to expand the Federal Parent Locator Service (FPLS) to improve States' ability to locate parents and collect child support. A large database, the National Directory of New Hires, will be established. Through this database, the interstate matching of child support obligors and employment, earnings, and benefit data will flow more efficiently and quickly between States. The National Directory of New Hires (NDNH) will contain the following:

(1) New hire information on employees commencing employment in either the public or private sector;

(2) Quarterly wage data on private and public sector employees; and

(3) Information on unemployment compensation benefits. Federal agencies are also required to submit both new hire and quarterly wage information. Names and social security numbers submitted for both new hire and quarterly wage information will be verified by the Social Security Administration to ensure that the social security number provided is correct.

In October of 1998, a second database will be established, the Federal Case Register (FCR), which will be derived from State level case registry information and will contain abstracts on all participants involved in child support enforcement cases. The NDNH and the FCR will be matched against each other on an on-going basis to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The current routine uses in this system of records are maintained to: (1) Request the most recent home and employment addresses and SSN of the noncustodial or custodial parents from any State or Federal government department, agency or instrumentality which might have such information in its records; (2) Provide the most recent home and employment addresses and SSN to State CSE agencies for the purpose of locating noncustodial parents in connection with establishing or enforcing child support obligations; (3) Provide the most recent home and employment addresses and SSN to State CSE agencies under agreements covered by section 463 of the Social Security Act (42 U.S.C. 663) for the purpose of locating noncustodial parents or children in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody determinations or conducting investigations, enforcement proceedings or prosecutions concerning the unlawful taking or restraint of children; and (4) Provide the most recent home and employment addresses and SSN to agents and attorneys of the United States, involved in activities in States which do not have agreements under section 463 of the Act for purposes of locating noncustodial parents or children in connection with Federal investigations, enforcement proceedings or prosecutions involving the unlawful taking or restraint of children; and (5) provide to the State Department the name and SSN of noncustodial parents in international child support cases, and in cases involving the Hague Convention on the Civil Aspects of International child Abduction.

The PRWORA amends Federal law and authorizes new uses and disclosures for the expanded FPLS. The new routine uses proposed for this system are compatible with the stated purposes of the system and include the following: (1) State agencies may access data in the NDNH for the purpose of administering the Child Support Enforcement Program and the Temporary Assistance for Needy Families (TANF) program; (2) The Commissioner of Social Security may

access information in the NDNH for the purpose of verifying reported SSNs and other purposes; (3) The Secretary of the Treasury may access information in the NDNH for purposes of administering advance payment of the earned income tax credit and verifying a claim with respect to employment in a tax return; (4) The Secretary of Health and Human Services may provide researchers with access to the new hire data for research efforts that would contribute to the TANF and CSE programs. Information disclosed may not contain personal identifiers; (5) Records may be disclosed to any agent of an agency that is under contract with the State CSE agency to assist in locating individuals for the purposes of establishing paternity and for establishing, modifying, and enforcing child support obligations; (6) Records in the NDNH may be disclosed to State CSE agencies in order to locate individuals for the purpose of establishing paternity and for establishment, modification, or enforcement of a support order; (7) Records may be disclosed to State CSE agencies for the purpose of locating individuals for the purpose of enforcing child custody and visitation orders; (8) New hire information may be disclosed to the State agency administering the Medicaid, Unemployment Compensation, Food Stamp, SSI, and territorial cash assistance programs for income eligibility verification, and to State agencies administering unemployment and workers' compensation programs to assist determinations of the allowability of claims. (9) OCSE will disclose information to the Treasury Department for the offset of certain Federal payments in order to collect past due child support obligations. The Federal payments included in the Administrative Offset System are: Federal salary, wage and retirement payments; vendor payments; expense reimbursement payments; and travel payments; and (10) Pursuant to section 452(k) of the Act, information from the FPLS may be disclosed to the Secretary of State to revoke, restrict, or deny a passport to any person certified by State CSE agencies as owing a child support arrearage greater than $5,000.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

FPLS records are maintained on disc and computer tape, and hard copy.

RETRIEVABILITY:

System records can be accessed by either a State assigned case identification number or Social Security Number.

SAFEGUARDS:

1. *Authorized Users:* All requests from the State IV-D Agency must certify that: (1) They are being made to locate non-custodial and custodial parents for the purpose of establishing paternity or securing child support, or in cases involving parental kidnapping or child custody and visitation determinations and for no other purpose; (2) the State IV-D agency has in effect protective measures to safeguard the personal information being transferred and received from the Federal Parent Locator Service; and (3) the State IV-D Agency will use or disclose this information for the purposes prescribed in 45 CFR 302.70.

2. *Physical Safeguards:* For computerized records electronically transmitted between Central Office and field office locations (including organizations administering HHS programs under contractual agreements), safeguards include a lock/unlock password system. All input documents will be inventoried and accounted for. All inputs and outputs will be stored in a locked receptacle in a locked room. All outputs will be labeled ''For Official Use Only'' and treated accordingly.

3. *Procedural and Technical Safeguards:* All Federal and State personnel and contractors, are required to take a nondisclosure oath. A password is required to access the terminal. All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' and the Department's Automated Information System Security Program Handbook.

RETENTION AND DISPOSAL:

Quarterly wage data supplied to the FPLS will be retained for eight calendar quarters and then destroyed. New hire information supplied to the FPLS will be kept in an active file for two years. New hire information will then be stored for an additional three years before being destroyed.

Tax refund and administrative offset information will be maintained for six years in an active master file for purposes of collection and adjustment. After this time, records of cases for which there was no collection will be destroyed. Records of cases with a collection will be stored on-line in an inactive master file.

Records pertaining to passport denial will be updated and/or deleted as obligors meet satisfactory restitution or other State approved arrangements.

Records of information provided by the FPLS to authorized users will be maintained only long enough to communicate the information to the appropriate State or Federal agent. Thereafter, the information provided will be destroyed. However, records pertaining to the disclosures, which include information provided by States, Federal agencies contacted, and an indication of the type(s) of information returned, will be stored on a history tape and in hard copy for five years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must provide his or her full name and address. Additional information, such as your Social Security Number, date of birth or mother's maiden name, may be requested by the system manager in order to distinguish between individuals having the same or similar names.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records. Requesters should also reasonably specify the record contents they are seeking.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under system manager above, and reasonably identify the record and specify the information to be contested and corrective action sought with supporting justification to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from departments, agencies, or instrumentalities of the United States or any State.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–22861 Filed 8–27–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0496]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by September 29, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Judith V. Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

Reporting and Recordkeeping Requirements for Manufacturers and Distributors of Electronic Products—21 CFR Parts 1002–1010, FDA Forms 2877, 3147, and 766 (OMB Control Number 0910–0025—Reinstatement)

Sections 532 through 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii through 360ss) direct the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program to protect the public from unnecessary radiation from electronic products. Such program shall include the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. Section 534(g) of the act (21 U.S.C. 360kk(g)) directs the Secretary to review and evaluate industry testing programs on a continuing basis, and section 535(e) and (f) of the act (21 U.S.C. 360*ll*(e) and (f)) directs the Secretary to immediately notify manufacturers of, and assure correction of, radiation defects or noncompliances with performance standards. The authority for records and reports is contained in section 537(b) and (c) of the act (21 U.S.C. 360nn(b) and (c)).

The regulations implementing these statutory provisions are found in parts 1002 through 1010 (21 CFR parts 1002 through 1010). Section 1002.3 requires manufacturers, when directed by FDA, to provide technical and safety information to users. Section 1002.10(a) through (k) requires manufacturers to submit to FDA product reports containing identification, design, operation and testing, quality control procedures, test results, and product labeling prior to the entry of the product into commerce. Section 1002.11(a) and (b) requires manufacturers to submit supplemental reports to FDA if modifications in product safety or testing of electronic products affect actual or potential radiation emission. Section 1002.12(a) through (e) requires manufacturers to submit abbreviated information on product safety and testing. Section 1002.13(a) through (c) requires manufacturers to report annually to FDA a summary of manufacturer records maintained in accordance with § 1002.30, and provide quarterly updates of models instead of § 1002.10 or § 1002.11 reports. Section 1002.20(a) through (c) requires manufacturers to report to FDA the circumstances, amount of exposure, and remedial actions taken concerning any accidental radiation occurrence involving their electronic products. If a firm is also required to report the incident under 21 CFR part 803, those regulations take precedence. Section 1002.30(a) and (b) requires manufacturers to keep records on test data and procedures, correspondence regarding radiation safety, and distribution records. Section 1002.31(a) requires manufacturers to maintain records required to be kept under part 1002 for 5 years. Section 1002.31(c) requires manufacturers, when requested by FDA, to provide copies of the distribution records required to be maintained by § 1002.30(b). Section 1002.40(a) through (c) requires dealers and distributors to retain first purchaser information, to be used by manufacturers when a product recall is instituted to ensure the radiation safety of a product. Section 1002.41(a) and (b) specifies that the dealer/distributor records in § 1002.40 may be retained by the dealer or forwarded to the manufacturer for retention and that the manufacturer or dealer shall retain distribution records for 5 years. Section 1002.50(a) specifies criteria by which manufacturers may request exemption from reporting and recordkeeping requirements when there is a low risk of injury, and § 1002.51 specifies criteria by which manufacturers may request exemption from reporting and recordkeeping requirements under certain circumstances if the product is intended for U.S. Government use. The burden is combined with § 1002.50(a), because the processes and procedures are identical.

Section 1003.10(a) and (c) requires manufacturers to notify FDA when their product has a defect or fails to comply with applicable performance standards. Also, under § 1003.10(b) manufacturers must notify purchasers, dealers, and distributors of product defects or noncompliance. Section 1003.11(a)(3) specifies criteria by which manufacturers may refute FDA's notice of defective or noncompliant product, and § 1003.11(b) states that manufacturers, when notified by FDA, must provide information on the number of defective products introduced into commerce. Section 1003.20(a) through (h) specifies information to be provided by manufacturers to FDA when the manufacturer discovers a defect or failure to comply. Section 1003.21(a) through (d) specifies the content and format of the notification by manufacturers to affected persons required by § 1003.10(a). Under § 1003.22(a) and (b), manufacturers must provide to FDA copies of the § 1003.10 disclosure sent to purchasers and to dealers or distributors. Section 1003.30(a) and (b) specifies criteria by which manufacturers may request an exemption from the § 1003.10 disclosure and possible product recall and § 1003.31(a) and (b) specifies the content of the § 1003.30 report and the procedure that the agency will follow in reviewing exemption requests. Sections 1004.2(a) through (i), 1004.3(a) through (i), and 1004.4(a) through (h) require manufacturers to report to FDA every plan to remedy a product defect or noncompliance through repair or replacement or refund.

Section 1005.21(a) through (c) specifies criteria for manufacturers or importers to request correction of noncompliant products for importation into the United States, including specific corrections, timeframe, and location for completion. Such requests are made on Form FDA 766, Application for Authorization to Relabel or to perform other action of the act and other related acts. Section 1005.25(a) and (b) requires importers to report identification information and compliance status of products to FDA. Initial designations are provided in the §§ 1002.10, 1002.11, and 1002.12 reports, so that burden is included in those sections. For each shipment, identification is made on Form FDA 2877. Form FDA 2877, Declaration for Products Subject to Radiation Control Standards, is used to collect this information.

Part 1010 prescribes performance standards for electronic products, under section 534 of the act, to which manufacturers must certify. Section 1010.2(d) specifies criteria for manufacturers to request alternate means of certification to a performance standard. Section 1010.3(a) through (c) requires manufacturers to provide to FDA the coding systems if information on labels is coded and to identify each brand name, and the name and address of the individual or company for whom each product so branded is manufactured. Because firms provide such information in the §§ 1002.10, 1002.11, and 1002.12 reports, the burden is included in those sections. Section 1010.4(b) specifies criteria for manufacturers to petition FDA for a variance from a performance standard. Form FDA 3147, Application for a Variance from 21 CFR 1040.11(c) for laser light shows, is used only by manufacturers of laser products to submit the information. Since the vast majority of variances are submitted by this industry, this form was developed to reduce the burden and timeframe for approvals. Section 1010.5(c) and (d) specifies criteria by which manufacturers or U.S. Government agencies may request an exemption (or amendment or extension) from performance standards when a product is to be used exclusively by a part of the U.S. Government and has adequate radiation emission specifications. Section 1010.13 provides that manufacturers may request alternate test procedures from those specified in a performance standard. The burden is combined with § 1010.5(c) and (d) because the processes and procedures are identical.

The information collections are placed upon manufacturers, importers, assemblers, distributors, and dealers of electronic products. Not all of the requirements are placed on all of these groups. The data reported to FDA and the records that are maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. The reports are reviewed by FDA staff to determine product safety and adequacy of quality control testing. Potential and actual problems are resolved with the individual firm. Each firm's quality control staff reviews the test records to maintain production of safe and compliant products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

If FDA did not collect this information, FDA may not have sufficient information to take appropriate actions to protect the public from unnecessary radiation hazards presented by electronic products.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating and Maintenance Costs
1002.3	10	1	10	12	120	$2,940
1002.10, 1010.3	540	1.6	850	24	20,400	$499,800
1002.11	1,000	1.5	1,500	0.5	750	$18,375
1002.12	150	1	150	5	750	$18,375
1002.13 Annual	900	1	900	26	23,400	$573,300
1002.13 Quarterly	250	2.4	600	0.5	300	$7,350
1002.20	40	1	40	2	80	$1,960
1002.50(a), 1002.51	10	1.5	15	1	15	$367.50
Form FDA 2877	600	32	19,200	0.2	3,840	$94,080
1010.2	1	1	1	5	5	$122.50
1010.4 and Form FDA 3147	53	2.1	115	0.5	58	$1,421
1010.4—Other	1	1	1	120	120	$2,940
1010.5, 1010.13	3	1	3	22	66	$1,617
Totals	1,760		23,385		49,904	$1,222,648

There are no capital costs associated with this collection.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating and Maintenance Costs
1002.30, 1002.31(a)	1,150	1,655.5	1,903,825	198.7	228,505	$5,598,373
1002.40, 1002.41	2,950	49.2	145,140	2.4	7,080	$173,460
Totals	4,100				235,585	

There are no capital costs associated with this collection.

These burden estimates are based on comments from industry and interviews with industry personnel.

Several requirements are not included in the burden chart because they are exempt under 5 CFR 1320.4. These exempt requirements are: Sections 1002.31(c), 1003.10(a) through (c), 1003.11(a)(3), 1003.11(b), 1003.20(a)

through (h), 1003.21(a) through (d), 1003.22(a) and (b), 1003.30(a) and (b), 1003.31(a) and (b), 1004.2(a) through (i), 1004.3(a) through (i), 1004.4(a) through (h) and 1005.21(a) through (c). Other requirements are not included because they constitute a disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)).

Dated: August 20, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22857 Filed 8–27–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0221]

Benzodiazepines and Related Substances; Criteria for Scheduling Recommendations Under the Controlled Substance Act; Notice of Public Hearing Modification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) in conjunction with other Federal agencies is announcing that the part 15 public hearing on benzodiazepines and related substances originally scheduled for September 11 and 12, 1997, will be held only on September 11, 1997. The public hearing will not continue to September 12, 1997. The decision to forego the second day is based on the limited number of respondents submitting notices of participation in the hearing.

DATES: The hearing will be held on Thursday September 11, 1997, from 9 a.m. to 4 p.m. The closing date for comments will be October 17, 1997.

ADDRESSES: The public hearing will be held at the Renaissance Hotel, 999 Ninth St. NW., Washington, DC. Comments are to be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Transcripts of the public hearing may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the hearing, at a cost of 10 cents per page. The transcript of the public hearing, copies of data and information submitted during the hearing, and any written comments will be available for review at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, rm. 15–22, Rockville, MD 20857, 301–827–1696, FAX 301–443– 0232, e-mail ''nreuter@bangate.fda.gov''.

SUPPLEMENTARY INFORMATION:

In a notice published in the Federal Register of June 19, 1997 (62 FR 33418), FDA in conjunction with other Federal agencies announced that it would convene a part 15 public hearing on benzodiazepines and related substances. The public hearing was scheduled for Thursday, September 11, 1997 and part of Friday, September 12, 1997.

Persons who wished to participate in the hearing were asked to file a notice of participation with the Dockets Management Branch (address above) on or before August 14, 1997. In response to that notice, eight individuals representing various organizations indicated their interest in participating in the hearing. FDA, along with the other participating agencies, have determined that the number of individuals indicating an interest in participating in the hearing can be accommodated in one full day and that there is no need to continue the hearing to the second day. Therefore, the public hearing will be held at the address above from approximately 9 a.m. until 4 p.m. on September 11, 1997.

Interested parties may still sign up to participate in the hearing. The June 19, 1997, notice included a provision whereby persons may give oral notice of participation by calling Nicholas Reuter (telephone number above) no later than August 29, 1997. This notice extends until September 3, 1997, the opportunity to give oral notice of participation. Those persons who give oral notice of participation should also submit written notice containing the information described above to the Dockets Management Branch by the close of business September 8, 1997.

Dated: August 22, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22935 Filed 8–25–97; 11:56 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0256]

Norma D. Banks; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Norma D. Banks, 3688 West Minarets Ave., Fresno, CA 91331, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Banks was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Ms. Banks has failed to request a hearing and, therefore, has waived her opportunity for a hearing concerning this action.

EFFECTIVE DATE: August 28, 1997.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Ms. Banks was employed by H. R. Cenci Laboratories, Inc. (Cenci), as Director of Quality Assurance and Regulatory Affairs. In that capacity, on November 17, 1993, she knowingly and willfully made false, fictitious, and fraudulent representations in a matter within the jurisdiction of FDA. Specifically, she misrepresented to FDA's Office of Generic Drugs information contained in an annual report that stability tests for three drug products manufactured by H. R. Cenci Laboratories, Inc. (i.e., promethazine syrup with phenylephrine, promethazine syrup with codeine, and promethazine syrup with phenylephrine and codeine), were uniformly passing, when, in fact, several stability test results were failing.

On January 25, 1996, the United States District Court for the District of Maryland entered judgment against Ms.

Banks for one count of knowingly and willfully making false, fictitious, and fraudulent statements and representations to a Federal agency as to material facts, a Federal felony under 18 U.S.C. 1001.

As a result of this conviction, FDA served Ms. Banks by certified mail on September 26, 1996, a notice proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application, and offered her an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that Ms. Banks was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Ms. Banks did not request a hearing. Her failure to request a hearing constitutes a waiver of her opportunity for a hearing and a waiver of any contentions concerning her debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.99(b)), finds that Ms. Norma D. Banks has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing finding, Ms. Norma D. Banks is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective August 28, 1997 (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd)). Any person with an approved or pending drug product application who knowingly uses the services of Ms. Banks in any capacity, during her period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Ms. Banks, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications or abbreviated antibiotic drug applications submitted by or with the assistance of Ms. Banks during her period of debarment.

Any application by Ms. Banks for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 96N–0256 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 12, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–22856 Filed 8–27–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0298]

Distributor Medical Device Reporting; Draft Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft Compliance Policy Guide (CPG) entitled ''Distributor Medical Device Reporting.'' The purpose of the CPG is to provide guidance concerning the interpretation and applicability of some of the provisions in the Medical Device Distributor Reporting Regulation. FDA believes that the following guidance will improve the administration and efficiency of medical device distributor reporting as well as the quality of information received.

DATES: Written comments on the draft CPG may be submitted by November 26, 1997.

ADDRESSES: Submit written requests for single copies of the draft CPG to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (CDRH) (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597 or outside MD 1–800–638–2041. Send two self-addressed adhesive labels to assist that office in processing your requests, or FAX your request to 301–443–8818. Facsimiles of the draft CPG are available from DSMA. To receive the draft CPG on your fax machine, call the CDRH Facts-On-Demand system at 1–800–899–0381 or 301–827–0111 from a touch tone telephone. At the first voice prompt press ''1'' to access DSMA Facts, at the second voice prompt press ''2'' and then enter the document number, ''120'' followed by the pound sign, ''#''. Follow the remaining voice prompts to complete the request. Submit written comments on the draft CPG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Chester T. Reynolds, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4618, ext. 114.

SUPPLEMENTARY INFORMATION:

I. Background

Distributors of devices have been required, by statute, to report device related deaths, serious illnesses, serious injuries and malfunctions to FDA and the manufacturers of the devices since May 28, 1992. The regulations that implemented the statutory provisions can be found in parts 804 and 807 (21 CFR parts 804 and 807).

Since 1993, FDA has received thousands of Medical Device Reports (MDR's) submitted in response to part 804. As a result of this experience, FDA has developed a draft CPG to provide guidance concerning the interpretation and applicability of some of the provisions of the Distributor Medical Device Reporting Regulation. For practical purposes, FDA intends to interpret the reporting standards for both domestic distributors and importers to be the same. In exercising its enforcement discretion, the agency does not plan to initiate regulatory action involving distributor requirements for staff training and education. Additionally, FDA encourages distributors to voluntarily use the reporting form MEDWATCH FDA Form 3500A. The agency believes that using this form will reduce the paperwork and level of effort for distributors, manufacturers, and FDA. This draft guidance document represents the agency's current thinking on distributor medical device reporting. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft

CPG entitled ''Distributor Medical Device Reporting.'' Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The agency will review all comments, but in issuing a final CPG, need not specifically address every comment. The agency will make changes to the CPG in response to comments, as appropriate. A copy of the draft CPG and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of the draft CPG may also be downloaded to a personal computer with access to the World Wide Web (www). The Office of Regulatory Affairs (ORA) and CDRH Home Pages include the draft CPG and may be accessed at ''http://www.fda.gov/ora'' or ''http://www.fda.gov/cdrh'' respectively. The draft CPG will be available on the Compliance References or Compliance Information pages for ORA and CDRH respectively.

Dated: August 15, 1997.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 97–22702 Filed 8–27–97; 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: Food 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 September 25 and 26, 1997, 8:30 a.m. to 5 p.m.

Location: Holiday Inn—Eisenhower Metro Center, Eisenhower Station Ballroom, 2460 Eisenhower Ave., Alexandria, VA.

Contact Person: Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727, or Catherine M. DeRoever, Advisory Committee Staff (HFS–22), 202–205–4251, FAX 202–205–4970, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will be conducting an informational meeting during which it will be receiving updates on past issues that were referred to the committee and on other activities related to food safety. There will also be briefings by the current working groups formed to discuss the Final Report from the Keystone National Policy Dialogue on Food, Nutrition, and Health, as well as simultaneous working group sessions. Two working groups are expected to have work products for committee discussion.

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 September 17, 1997. Oral presentations from the public will be scheduled between approximately 4 p.m. and 5 p.m. on September 25, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 17, 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: August 21, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–22854 Filed 8–27–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Mammography Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing the following public workshop: Mammography Workshop. The topics to be discussed are: Update on the Mammography Quality Standards Act (MQSA), State regulations on mammography, the medical physicist's responsibilities, FDA's MQSA compliance, the radiographic processor, and preparation for the MQSA inspection.

Date and Time: The public workshop will be held on Tuesday, September 23, 1997, 8:30 a.m. to 5 p.m.; registration, 8 a.m. to 8:30 a.m. Registration will close on September 16, 1997.

Location: The public workshop will be held at the Medical Forum Bldg., 950 22d St. North, Birmingham, AL 35203, 205–458–8800.

Contact: Ralph T. Trout, Food and Drug Administration (HFR–SE19), 60 Eighth St. NE., Atlanta, GA 30309, 404–347–4001, ext. 5248, FAX 404–347–4349.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by Tuesday, September 16, 1997. Space is limited, therefore interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact Ralph T. Trout at least 7 days in advance.

SUPPLEMENTARY INFORMATION: This workshop is being sponsored by FDA's Southeast Region and the radiological health programs of the States of the Southeast Region. These States are Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, and the Commonwealth of Puerto Rico and the Virgin Islands. The purpose of this workshop is to provide mammography facilities with an update on MQSA and technical training in the area of mammography.

Dated: August 22, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22980 Filed 8–25–97; 4:44 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medicated Feed Good Manufacturing Practices (GMP's) Training Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Pacific Region is announcing a training workshop to

provide industry and regulators with current information concerning changes in the regulation of medicated feeds including the Animal Medicinal Drug Use Clarification Act, veterinary feed directives, feed mill licensing and current good manufacturing practices for medicated feeds. The training workshop is being conducted in cooperation with the California Department of Food and Agriculture (CDFA) and the Association of American Feed Control Officials (AAFCO).

DATES: The 2-day training workshop will be held on September 23, 1997, from 8 a.m. to 5 p.m., and September 24, 1997, from 8:30 a.m. to 3 p.m.

ADDRESSES: The workshop will be held at the Delta King Hotel, 1000 Front St., Old Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT:

For information regarding this notice: Mark Roh, Food and Drug Administration, Oakland Federal Bldg., 1301 Clay St., Oakland, CA 94612, 510–637–3980; or Karen Robles, Food and Drug Administration, 801 ''I'' St., rm. 443, Sacramento, CA 95814, 916–498–6400, ext. 14; or

For information regarding registration and the workshop: Steven Wong, GMP Training Workshop Coordinator, California Dept. of Food & Agriculture, Feed Inspection Program, 1220 ''N'' St., rm. A–472, Sacramento, CA 95814, 916–654–0574, FAX 916–653–2407.

SUPPLEMENTARY INFORMATION: This training workshop is to further assist the medicated feed industry and Federal and State regulators with interpretation and understanding of the current regulations concerning medical feed mills. Attention will also be given to recent and proposed changes in the regulatory procedures and policy.

Registration is being handled by AAFCO. AAFCO is collecting a minimal registration fee of $50.00 to cover the cost of the facility and preparation of course materials. Space is limited and early registration is recommended.

Dated: August 22, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22979 Filed 8–25–97; 4:44 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

System Suitability (Validation) of Chromatographic Analysis/Out-of-Specification Results; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing that it will hold a series of two public meetings that will be offered in two locations. The topics to be discussed are validating chromatographic systems and evaluating out-of-specification test results.

Date and Time: The public meetings will be held on September 12, 1997, 8 a.m. to 12 m. and 1 p.m. to 4 p.m.; and September 24, 1997, 2 p.m. to 5:30 p.m. (both meetings).

Location: On September 12, 1997, the meetings will be held at the Independence Seaport Museum Penn's Landing, 211 South Columbus Blvd., and Walnut St., Philadelphia, PA, 215–413–8622, FAX 215–925–6713. On September 24, 1997, the meetings will be held at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD, 301–657–1234, FAX 301–657–6453.

Contact: Richard A. Baldwin, Division of Field Science (HFC–141), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6388, FAX 301–443–5153.

Registration: Registration for the September 24, 1997, meetings is required through the Parenteral Drug Association. For more information on how to register, contact the Parenteral Drug Association at 301–986–0293, or e-mail info@pda.org.

SUPPLEMENTARY INFORMATION: On September 12, 1997, FDA's Office of Regulatory Affairs and the Office of External Affairs are cosponsoring two meetings entitled ''System Suitability (Validation) for Chromatographic Analysis'' and ''Out-of Specification Results.'' On September 24, 1997, FDA, in cooperation with the Parenteral Drug Association, will offer the same meetings in Bethesda MD. The goal of these meetings is to provide consistent practices and procedures between FDA and the pharmaceutical industry.

Requests for handouts are available from the Division of Field Science. Submit requests to Denise Jones, Division of Field Science (HFC–141), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

If you need special accommodations due to a disability, please notify the contact person at least 7 days in advance.

Dated: August 22, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22978 Filed 8–25–97; 4:44 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Potency and Dosage of Von Willebrand Factor Concentrates; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''FDA Sponsored Workshop on Potency and Dosage of von Willebrand Factor Concentrates (vWF).'' The topics to be discussed include potency assays and standards for vWF concentrates; pharmacokinetic studies and clinical trials of vWF concentrates; the correlation of dosage regimens with clinical outcome; and labeling of vWF concentrates.

Date and Time: The workshop will be held on September 26, 1997, 8 a.m. to 5 p.m.

Location: The workshop will be held at Jack Masur Auditorium, National Institute of Health, 8800 Rockville Pike, Bldg. 10, Bethesda, MD 20892.

Contact: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, FAX 301–827–2843.

SUPPLEMENTARY INFORMATION:

FDA has the responsibility of ensuring that product labeling provides information about product potency and dosage. In the case of replacement therapy for deficiencies in coagulation factor activity, this has been done by assessing the potency of a product relative to a defined standard, and by measuring the pharmacokinetics of the product. This information has been used to establish a dosage that will raise the concentration of circulating coagulation activity to a targeted level for a known period of time. Clinical trials establish the clinical benefit of a given dosage regimen. This model has been difficult to apply to products submitted to FDA for licensure for the treatment of vWF because there is no standardized in vitro test for vWF potency; there is no vWF

concentrate standard, and assays based on vWF plasma standards may not be appropriate to measure the potency of concentrates; and published clinical trials have not correlated the dosage of specific products with clinical outcome. The main goal of this workshop is to address these concerns through exchange of information about each of these issues, through the participation of the patient, industrial, medical, scientific, and regulatory communities. Workshop participants are asked to present their positions, rationales, and/or experiences regarding: (1) The benefits and liabilities of using ristocetin cofactor activity, or other tests, to measure vWF activity; (2) proposals for standardizing the potency and dosage of vWF concentrates; and (3) clinical trials to relate given dosage regimen to clinical benefit. Information presented at this workshop will assist in product development and facilitate licensure of safe and effective vWF products.

Registration and Requests for Oral Presentations: Fax registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by September 19, 1997. Registration at the site will be done on a space available basis on the day of the workshop beginning at 7:30 a.m. There is no registration fee for the workshop.

If you need special accommodations due to a disability, please contact Joseph Wilczek at least 7 days in advance.

Transcripts: Transcripts of the workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the workshop at a cost of 10 cents per page.

Dated: August 22, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22982 Filed 8–27–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0201]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Evaluation of Proposed OTC Label Formats'' (study A) and ''OTC Label Format Preference'' (study B) has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 23, 1997 (62 FR 28482), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507) and 5 CFR 1320.12 , which provides for emergency processing of the proposed collection of information. OMB has approved the information collection and has assigned OMB control number 0910–0343. The approval expires on November 30, 1997. 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.

Dated: August 22, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22981 Filed 8–27–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0349]

Convenience Kits Interim Regulatory Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Convenience Kits Interim Regulatory Guidance.'' The guidance is final and in effect at this time. This guidance applies to convenience kits and provides guidance regarding FDA's intent to exercise enforcement discretion with respect to premarket notification requirements under the Federal Food, Drug, and Cosmetic Act (the act), and describes FDA's intent to propose rulemaking to exempt certain convenience kits from premarket notification requirements. The guidance addresses the type of data needed by the Center for Devices and Radiological Health (CDRH) to decrease the number of 510(k) submissions for convenience kits, saving Office of Device Evaluation (ODE) review resources. The agency is inviting public comment on this guidance.

DATES: Submit written comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Convenience Kits Interim Regulatory Guidance'' to the Office of Device Evaluation, Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance. Submit written comments on the guidance to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Heather Rosecrans, Office of Device Evaluation (HFZ–404), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance represents a final document that describes a new regulatory approach to be applied to convenience kits that could result in a decrease in the number of 510(k) submissions for these devices and, in so doing, will save FDA review resources.

Under section 510(k) of the act (21 U.S.C. 360(k)), first time marketers of devices must submit a premarket notification and obtain clearance for a device before it can be lawfully introduced into interstate commerce. Many convenience kits that have been subject to 510(k) review are comprised of legally marketed devices that are simply being assembled in kit form strictly for the ''convenience'' of the purchaser.

FDA believes that under certain circumstances, premarket clearance for convenience kits may not be necessary to ensure protection of the public health. Accordingly, FDA intends to propose rulemaking to exempt certain, specifically identified convenience kits from the requirement of premarket notification. Until such rule is in effect, FDA intends to exercise enforcement discretion regarding the requirement for

premarket clearance for convenience kits that have intended uses, components, and processing methods that are described in the guidance, and where the assembler/manufacturer is able to reasonably conclude that any further processing of the kit and its components does not significantly affect the safety or effectiveness of any of its components. The intent to exercise enforcement discretion means that FDA does not intend to take enforcement action for the failure to submit premarket notification for convenience kits described in the guidance. In the future, FDA intends to propose rulemaking to formally exempt these types of kits from the requirement of premarket notification.

This guidance is effective immediately.

The ''Convenience Kits Interim Regulatory Guidance'' represents the agency's current thinking on premarket notification regulatory strategy for convenience kits. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Electronic Access

In order to receive the ''Convenience Kits Interim Regulatory Guidance'' document via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number 562 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may do so by using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. The CDRH home page is updated on a regular basis and includes the ''Convenience Kits Interim Regulatory Guidance'' document, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''. The ''Convenience Kits Interim Regulatory Guidance'' is available on the medical device reporting page at ''http://www.fda.gov/cdrh/ode/convkit.html''.

A text only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select MEDICAL DEVICES AND RADIOLOGICAL HEALTH. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Request for Comments

Interested persons may, at any time, submit to the contact person listed above written comments regarding this guidance.

Dated: August 21, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–22855 Filed 8–27–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–39]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Home Health Medicare Conditions of Participation (COP) Information Collection Requirements (ICR's) as outlined in Regulation 42 CFR Part 484; *Form No.:* HCFA–R–39 OMB #0938–0365; *Use:* The ICR's contained in 42 CFR part 484 outline Home Health Agencies Medicare COP's to ensure Home Health Agencies meet Federal patient health and safety requirements. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions and Federal Government; *Number of Respondents:* 10,203; *Total Annual Responses:* 10,203; *Total Annual Hours:* 86,008.

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Negative Case Action Review Process (NCA)/Annual Report and Supporting Regulations 42 CFR 431.800; *Form No.:* HCFA—6401 OMB #0938–0300; *Use:* HCFA uses the NCA reviews conducted by states to assure that beneficiaries are not being denied medical assistance that they are eligible for and that recipients are being given adequate and timely notice of termination. The results of NCA reviews are used by states and the Federal Government to identify problem areas and plan corrective action initiatives. *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 6,770.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 20, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–22963 Filed 8–27–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–207]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Evaluation of Five State Health Care Reform Demonstrations and the Evaluation of the Medicaid State Health Reform Demonstrations; *Form No.:* HCFA–R–207; *Use:* These evaluations will investigate health care reform in ten states that will implement or have implemented demonstration programs using Medicaid Section 1115 waivers. The surveys will gather information to answer questions regarding access to health care, quality of care delivered, satisfaction with health services, and the use and cost of health services. The surveys will be administered to Medicaid eligible and newly covered enrollees and eligible and near-eligible non-enrollees. A subsample of survey respondents will be SSI recipients and other disabled people who have participated in demonstrations for at least a year. Quality of care surveys will be administered to Medicaid enrollees who have diabetes and to parents of children in the Medicaid program who have pediatric asthma. *Frequency:* (Other) one time for most respondents; *Affected Public:* Individuals or Households; *Number of Respondents:* 33,693; *Total Annual Responses:* 34,035; *Total Annual Hours:* 10,279.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 11, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–22964 Filed 8–27–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Life Fellowship Bird Sanctuary, Seffner, FL, PRT–832609.

The applicant requests a permit authorizing import of 36 Galapagos tortoises (*Geochelone elephantopus*) from the Bermuda Aquarium, Natural History Museum and Zoo, Flatts, Bermuda for the purpose of enhancement of the species through captive propagation.

Applicant: University of Wisconsin, Dept. of Zoology, Madison, WI, PRT–831689.

The applicant request a permit to import blood and feather samples taken from captive-held Andean condors (*Vultur gryphus*) in Ecuador, Bolivia, Colombia, and Argentina for the purpose of scientific research.

Applicant: Cohanzick Zoo, Bridgeton, NJ, PRT–833281.

The applicant request a permit to import a male and female Bengal tigers (*Panthera tigris tigris*) born in captivity from Parken Zoo, Eskilstuna, Sweden, for the purpose of enhancement of the species through conservation education.

Applicant: University of Puerto Rico, Rio Piedras, PR, PRT–833581.

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five year period.

Applicant: Stephen Fullmer, Salt Lake City, UT, PRT–833360.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Richard Nelson, Sarasota, FL, PRT–833155.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994 from the Foxe Basin polar bear population, Northwest Territories, Canada for personal use.

Applicant: Arlo Spiess, El Macero, CA, PRT–833156.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: John Richardson, New Middletown, OH, PRT–832321.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population,

Northwest Territories, Canada for personal use.

Applicant: John C. Byram, Jr., Mission, KS, PRT–833352.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Bobbie McLawhorn, New Bern, NC, PRT–833590.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Robert B. Johnson, Millwood, NY, PRT–833623.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Collins F. Kellogg, Sr., Croghan, NY, PRT–833625.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Parry Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on any of these applications for marine mammal permits should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with all of the applications listed in this notice are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: August 22, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–22889 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance

On August 15, 1997, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–833446) to Dr. David Owens, Texas A&M University, College Station, TX to import blood samples from Kemp's ridley sea turtles (*Lepidochelys kempii*) currently maintained at the Cayman Turtle Farm, Grand Cayman, Cayman Islands. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of the sea turtles existed and that no reasonable alternative was available to the applicant, for the following reasons: (1) Mexico has agreed to accept Kemp's ridley sea turtles from the Cayman Turtle Farm which can no longer maintain this endangered species; (2) all of the sea turtles must be tested for disease before transport to Mexico; (3) testing of up to 200 samples is expected to take at least several weeks; (4) because of financial difficulties, the Cayman authorities have indicated that the animals must be moved to Mexico by November or they will have to be euthanized. The 30-day public comment period has therefore been waived to expedite the processing of the blood samples to ensure that only healthy turtles are transported to Mexico and to ensure that healthy animals are not euthanized in the Cayman facility due to lack of supporting funds.

Dated: August 22, 1997.

Karen Anderson,

Acting Chief, Branch of Permit, Office of Management Authority.

[FR Doc. 97–22887 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Basin A Project, Contra Costa County, California

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt.

SUMMARY: This notice advises the public that the Contra Costa County Department of Public Works (Department) has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number PRT–833486. The proposed permit would authorize the incidental take of the California red-legged frog (*Rana aurora draytonii*), federally listed as threatened, and/or modification of its habitat during sediment removal activities at Basin A in Contra Costa County, California. The permit would be in effect for 20 years.

The Service announces the receipt of the Department's incidental take permit application and the availability of the proposed Basin A Habitat Conservation Plan (Plan), which accompanies the incidental take permit application, for public comment. The Plan fully describes the proposed project and the measures the Department would undertake to minimize and mitigate project impacts to the California red-legged frog. The Service has determined that the Basin A Plan qualifies as a ''low-effect'' Plan as defined by the Fish and Wildlife Service's Habitat Conservation Planning Handbook (November 1996). The Service has further determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This notice is provided pursuant to section 10(c) of the Endangered Species Act.

Comments are specifically requested on the appropriateness of the ''No Surprises'' assurance specifically discussed under the ''Unforeseen Circumstances'' section of the Plan. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application and Plan should be received on or before September 29, 1997.

ADDRESSES: Comments regarding the permit application or the Plan should be addressed to the Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Please refer to permit number PRT–833486 when submitting comments. Individuals wishing copies of the application and the Plan for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Tiki Baron or Mr. William Lehman,

Sacramento Fish and Wildlife Office; telephone (916) 979–2129.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibit the ''taking'' of a species listed as endangered or threatened, respectively. However, the Service, under limited circumstances, may issue permits to ''incidentally take'' listed species, which is take that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

The Department proposes to remove excess sediment from a constructed wetland, known as Basin A, in Contra Costa County, California. The Department constructed Basin A as mitigation for impacts to wetland and riparian habitat caused by a highway widening project. Basin A, located south of State Route 4 and west of Bay Point near the city of Concord, is approximately 4.8 acres in size and consists of a lower wetland basin (2.5 acres), a sedimentation basin (0.45 acres), an upper riparian area (0.2 acres), and side slopes and an access road (1.6 acres). Vegetation and wildlife monitoring began in the spring of 1996 after native vegetation had been planted. On April 21, 1997, a California red-legged frog was observed in the lower wetland basin during monitoring activities. No other observations of red-legged frogs at Basin A have been made prior or subsequent to this sighting.

Excessive sediment has accumulated at Basin A as a result of heavy grazing upstream, the incised condition of the stream that flows into the basin, and heavy rain storms this past winter (1996–1997). To ensure proper functioning of the wetlands at Basin A, the Department proposes to remove excess sediment from the sedimentation basin, as necessary, on an on-going basis. The Department estimates that sediment removal from the sedimentation basin would be required, on average, in approximately 60% of the years ahead (i.e., 3 out of every 5 years, or 12 years out of the 20-year permit term). In addition, the Department proposes to remove excess sediment from the lower wetland basin this year. As a result of heavy rain storms in recent winters, sediment by-passed the sedimentation basin and has accumulated in a portion of the lower wetland basin. The need for removal of sediment from the lower wetland basin in future years depends on the occurrence of unusually large storms. The Department estimates that such storms, and thus sediment removal from the lower wetland basin, would occur once every 5 to 10 years (i.e., a total of two to four times over the life of the permit). Sediment removal would only occur once during any given year, between the months of June and October when both the sedimentation basin and the lower wetland basin are likely to be at their driest.

Removal of sediment from the sedimentation basin and lower wetland basin may result in take of California red-legged frogs. Potential direct impacts to red-legged frogs during sediment removal activities include accidental injury or death by crushing, burying, drowning, or other means as a result of foot traffic, project-related vehicle traffic, and the operation of heavy equipment. Sediment removal would occur during the dry season, however, which decreases the likelihood that red-legged frogs would be present in the basin. Removal of sediment from either the sedimentation basin or the lower wetland basin would not have significant long-term adverse impacts to red-legged frog habitat because the basins would continue to hold water seasonally, providing habitat for frogs. To the contrary, removal of sediment from the sedimentation basin and lower wetland basin would likely enhance habitat values for red-legged frogs at Basin A over the long term.

To minimize take of California red-legged frogs, the Department proposes to conduct pre-activity surveys at Basin A prior to the start of each incident of sediment removal activities. In addition, a qualified biologist would monitor each sediment removal incident throughout the term of the permit. If California red-legged frogs are observed in or immediately adjacent to the area to be excavated, they would be captured by a qualified biologist and relocated to another portion of the basin. Sediment removal activities would be accomplished in as short a time as possible, generally within one day. The Service believes that the proposed project would result in minor or negligible effects to the California red-legged frog because the actual number of red-legged frogs taken at Basin A would likely be very low, the percentage of the Basin A red-legged frog habitat relative to the species' entire range is very small, and its relative importance to the species both regionally and rangewide is thought at this time to be minor, and the improvement and maintenance of habitat values for red-legged frogs at Basin A would likely offset the impact of the possible loss of a small number of frogs. The proposed project would not affect any other listed species.

The Service has determined that the Basin A Plan qualifies as a ''low-effect'' Plan as defined by the Fish and Wildlife Service's Habitat Conservation Planning Handbook (November 1996). Low-effect Plans are those involving (1) minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Basin A Plan qualifies as a low-effect Plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the California red-legged frog and its habitat. The Service does not anticipate significant direct or cumulative effects to the California red-legged frog resulting from the removal of excess sediment, during the dry season, from a constructed wetland basin.

2. The Basin A site, a constructed wetland, has already been significantly modified from its natural state; therefore, removal of excess sediment from the basin would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of this Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the Basin A Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). No further National Environmental Policy Act documentation will therefore be prepared.

This notice is provided pursuant to section 10(c) of the Endangered Species Act. The Service will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application

meets the requirements of section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the California red-legged frog. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: August 22, 1997.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–22896 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare an Environmental Impact Statement for Issuance of an Incidental Take Permit to the Louisiana-Pacific Corporation

AGENCY: Fish and Wildlife Service, Interior and National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of Intent.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (collectively ''the Services'') intend to prepare an Environmental Impact Statement addressing approval and implementation of a Habitat Conservation Plan (Plan) submitted by the Louisiana-Pacific Corporation as part of an application for an incidental take permit, pursuant to section 10(a) of the Endangered Species Act of 1973, as amended. The Plan will cover forest management activities on Louisiana-Pacific's lands within Mendocino, Sonoma, and Humboldt counties in northern California. Louisiana-Pacific intends to request an incidental take permit for the northern spotted owl (*Strix occidentalis caurina*), coho salmon (*Oncorhynchus kisutch*), American peregrine falcon (*Falco peregrinus anatum*), and marbled murrelet (*Brachyramphus marmoratus marmoratus*). It is anticipated the applicant may also seek coverage for approximately 50–60 unlisted species of concern (anadromous and resident fish, wildlife, and plants) under specific provisions of the permit, should these species be listed in the future.

Public Involvement

This notice is being furnished pursuant to the Council on Environmental Quality Regulations for implementing the Procedural Provisions of the National Environmental Policy Act Regulations (40 CFR sections 1501.7 and 1508.22) to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be considered in preparation of the Environmental Impact Statement.

DATES: Comments must be received on or before September 30, 1997. Public scoping meetings, at which oral and written comments can be submitted, are scheduled for Tuesday, September 9, 1997, 2:30–4:30 p.m. & 6:30–9:30 p.m., at Ukiah Valley Conference Center, 200 South School Street, Ukiah, California 95482, and on Thursday, September 11, 1997, 6:30–9:30 p.m., at Samoa Fire Hall, Samoa, California 95564.

ADDRESSES: Comments regarding the scope of the Environmental Impact Statement should be addressed to Mr. Bruce Halstead, Project Leader, Coastal California Fish and Wildlife Office, Fish and Wildlife Service, 1125 16th Street, Room 209, Arcata, California 95521–5582. Written comments may also be sent by facsimile to (707) 822–8411. Comments received will be available for public inspection, by appointment, during normal business hours (Monday through Friday; 8:00 a.m. to 5:00 p.m.) at the above address. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Amedee Brickey, at the above address.

SUPPLEMENTARY INFORMATION: Louisiana-Pacific Corporation, a forest products company, owns and manages approximately 305,000 acres of commercial forest lands in northern California that will be considered for inclusion in a Plan. Approximately 230,000 acres of the land is located in coastal Mendocino and Sonoma counties, and approximately 75,000 acres in coastal Humboldt County. The Plan will evaluate various forest management alternatives for the planning area, including an alternative similar to Louisiana-Pacific's Sustained Yield Plan for Coastal Mendocino County. This Sustained Yield Plan is currently under review by the California Department of Forestry and Fire Protection.

Louisiana-Pacific's multi-species planning approach is anticipated to include the northern spotted owl, coho salmon, marbled murrelet, American peregrine falcon, and other threatened/endangered species. In addition, about 50–60 unlisted species of concern (anadromous and resident fish, wildlife, and plants) are being considered for inclusion in the Plan.

Once completed, it is expected that Louisiana-Pacific Corporation will submit the Plan as part of the incidental take permit application process, as required under the provisions of section 10(a)(2)(A) of the Endangered Species Act. The Services will evaluate the incidental take permit application and associated Plan in accordance with section 10(a) of the Endangered Species Act and its implementing regulations. The environmental review of the permit application and the Plan will be conducted in accordance with the requirements of the National Environmental Policy Act and its implementing regulations. A No Action alternative will be considered consistent with the requirements of the National Environmental Policy Act.

Several streams in watersheds in which the Louisiana-Pacific Corporation owns land are listed as water quality limited under Section 303(d) of the Clean Water Act. If feasible, the Environmental Protection Agency will work with the Louisiana-Pacific Corporation, other Federal agencies, the State of California, and the public to address water quality issues associated with these waterbodies at the same time the Plan is developed. It is expected that a water quality planning and management framework will be developed to establish total maximum daily loads for streams listed under section 303(d) of the Clean Water Act.

Dated: August 21, 1997.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–22898 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits for Marine Mammals

On June 26, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 123, Page 34482, that an application had been filed with the Fish and Wildlife Service by Donald Williams for a permit (PRT–830806) to import a personal sport-hunted polar bear from the Northwest Territories, Canada.

Notice is hereby given that on August 8, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 26, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 123, Page 34482, that an

application had been filed with the Fish and Wildlife Service by Mark Harlow, Aberdeen, SD, for a permit (PRT–830616) to import a personal sport-hunted polar bear from the Northwest Territories, Canada.

Notice is hereby given that on August 14, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 26, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 123, Page 34482, that an application had been filed with the Fish and Wildlife Service by Larry Johnson, Olympia, WA, for a permit (PRT–830817) to import a personal sport-hunted polar bear from the Northwest Territories, Canada.

Notice is hereby given that on August 14, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 26, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 123, Page 34482, that an application had been filed with the Fish and Wildlife Service by Robert Rod, Brookshire, TX, for a permit (PRT–830613) to import a personal sport-hunted polar bear from the Northwest Territories, Canada.

Notice is hereby given that on August 13, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 3, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 128, Page 36070, that an application had been filed with the Fish and Wildlife Service by Felix Widlacki, Orland Park, IL, for a permit (PRT–831166) to import a personal sport-hunted polar bear from the Northwest Territories, Canada.

Notice is hereby given that on August 14, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 3, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 128, Page 36070, that an application had been filed with the Fish and Wildlife Service by Jose Carbonall, Miami, FL, for a permit (PRT–831228) to import a personal sport-hunted polar bear from the Northwest Territories, Canada.

Notice is hereby given that on August 14, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 13, 1997 , a notice was published in the **Federal Register**, Vol. 62, No. 114, Page 32364, that an application had been filed with the Fish and Wildlife Service by David Frank Barkman for a permit (PRT 830053) to import a personally sport hunted polar bear (*Ursus maritimus*) trophy from the Northwest Territories, Canada.

Notice is hereby given that on August 18, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: August 22, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–22888 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–018–1220–02]

Recreation Management; Emergency Closure and Restriction Order, California

Location: The following Emergency Closure and Restriction shall apply to Public Lands located adjacent to McCabe Flat Campground, specifically the beach swimming area. These Public Lands are located within the Folsom Resource Area, Township 4 South, Range 18 East, southeast quarter of section 8, Mt. Diablo meridian. This Emergency Closure and Restriction Order applies only to the area encompassed by sand and normally used for swimming activities in the river. This Emergency Closure and Restriction is promulgated pursuant to Title 43 Code of Federal Regulations, section 8364.1.

Prohibitions: No person shall:

1. Possess any bottle or container made of glass.

2. Enter or be on the beach between sunset and sunrise.

Period of Time: These closures and restrictions shall be in effect from August 22, 1997 to December 31, 1997.

Exemptions: Federal, state, and local law enforcement officers and emergency services personnel, while performing official duties, are exempt from these closures and restrictions.

Reasons for Closure and Restrictions: This area, which is immediately adjacent to a public campground, is often used at night by persons not registered at the campground. This use is often disruptive and annoying to persons using the campground. Campers are intimidated and threatened by the night time use on the beach. This closure and restriction will protect the public and the resources.

Violations of this Closure and Restriction Order are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, as specified in Title 43 Code of Federal Regulations, section 8364.1(d).

D.K. Swickard,

Area Manager.

[FR Doc. 97–23061 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–00–4120–14; North Rochelle Tract, WYW127221]

Competitive Coal Lease Sale Reoffering; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale.

SUMMARY: Notice is hereby given that certain coal resources in the North Rochelle Tract (formerly known as the North Roundup Tract) described below in Campbell County, Wyoming, will be reoffered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 1 p.m., Thursday, September 25, 1997. Sealed bids must be submitted on or before 11 a.m., Thursday, September 25, 1997.

ADDRESSES: The lease sale will be held in the 1st Floor Conference Room (Room 107) of the Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. Sealed bids clearly marked ''Sealed Bid for North Rochelle Tract, WYW127221—Not to be opened before 1 p.m., on Thursday, September 25, 1997'', must be submitted to the Cashier, Wyoming State Office, at the address given above *or* P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Laura Steele, Land Law Examiner, or Melvin Schlagel, Coal Coordinator, at 307–775–6200.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application filed by Bluegrass Coal Development Company (formerly, SMC Mining Company), a subsidiary of Zeigler Coal Holding Company of Evansville, Indiana. The coal resources to be reoffered consist of all reserves recoverable by surface mining methods in the following described lands located approximately 46 miles south-southeast of the City of Gillette, Wyoming, and about 13 miles southeast of Reno Junction just north of the Reno County Road:

T. 42 N., R. 70 W., 6th P.M., Wyoming
Sec. 4: Lots 5–16, 19 and 20;
Sec. 5: Lots 5–16;
T. 43 N., R. 70 W., 6th P.M., Wyoming
Sec. 32: Lots 9–16;
Sec. 33: Lots 11–14.
Containing 1,481.930 acres.

All of the acreage reoffered has been determined to be suitable for mining. The surface estate of the tract is controlled by Arco Coal Company, Powder River Coal Company, and the U.S. Forest Service.

The North Rochelle Tract, located in Campbell County, Wyoming, is adjacent to the existing North Rochelle and Black Thunder Mines and contains surface minable coal reserves in the Wyodak seam currently being recovered in the existing mines. The Wyodak seam averages about 57 feet thick with an additional minable rider seam above the main seam that averages about 7 feet thick. There are no coal outcrops on the tract.

The overburden above the rider seam ranges from 100–200 feet thick while the overburden above the main Wyodak seam where no rider seam exists ranges from 175–250 feet thick. The total in-place stripping ratio (BCY/ton) of the coal seams is 2.91:1.

The tract contains an estimated 157,610,000 tons of minable coal in the Wyodak and rider seams. This estimate of minable reserves does not include any tonnage from localized seams or splits containing less than 5 feet of coal.

The coal is ranked as subbituminous C. The overall average quality is 8680 BTU/lb, 4.91 percent ash, 27.72 percent moisture, and .23 percent sulfur. These quality averages place the coal reserves near the low end of coal quality currently being mined in the far southern Powder River Basin south of Wright, Wyoming. The tract in this lease offering contains split estate lands. The surface is not held by a qualified surface owner as defined in the regulations, 43 CFR 3400.0–5.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals or exceeds the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bid should be sent by ''Certified Mail, Return Receipt Requested'', or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 11 a.m., Thursday, September 25, 1997, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The lease issued as a result of this offering will provide for payment of an annual advance rental of $3.00 per acre, or fraction thereof, *and* of a royalty payment to the United States of 12½ percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 203.250(f).

Bidding instructions for the tract reoffered and the terms and conditions of the proposed coal lease are available from the Wyoming State Office at the addresses above. The case file, WYW127221, is available for inspection at the Wyoming State Office.

Dated: August 23, 1997.

Alan R. Pierson,

State Director.

[FR Doc. 97–22899 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–933–1990–00]

Notice of Availability of the Programmatic Environmental Assessment for Selected Actions Taken for Mining Claim Use and Occupancy in Arizona, and the Preliminary Finding of No Significant Impact

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), and Use and Occupancy Under the Mining Laws regulations (43 CFR 3715), the Bureau of Land Management has prepared an environmental assessment (EA) that evaluates the impacts of typical mining claim and/or millsite occupancies. This EA describes and analyzes the proposed action, consisting of seven typical occupancy scenarios, and the no action option. The actions analyzed in this EA involve operations that disturb 5 acres or less. This notice is intended to invite the public to comment on the analysis of impacts presented in the EA and the performance measures developed for the proposed action.

DATES: Written comments will be accepted on or before September 29, 1997. Any comments received by the close of the comment period will be evaluated and those letters that identify issues, where clarification or discussion is required, will be addressed in the final EA. Copies of the EA and the preliminary Finding of No Significant Impact (FONSI) will be provided to any person or agency commenting, or to other interested parties, upon written request.

Comments on the EA and FONSI should be sent to the Arizona State Office at the address listed below.

ADDRESSES: Send comments on the EA to: Bureau of Land Management, Arizona State Office, AZ–933, 222 North Central Avenue, Phoenix, AZ 85004–2203.

FOR FURTHER INFORMATION CONTACT: Ralph Costa, Mining Engineer, Arizona State Office. Telephone: (602) 417–9349.

Dated: August 20, 1997.

Denise P. Meridith,

State Director.

[FR Doc. 97–22610 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–950–5700–00; CACA 35718]

Public Land Order No. 7280; Withdrawal of National Forest System Land for the Jordan Creek/Bower Cave Special Interest Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,236.31 acres of National Forest System land from mining for 50 years to protect the Jordan Creek/Bower Cave Special Interest Area. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 28, 1997.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Jordan Creek/Bower Cave Special Interest Area:

Mount Diablo Meridian, Stanislaus National Forest

T. 2 S., R. 17 E.,
Sec. 13, SW¼SW¼, S½SE¼SW¼, E½SE¼, S½NE¼, and SE¼SE¼NW¼;
Sec. 14, NW¼SW¼, NE¼SW¼SW¼, N½SE¼SW¼, SE¼SE¼SW¼, and S½SE¼;
Sec. 15, SE¼NE¼, SW¼NE¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, and NE¼NE¼SE¼;
Sec. 23, lots 1 and 5, and a portion of MS 2108;
Sec. 24, N½ of lot 1, N½NE¼, NE¼NW¼, E½SW¼SW¼, SE¼SE¼, E½NE¼SE¼, E½SE¼NE¼, and NW¼SE¼NE¼.
T. 2 S., R. 18 E.,
Sec. 18, lot 3;
Sec. 19, lots 1 to 4, inclusive, S½NE¼SW¼, N½SW¼SE¼, S½NW¼SE¼, and SE¼SE¼;
Sec. 20, S½SW¼SW¼;
Sec. 29, N½NW¼, NW¼NE¼, and N½SE¼NW¼.

The area described contains 1,236.31 acres in Mariposa County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: August 12, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–22713 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–018–1430–01; NMNM 93823]

Public Land Order No. 7281; Withdrawal of Public Lands for the Embudo Canyon Area of Critical Environmental Concern; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 2,057.67 acres of public lands from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect the riparian, scenic, and recreational values of the Embudo Canyon Area of Critical Environmental Concern. The lands have been and will remain open to mineral leasing. An additional 880 acres of non-Federal lands, if acquired by the United States, would become subject to the withdrawal.

EFFECTIVE DATE: August 28, 1997.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto, BLM Taos Resource Area, 226 Cruz Alta Road, Taos, New Mexico 87571, 505–758–8851.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Embudo Canyon Area of Critical Environmental Concern:

New Mexico Principal Meridian

T. 22 N., R. 10 E.,
Sec. 1, NE¼.
T. 22 N., R. 11 E.,
Sec. 5, lots 2 to 4, inclusive, NW¼, and N½SW¼;
Sec. 6, N½.
T. 23 N., R. 11 E.,
Sec. 27, lots 7 and 8, and SW¼;
Sec. 28, S½S½;
Sec. 29, S½SE¼;
Sec. 31, S½;
Sec. 33, N½ and NW¼SW¼;
Sec. 34, lot 5 and NW¼.

The areas described aggregate 2,057.67 acres in Taos and Rio Arriba Counties.

2. The following described non-Federal lands are located within the boundary of the Embudo Canyon Area of Critical Environmental Concern. In the event these lands return to public ownership, they would be subject to the terms and conditions of this withdrawal:

New Mexico Principal Meridian

T. 23 N., R. 10 E.,
Sec. 36, S½NE¼ and SE¼.
T. 23 N., R. 11 E.,
Sec. 32.

The areas described aggregate 880 acres in Taos and Rio Arriba Counties.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: August 12, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–22873 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1430–01–CA–38592]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Modoc County, California have been

examined and found suitable for classification for conveyance to the County of Modoc under the provisions of the Recreation Public Purpose Act, as amended (43 U.S.C. 869 *et seq.*). The county of Modoc proposes to use the lands for a tactical shooting range.

Mount Diablo Meridian

T39N, R13E
W2NESW, W2SW, SESW, W2W2SWSE, W2E2NESW, of Section 11

Containing 150 acres, more or less.

The lands are not needed for Federal Purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations.

(1) Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

(2) A right-of-way for ditches and canals constructed by the authority of the United States.

(3) All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Alturas Resource Office, 708 West 12th Street, Alturas, CA 96101, (916) 233–4666.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the address above.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a tactical shooting range. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a shooting range.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: August 21, 1997.

Scott Lieurance,

Acting Area Manager.

[FR Doc. 97–22893 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–12] ES–48891, Group 29, Illinois]

Notice of Filing of Plat of Survey; Illinois, Stayed

On Monday, July 21, 1997, there was published in the **Federal Register**, Volume 62, Number 140, on page 39249, a notice entitled, Notice of Filing of Plat of Survey; Illinois. Said notice referenced the filing of the plat of the dependent resurvey of a portion of U.S. Survey No. 578, and the survey of the Locks and Dam No. 27 acquisition boundary, Township 3 North, Ranges 9 and 10 West, Third Principal Meridian, Illinois, accepted July 11, 1997.

This plat filing is hereby stayed, pending the consideration of additional information which may bear upon this survey.

Dated: August 20, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–22884 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(CO–930–1920–00–4357; COC–61013)

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

August 18, 1997.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy proposes to withdraw approximately 209.2 acres of public land for 5 years to protect the construction area of the permanent disposal site near Maybelle, Colorado. This order closes this land for up to two years from operation of the public land laws, including the mining and the mineral leasing laws.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before November 26, 1997.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On August 18, 1997, the Department of Energy filed an application to withdraw the following described public lands from settlement, sale, location or entry under the general land laws, including the mining laws and the mineral leasing laws:

T. 7 N., R. 94 W.,
Sec. 19, Lots 9, 11, 13, and 15, and E½NE¼.

The area described contains 209.20 acres of public land in Moffat County.

The purpose of this withdrawal is to protect the Maybelle Uranium Mill Tailings construction site. For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections, in connection with this proposed withdrawal, may present their views in writing to the Colorado State Director. If the authorized officer determines that a public meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management, in conjunction with the Department of Energy, will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 97–22870 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved information collection (OMB Control Number 1010–0006).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend and revise the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that 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 Office of Management and Budget (OMB) control number.

DATES: Submit written comments by October 27, 1997.

ADDRESSES: Direct all written comments to the Rules Processing Team, Minerals Management Service, Mail Stop 4020, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.

Abstract: The Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop offshore oil and gas resources; to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of the human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. The Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213 (c)).

The MMS uses the information collected under Part 256 to determine if applicants are qualified to hold leases in the OCS. For example, MMS uses the information to: (a) verify the qualifications of a bidder on an OCS lease sale; (b) develop the semiannual List of Restricted Joint Bidders that identifies parties which are ineligible to bid jointly with each other on OCS lease sales, under limitations established by the EPCA; (c) ensure the qualification of assignees; (d) document that a leasehold or geographical subdivision has been surrendered by the record title holder, and (e) verify that lessees have adequate bonding coverage. If MMS did not collect the information, we would be unable to comply with the mandates of the OCSLA and the EPCA.

The individual responses to Calls for Information are the only information collected involving the protection of confidentiality. The MMS will protect specific individual replies from disclosure as proprietary information in accordance with section 26 of the OCSLA and 30 CFR 256.10(d). No items of a sensitive nature are collected. Responses are required to obtain or retain a benefit.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting and number of responses vary for each section and are mostly on occasion or annual (see chart below). There are no recordkeeping requirements in 30 CFR part 256.

Estimated Annual Reporting and Recordkeeping Hour Burden: 17,525 burden hours (see chart below).

BURDEN BREAKDOWN

Citation 30 CFR Part 256	Reporting requirement	Annual Number of responses	Burden per response (hours)	Annual burden hours
Subparts A, E, H, L, M	None	Not applicable		0
Subparts B, D, F	Public notice and comment process through the **Federal Register**.	Exempt as defined in 5 CFR 1320.3(h)(4)		0
Subpart C	Reports from Federal agencies	Exempt as defined in 5 CFR 1320.3(c)(4)		0
Various Subparts: 256.37; 256.53; 256.68; 256.70; 256.71; 256.72; 256.73.	Request approval for various operations or submit plans or applications.	Burden included with other approved collections in 30 CFR Part 250		0
Subpart G: 256.41; 256.43	Submit qualification of bidders for joint bids and statement of production.	200 responses	4.5	900
256.46	Submit bids	2,000 bids	1	2,000
256.47(c)	File agreement to accept joint lease on tie bids.	1 agreement	4	4
256.47(e)(1), (e)(3)	Request for reconsideration of bid rejection.	Exempt as defined in 5 CFR 1320.3(h)(9)		0
256.47; 256.50	Execute lease (includes submission of evidence of authorized agent and request for dating of leases).	629 leases	1	629
Subpart I	Provide bonding document certifications, etc.	Exempt as defined in 5 CFR 1320.3(h)(1)		0
256.53(c), (d), (f)	Demonstrate ability to carry out present and future financial obligations and/or request reduction in amount of supplemental bond required.	150 submissions	.25	37.5
256.55(b)	Notify MMS of action filed alleging lessee, surety, or guarantor are insolvent or bankrupt.	1 notice	.5	.5

BURDEN BREAKDOWN—Continued

Citation 30 CFR Part 256	Reporting requirement	Annual Number of responses	Burden per response (hours)	Annual burden hours
256.56	Provide plan to fund lease-specific abandonment account and related information.	3 submissions	8	24
256.57	Provide third-party guarantee, related notices, and annual update.	10 submissions	.5	5
256.58(a)	Request termination of period of liability and cancellation of bond.	50 requests	.5	25
Subpart J: 256.62; 256.64; 256.67	File application for assignment or transfer.	2,275 applications	5	11,375
256.64(a)(8)	Submit non-required documents for record purposes.	Voluntary, non-required submissions of documents the lessee wants MMS to file with the lease.		0
Subpart K: 256.76	File written request for relinquishment	505 relinquishments.	5	2,525
Total Reporting		5,824		17,525

Estimated Annual Reporting and Recordkeeping Cost Burden: $420,875 for transfer application fees (approximately 2,275 applications × $185 fee) and $62,500 for non-required documents filing fees (approximately 2,500 requests × $25 fee).

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. As a result of comments we receive and our consultations with a representative sample of respondents, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden shown in the chart above, MMS assumed that respondents perform many of the requirements and maintain records in the normal course of their activities. The MMS considers these to be usual and customary and took that into account in estimating the burden.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have any other cost burdens in addition to the filing fees required in 30 CFR part 256. Your response should split the cost estimate into two components:

(a) total capital and startup cost component, and

(b) annual operation, maintenance, and purchase of services component.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: August 19, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–22874 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Royalty Policy Committee, on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies.

Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and Federal Departments.

At this fifth meeting, the Minerals Management Service (MMS) will be prepared to respond to questions concerning plans to implement previously approved reports.

The Committee will consider progress reports and recommendations by the Net Receipts Sharing and Coal subcommittees. Additionally, the Committee will hear status reports from some of the current efforts being undertaken by the Royalty Management Program.

DATES: The meeting will be held on Thursday, September 25, 1997, 8:30 a.m.–4:00 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites, Denver Southeast, 7525 East Hampden Avenue, Denver,

Colorado 80231, telephone number (303) 696–6644.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Miller, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3060, Denver, CO 80225–0165, telephone number (303) 231–3413, fax number (303) 231–3362.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**.

The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available.

Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to Mr. Michael A. Miller, at the address listed above. Minutes of Committee meetings will be available 10 days following each meeting for public inspection and copying at the Royalty Management Program, Building No. 85, Denver Federal Center, Denver, Colorado.

These meetings are being held by the authority of the Federal Advisory Committee Act, Pub. L. No. 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: August 22, 1997.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 97–22897 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Programmatic Environmental Impact Statement/Environmental Impact Report on the CALFED Bay-Delta Program, San Francisco Bay/ Sacramento-San Joaquin River Delta, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Supplemental notice of intent to prepare an environmental impact statement/environmental impact report.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) is issuing this supplemental notice of intent (NOI). The original NOI titled, ''Programmatic Environmental Impact Statement/ Environmental Impact Report on the CALFED Bay-Delta Program, San Francisco Bay/Sacramento-San Joaquin River Delta, California'' was published in the **Federal Register** at 61 FR 10379, Mar. 13, 1996. The NOI summarized the CALFED Program, the Programmatic Environmental Impact Statement/ Environmental Impact Report (EIS/EIR), and provided a list of scoping meeting dates and locations.

This notice supplements the original NOI to expand the scope of the Programmatic EIS/EIR to include the preparation of a Habitat Conservation Plan (HCP) as defined under Section 10 of the Federal Endangered Species Act (FESA) and satisfying the requirements of the California Endangered Species Act (CESA). The CALFED agencies intend to prepare an HCP and the State agencies intend to apply for an incidental take permit, pursuant to FESA and CESA. Both FESA and CESA require permits for any activity which could result in ''take'' of threatened and endangered species. The HCP planning process is intended to ensure that the effects of the incidental take are avoided, minimized, or mitigated to the extent practicable. In addition, the Federal agencies will consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) pursuant to Section 7 of FESA. This consultation will be coordinated with the HCP planning process. NEPA requires that Federal agencies assess the environmental impacts of agency actions. A joint programmatic EIS/EIR will be prepared pursuant to NEPA and the California Environmental Quality Act (CEQA) to evaluate potential impacts associated with the actions contained within an HCP and subsequent issuance of an incidental take permit.

Upon receipt of an application or request for an incidental take permit, the Services must evaluate whether to issue an incidental take permit for the Bay-Delta Program under section 10(a)(1)(B) of the FESA and the California Department of Fish and Game (DFG) must evaluate whether to authorize take under CESA or the Natural Community Conservation Program Act (NCCPA). The Programmatic EIS/EIR will include an analysis of the HCP and Program alternatives as part of the Bay-Delta Program and the action of the Services' issuance of an incidental take permit and DFG's approval of a management authorization. If an HCP is approved and an incidental take permit issued, non-Federal members of CALFED would receive assurances, pursuant to the Department of the Interior's No Surprises Policy. The purpose of this HCP is to provide comprehensive, long-term conservation of threatened and endangered species such that the plan participants can be assured that in the event of unforeseen circumstances, no additional land, funds, or restrictions on covered program actions will be required.

DATES: Written public comments on the options for structuring an HCP and the potential of granting assurances by way of the HCP process should be sent to CALFED by October 20, 1997.

Three CALFED status/HCP and NEPA scoping meetings are scheduled to solicit public input. Specific times and locations of these meetings will be sent to individuals, agencies, and organizations on the CALFED mailing list and will be published in local newspapers prior to the meeting dates.

- September 16, 1997, Redding, California.
- September 23, 1997, Sacramento, California.
- October 2, 1997, Los Angeles, California.

In addition, the CALFED Bay-Delta Program will hold public meetings or workshops to discuss the development of the HCP and the Programmatic EIS/ EIR. These meetings will occur in advance of the Program's issuing a draft Programmatic EIS/EIR for the CALFED Bay-Delta Program.

ADDRESSES: Written comments on the proposal to prepare an HCP for the CALFED Bay-Delta Program should be sent to Ms. Sharon Gross, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento, California 95814.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Gross at the above address or call at the CALFED Bay-Delta Program Office at (916) 657–2666.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Ecosystem Directorate (FED) and the Governor's Water Policy Council of the State of California (Council), are jointly known as CALFED. The CALFED Bay-Delta Program is a joint effort among State and Federal agencies with management and regulatory responsibilities in the Sacramento-San Joaquin River Bay-Delta system of California. The Federal co-lead agencies include the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Bureau of Reclamation, National Marine Fisheries Service, and the National Resources Conservation Service. The U.S. Forest Service, Western Area Power Administration, Bureau of Land

Management, and the U.S. Geological Survey are participating as cooperating Federal agencies. The State of California Resources Agency is the lead agency under CEQA. Responsible State agencies include California Department of Fish and Game, California Department of Water Resources and the State Water Resources Control Board. The mission of the CALFED Bay-Delta Program is to develop a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system. The Program addresses four primary resource areas; ecosystem quality, water quality, water supply reliability, and system vulnerability.

B. Proposed Action

1. The CALFED agencies will develop a HCP and certain nonfederal CALFED agencies intend to apply for an incidental take permit, pursuant to section 10 of the FESA as part of the CALFED Bay-Delta Program. The CALFED agencies will seek incidental take coverage and assurances (for the nonfederal agencies) for state and federally listed species, as well as currently unlisted species should they become listed in the future. In addition, the Federal agencies will consult pursuant to Section 7, and will coordinate that process with the HCP planning process. The level of assurances provided will depend on the specific actions covered by the HCP, the level of detail provided in the HCP, and on the unique circumstances of each species; assurances must be consistent with the requirements of the State and Federal Endangered Species Acts and other applicable laws.

2. The Programmatic EIS/EIR for the CALFED Bay-Delta Program will include an evaluation of the environmental impacts associated with the HCP and Program alternatives for the purpose of the Services' and DFG's determination on whether to issue an incidental take permit.

3. The HCP will include, among other things, an adaptive management plan and monitoring requirements.

C. HCP Options

The CALFED agencies are considering several options for the structure of an HCP.

1. *Standard HCP:* Develop a comprehensive HCP that would address all reasonable and foreseeable activities and associated impacts under consideration for the program. Assurances to appropriate entities would be commensurate with the level of specificity and detail provided in the HCP.

2. *Phased HCP with Conditioned Permit:* Develop an initial HCP for the Bay-Delta Program which addresses all known actions; supplemental HCPs (and appropriate CEQA and NEPA compliance) would be developed in the future as unknown/undefined program components became defined. Upon determination by the Services that issuance criteria have been met, an incidental take permit for the whole Bay-Delta Program would be issued; the permit would be conditioned to become effective in stages corresponding to approval of supplemental HCPs. Assurances to appropriate entities would become effective in stages.

3. *Phased HCP with Permit Amendments:* Develop an initial HCP for the Bay-Delta Program which covers all known actions; subsequent supplemental HCPs (and appropriate CEQA and NEPA compliance) would be developed in the future as unknown/undefined program components became defined. An incidental take permit, covering only those actions included in the initial HCP, would be issued upon approval of the initial HCP. Permit amendments would be processed as supplemental HCP's were approved. Assurances would be provided to appropriate entities only for that portion of the overall Program as covered by each permit or amended permit.

D. Scope of Comments

1. The CALFED agencies are seeking comments on the HCP options outlined above and are seeking comments on additional ideas for HCP options not discussed above.

2. The CALFED agencies are seeking comments on assurances provided in conjunction with an HCP, pursuant to the Department of the Interior's No Surprises Policy, which would be given to non-Federal participants.

Note: If special assistance is required, contact Ms. Pauline Nevins at least one week prior to each public meeting to enable CALFED to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available from TDD phones at 1–800–735–2929; from voice phones at 1–800–735–2922.

Dated: August 22, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–22895 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the permanent program performance standards—surface mining activities at 30 CFR part 816.

DATES: Comments on the proposed information collection must be received by October 27, 1997, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 816.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such

as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Permanent Program Performance Standards—Surface Mining Activities, 30 CFR part 816.

OMB Control Number: 1029–0047.

Summary: Section 525 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting surface coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau Form Number: None.

Frequency of Collection: On occasion, quarterly and annually.

Description of Respondents: Surface coal mining operators.

Total Annual Responses: 146,224.

Total Annual Burden Hours: 412,076.

Dated: August 21, 1997.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 97–22852 Filed 8–27–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental Policy and 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *Sun Co. Inc. (R&M),* Civil Action No. 97–CV–104H, was lodged in the United States District Court for the Northern District of Oklahoma on August 14, 1997. The proposed Consent Decree settles the United States claims for injunctive relief and civil penalties in the Complaint.

Under the terms of the proposed Agreement and Order, Sun Co. Inc. (R&M) (''Sun'') will pay a civil penalty, perform two supplemental environmental projects (''SEPs''), and perform injunctive relief. The cash amount of the civil penalty is $100,000. The first SEP will reduce the reid vapor pressure of the 87 octane gasoline sold through non-pipeline transactions in the Tulsa area during the 1997 Ozone Season from 8.2 to 8.0. The second SEP will provide $50,000 worth of free bus service in Tulsa County on ozone alert days. The injunctive relief requires Sun to maintain individually numbered car seals on valves controlling the flow of refinery fuel gas to specified devices and to keep a log of the car seal numbers and valve positions.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Sun Co. Inc. (R&M),* DOJ Number 90–5–2–1–2076.

The proposed Consent Decree may be examined at the Region 6 Office of the U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $3.75 for a copy (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker B. Smith,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–22883 Filed 8–27–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Organization, Functions, and Authority Delegations: Pre-Merger Notification Unit; Relocation

AGENCY: Pre-Merger Notification Unit/FTC Liaison Office (Pre-Merger Notification Unit).

ACTION: Notice of relocation.

SUMMARY: The Pre-Merger Notification Office will be relocating from: Department of Justice, Antitrust Division, Pre-Merger Notification Unit, 950 Pennsylvania Ave., NW, Room #3218, Washington, DC 20530.

Effective September 5, 1997 the new address will be: Department of Justice, Antitrust Division, Pre-Merger Notification Unit, Patrick Henry Building, 601 D St., NW, Room #10–013, Washington, DC 20530.

Do Not Use the 20530 Zip Code for FedEx Airbills. For FedEx airbills, use the above address information, using the zip code 20004. The use of the 20530 zip code will result in a delay of the delivery of FedEx packages to our office.

Delivery of Pre-Merger Notification & Report Forms and other materials to the Pre-Merger Unit will be similar to current procedures in place at the Main Justice Building.

All telephone numbers will remain unchanged.

DATES: Effective September 5, 1997.

ADDRESSES: Department of Justice, Antitrust Division, Pre-Merger Notification Unit, Patrick Henry Building, 601 D St., NW, Room #10–013, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Elaine M. Gibbs or Renata Dean at (202) 514–2558.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–22877 Filed 8–27–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS. No. 1878–97; AG Order No. 2112–97]

RIN 1115–AE26

Designation of Montserrat Under Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Under section 244 of the Immigration and Nationality Act (the Act), the Attorney General is authorized to grant Temporary Protected Status (TPS) in the United States to eligible nationals of designated foreign states (or to eligible aliens who have no nationality and who last habitually resided in a designated state) upon a finding that such states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. This notice designates Montserrat for TPS pursuant to section 244(b)(1) of the Act.

EFFECTIVE DATES: This designation is effective on August 28, 1997 and will remain in effect until August 27, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Subsection 308(b)(7) of Pub. L. 104–208 (September 30, 1996) renumbered section 244A of the Act as section 244.

Under this section, the Attorney General is authorized to grant TPS to eligible aliens who are nationals of a foreign state designated by the Attorney General (or who have no nationality and last habitually resided in that state). The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Montserratians desiring safe haven in the United States should apply for Temporary Protected Status during the initial registration period being announced now, unless they would be eligible for late initial registration under 8 CFR 244.2(f)(2) and they choose to wait. This recommendation applies to any Montserratian who has already applied for, or plans to apply for, asylum but whose asylum application has not yet been adjudicated.

An application for Temporary Protected Status does not preclude or adversely affect an application for asylum or any other immigration benefit. Regardless of the denial of an application for asylum or another immigration benefit, Montserratians who apply for TPS during the initial registration period would remain eligible to re-register if the designation of TPS is extended. However, without a TPS application during the initial registration period, only those Montserratians who satisfy the requirements for late initial registration under 8 CFR 244.2(f)(2) would be eligible for TPS registration during an extension of designation.

Montserratians who already have employment authorization, including some asylum applicants, and Montserratians who have no need for employment authorization, including minor children, may register for TPS by filing an Application for Temporary Protected Status, Form I–821, which requires a filing fee. The Application for Temporary Protected Status, Form I–821, must always be accompanied by an Application for Employment Authorization, Form I–765, which is required for data-gathering purposes. The appropriate filing fee must accompany Form I–765, unless a properly documented fee waiver request is submitted under 8 CFR 244.20 to the Immigration and Naturalization Service or the applicant does not wish to obtain employment authorization.

Notice of Designation of Montserrat Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254a), I find, after consultation with the appropriate agencies of the Government, that:

(1) Since July 1995, Montserrat (with a total land area of only 100 square kilometers) has been endangered by an active volcano, which has affected the entire island and its residents. The volcano's eruptions have forced the evacuation of more than half the island, closed the airport, stopped most seaport activities, and destroyed three-fourths of the infrastructure of the island;

(2) There has been an environmental disaster in Montserrat resulting in a substantial, but temporary, disruption of living conditions on Montserrat;

(3) The government of Montserrat officially has requested designation of Montserrat for TPS;

(4) There exist extraordinary and temporary conditions in Montserrat that prevent aliens who are nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) from returning to Montserrat in safety; and

(5) Permitting nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) Montserrat is designated under sections 244(b)(1)(B) and (C) of the Act. Nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) who have been ''continuously physically present'' since August 28, 1977 and have ''continuously resided in the United States'' since August 22, 1997, may apply for Temporary Protected Status within the registration period which begins on August 28, 1997 and ends on August 27, 1998.

(2) I estimate that there are approximately 1,000 nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) who are currently in nonimmigrant or unlawful status and who are eligible for Temporary Protected Status.

(3) Except as specifically provided in this notice, applications for TPS by nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) must be filed pursuant to the provisions of 8 CFR part 244. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on August 28, 1997 and will remain in effect until August 27, 1998.

(4) A fee of fifty dollars ($50) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the registration period.

(5) The fee prescribed in 8 CFR 103.7(b)(1), which is currently seventy dollars ($70), will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization. An alien who does not request employment authorization must nevertheless file Form I–765, together with Form I–821, for informational purposes, but in such cases Form I–765 will be without fee.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 27, 1998, the designation of Montserrat under the TPS program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. If there is an extension of designation, late initial registration for TPS shall only be allowed pursuant to the requirements of 8 CFR 244.2(f)(2).

(7) Information concerning the TPS program for nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: August 26, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–23118 Filed 8–27–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: September 11, 1997, 10:00 am, U.S. Department of Labor, Seminar Room #4, 200 Constitution Ave., NW, Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs; Phone: (202) 219–7597.

Signed at Washington, DC, this 19th day of August 1997.

Andrew J. Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 97–22882 Filed 8–27–97; 8:45 am]

BILLING CODE 4510–28–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–3 CARP CD 90–92]

Determination of the Distribution of the 1991 Cable Royalties in the Music Claimants Category

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of arbitration.

SUMMARY: The Librarian of Congress is announcing initiation of the 180-day arbitration period for determination of the distribution of the 1991 cable royalties in the Music Claimants category.

EFFECTIVE DATE: September 3, 1997.

ADDRESSES: All hearings and meetings for this proceeding shall take place in the Library of Congress, Copyright Office, 101 Independence Avenue, S.E., James Madison Memorial Building, Room 414, Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

This notice fulfills the requirement of 37 C.F.R. 251.72 which provides that:

If the Librarian determines that a controversy exists among claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the **Federal Register** a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

This notice published today fulfills the requirements of § 251.72 for the distribution of the 1991 cable royalties in the Music Claimants category.

On February 15, 1996, the Library of Congress published a notice requesting interested parties to comment on the existence of Phase II controversies for the distribution of the 1990, 1991, and 1992 cable royalty funds. 61 FR 6040 (February 15, 1996). The parties who filed comments and Notices of Intent to Participate identified two unsettled categories that would require resolution before a CARP. The first controversy involved the distribution of the 1991 royalty funds between James Cannings and Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, and SESAC, Inc. (collectively, ''the Music Claimants''). The second controversy involved the distribution of the 1990–1992 cable royalty funds between the National Association of Broadcasters (NAB) and the Public Broadcasting Service (PBS). On June 3, 1997, however, NAB and PBS notified the Copyright Office that they had reached settlement concerning all matters related to their Phase II dispute over the distribution of the 1990–1992 royalty funds, thus leaving a single dispute for resolution by a CARP.

Each proceeding includes a 45 day precontroversy discovery period. The original schedule for the precontroversy discovery period established by order of the Register of Copyrights, *see* Order in Docket No. 94–3 CARP CD 90–92 (February 14, 1997), was vacated and reset at the request of the Music Claimants. *See* Order in Docket No. 94–3 CARP CD 90–92 (May 21, 1997).

The precontroversy discovery phase of the CARP proceeding now being complete, the Copyright Office of the Library of Congress is announcing the existence of a Phase II controversy as to the distribution of the 1991 cable compulsory license royalties in the Music Claimants category, and is initiating an arbitration proceeding under chapter 8 of title 17 to resolve the distribution of the funds. The arbitration proceeding shall begin on September 3, 1997, and shall continue for a period not to exceed 180 days. Consequently, the proceeding shall conclude, and the arbitrators shall submit their final report to the Librarian of Congress by March 2, 1998, in accordance with § 251.53 of the rules.

Section 802(b) of the Copyright Act, 17 U.S.C., also instructs the Librarian of Congress to select two arbitrators within 10 days of the initiation of the proceeding. Having already completed this task, the Librarian is announcing the names of the two arbitrators who have agreed to serve on this panel:

The Honorable John Farmakides and The Honorable Jesse Etelson. The third arbitrator, who shall serve as the Chairperson for the panel, will be selected in accordance with section 802(b).

A meeting between the copyright claimants participating in the distribution proceeding and the arbitrators shall take place at 2 p.m. on Thursday, September 4, 1997, at the above described address to discuss the hearing schedule, billing for the services of the arbitrators and payment, and all other procedural matters. The meeting is open to the public. Further scheduling of the Music Claimants 1991 cable distribution proceeding is within the discretion of the CARP. The Library will publish a schedule of the proceedings, as required by 37 CFR 251.11(b), when it becomes available.

Dated: August 25, 1997.

Nanette Petruzzelli,

Acting General Counsel.

[FR Doc. 97–22954 Filed 8–27–97; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Special Emphasis Panel in Design Manufacturing and Industrial Innovation; Notice of Meeting

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 Design Manufacturing and Industrial Innovation (1194).

Date and Time: September 15–16, 1997.

Place: Room 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA and Critical Technologies Institute/RAND, 1333 H St. NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Paul J. Herer, Senior Advisor for Planning and Technology Evaluation, Office of the Assistant Director for Engineering, Room 505, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Tel: (703) 306–1303.

Purpose of Meeting: To provide advice and recommendations concerning the use, need for, and continued government support for the RADIUS database, which is administered by the Critical Technologies Institute of the RAND Corporation.

Agenda: To site visit the RADIUS project and review and evaluate its request for additional funding.

Reason for Closing: The activity being reviewed includes information of a proprietary or confidential nature, including technical information, and financial and personnel data. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: August 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–22892 Filed 8–27–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[IA 97–033]

Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

In the Matter of Robert J. Nelson.

I

Robert J. Nelson was employed by Duke Power Company (DPC) (Licensee) as an electrical systems support valve maintenance technician at the McGuire Nuclear Station. DPC holds License Nos. NPF–9 and NPF–17 (Licenses) for McGuire Nuclear Station, Units 1 and 2, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on July 8, 1981 and May 27, 1983, respectively. The Licenses authorize DPC to operate the McGuire facility in accordance with the conditions specified therein. The facility is located on the Licensee's site in Huntersville, North Carolina.

II

During the McGuire Unit 1 refueling outage in January 1996, maintenance was being performed to replace valve 1NV233, a safety-related check valve in the mini-flow path for the 1B charging pump. On January 3, 1996, Mr. Robert J. Nelson initialed Step 11.4.5 of Procedure MP/O/A/7600/04, Kerotest ''Y'' Type Check Valve Corrective Maintenance, which stated: ''Install *NEW* body to cover gasket in body.'' On the evening of January 3, 1996, valve 1NV233 was disassembled and DPC technicians identified that the gasket was not new, as it had been previously torqued. McGuire Technical Specification (TS) 6.8.1.c requires that written procedures be established, implemented and maintained covering the activities recommended in Regulatory Guide 1.33, Revision 2, February 1978. Regulatory Guide 1.33 states, in part, that maintenance which can affect performance of safety-related equipment should be performed in accordance with written procedures. The failure to perform Step 11.4.5 of Procedure MP/O/A/7600/04 as prescribed is a violation of TS 6.8.1.c. Following an investigation, DPC terminated Mr. Nelson's employment on January 18, 1996, based on a finding that he had falsified Procedure MP/O/A/7600/04.

Between March 22, 1996, and March 31, 1997, the NRC Office of Investigations conducted an investigation and concluded that Mr. Nelson had purposely decided to use the old gasket and intentionally signed the procedure step falsely indicating that the gasket had been replaced with a new gasket. The Commission's regulation, 10 CFR 50.9(a) provides, in part, that information required by the Commission's regulations, orders, or license conditions to be maintained by the licensee shall be complete and accurate in all material respects. The failure of DPC to maintain complete and accurate required records of maintenance activities performed on safety-related equipment is a violation of 10 CFR 50.9. Furthermore, during the investigation, Mr. Nelson was not forthright in providing information regarding the failure to follow procedures and intentional falsification of the record as evidenced by statements made by Mr. Nelson to the OI investigator.

On May 27, 1997, the NRC sent a certified letter to Mr. Nelson advising him that his actions appeared to have violated 10 CFR 50.5, ''Deliberate Misconduct,'' and offering him the opportunity to attend a predecisional enforcement conference. The letter was returned to the NRC by the U.S. Postal Service with a note that the letter was unclaimed. The NRC also unsuccessfully attempted to contact Mr. Nelson by telephone on July 16 and 21, 1997.

III

Based on the above, it appears that Mr. Nelson engaged in deliberate misconduct when he intentionally signed a procedure step claiming that a gasket in a safety-related valve had been replaced with a new gasket when it had not been replaced. Mr. Nelson's deliberate misconduct caused the Licensee to be in violation of McGuire TS 6.8.1.c and 10 CFR 50.9(a), and is, therefore, a violation of 10 CFR 50.5(a)(1) and 10 CFR 50.5(a)(2). The NRC must be able to rely on licensees and their employees to fully comply with NRC requirements, including plant procedural requirements which ensure the operability of safety-related equipment and requirements to maintain records that are complete and accurate in all material respects. Mr. Nelson's deliberate misconduct, in causing the Licensee to violate TS 6.8.1.c and 10 CFR 50.9(a), raises serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with Commission requirements and that public health and safety will be protected if Mr. Nelson were permitted at this time to be involved in NRC-licensed activities. Therefore, public health, safety and interest require that Mr. Nelson be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order and, if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Nelson is required to notify the NRC of his first employment in NRC-licensed activities for one year following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nelson's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5 and 10 CFR 150.20, *it is hereby ordered, effective immediately, that:*

A. Mr. Robert J. Nelson is prohibited for one year from the date of this Order from engaging in or exercising control over individuals engaged in NRC-licensed activities. If Mr. Nelson is currently involved in NRC-licensed activities, he must immediately cease such activities, inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. For purposes of this Order, NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

B. For a period of one year following the period of prohibition set forth in

Paragraph IV.A. above, Mr. Robert J. Nelson shall, within 20 days of his acceptance of his first employment offer involving NRC-licensed activities as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. The notice shall include a statement of his commitment to compliance with regulatory requirements and the basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon demonstration by Mr. Nelson of good cause.

V

In accordance with 10 CFR 2.202, Mr. Nelson must, and any other person(s) adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Nelson or other person(s) adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555.

Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW Suite 23T85, Atlanta, Georgia 30303 and to Mr. Nelson if the answer or hearing request is by a person other than Mr. Nelson. If a person other than Mr. Nelson requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Nelson or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Nelson, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 18th day of August 1997.

Ashok C. Thadani,

Acting Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 97–22939 Filed 8–27–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for the clearance of an information collection. The questions are intended to elicit from Federal contractors descriptions of successes in hiring workers directly off the welfare rolls. The submissions are entirely voluntary.

DATES: Comments on this proposal should be received on or before October 27, 1997.

ADDRESSES: Send or deliver comments to—Donna Beecher, Director, Office of Contracting and Administrative Services, U.S. Office of Personnel Management, 1900 E St., NW, Room 1340, Washington, DC 20415.

For information regarding administrative coordination, contact—Kent Bailey, Publications Services Division, 202–606–2260.

SUPPLEMENTARY INFORMATION: On March 8, 1997, the President called for the Federal Government to support welfare reform by joining with other employers in offering jobs to welfare recipients. On April 10, 1997, the Office of Management and Budget's Office of Federal Procurement Policy asked Federal Agencies to emphasize to their contractors the importance of hiring people off the welfare rolls.

Federal agencies regularly report their welfare-to-work hires and related experiences. They would like to include in their reports success stories from their contractors. Success stories provide examples that help to inform the public and encourage additional hiring by other non-Federal employers.

This information collection is entirely voluntary and can be submitted whenever the contractor chooses to do so. The information requested and reporting instructions will be posted on the Acquisition Reform Network home page on the Internet (www.arnet.gov) for a period of approximately four (4) years. A listing of agency contacts will be included in the posting. Government contractors will be invited to send their responses directly, via Internet e-mail, to their primary agency contact.

The information collection consists of a set of questions. Some of the questions are narrative and some statistical. The purpose of the statistical questions is not to gather statistically valid data but to provide a context for narrative descriptions of success. The responses should cover activity since March 8, 1997, and should apply to adults and teen heads of household who immediately prior to hiring were receiving assistance under the Temporary Assistance for Needy Families (TANF) program, Aid to Families with Dependent Children (AFDC), or Tribal Temporary Assistance for Needy Families program administered by an eligible Indian tribe.

The proposed information collection will consist of the following questions:

1. What is the success story you would like to submit?

2. How many former welfare recipients have you hired? Please provide an estimate of the time period during which the hiring was done.

3. What percent of these hires would you estimate were attributable to Federal contracts?

4. What percent of these hires would you estimate were attributable to this Department's or Agency's contracts?

5. Please share any comments on:

—Recruitment strategies
—Retention strategies
—Welfare to Work hiring with subcontractors
—Challenges overcome

This Success Story submitted by:

Company Name _____
Company Address _____
Contact Person _____
Phone Number _____
E-mail _____

Burden: We estimate that 10,000 responses will be submitted annually, and that each response will take approximately 60 minutes to prepare. The annual estimated burden is 10,000 hours.

Comments Requested: We are asking for comments in order to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Government, including whether the information will have practical utility;

2. Evaluate the accuracy of the 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.

U.S. Office of Personnel Management.

Janice R. Lachance,

Deputy Director.

[FR Doc. 97–22868 Filed 8–27–97; 8:45 am]

BILLING CODE 6325–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2975, Amdt. 1]

State of Colorado

In accordance with a notice from the Federal Emergency Management Agency dated August 12, 1997, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on July 28, 1997 and continuing through August 12, 1997.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 30, 1997 and for economic injury the termination date is May 1, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 20, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–22865 Filed 8–27–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Manager, Transport Standards Staff, ANM–110, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone (425) 227–2190, fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations of the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with the aviation authorities in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine Issues. These issues involve the airworthiness standard for transport category airplanes in 14 CFR part 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135. The corresponding European airworthiness standards for transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, JAR–E and JAR–P, respectively. The corresponding Canadian Standards are contained in Chapters 525, 533 and 535 respectively.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

FAR/JAR 25 Aging Aircraft

1. ARAC is tasked to review the capability of analytical methods and their validation; related research work; relevant full-scale and component fatigue test data; and tear down inspection reports, including fractographic analysis, relative to the detection of widespread fatigue damage (WFD). Since aircraft in the fleet provide important data for determining where and when WFD is occurring in the structure, ARAC will review fractographic data from representative ''fleet leader'' airplanes. Where sufficient relevant data for certain airplane models does not currently exist, ARAC will recommend how to obtain sufficient data from representative airplanes to determine the extent of WFD in the fleet. The review should take into account the Airworthiness Assurance Harmonization Working Group report ''Structural Fatigue Evaluation for Aging Aircraft'' dated October 14, 1993, and extend its applicability to all transport category airplanes having a maximum gross weight greater than 75,000 pounds.

2. ARAC will produce time standards for the initiation and completion of model specific programs (relative to the airplane's design service goal) to predict, verify and rectify widespread fatigue damage. ARAC will also recommend action that the Authorities should take if a program, for certain model airplanes, is not initiated and completed prior to those time standards. Actions that ARAC will consider include regulations to require Type Certificate holders to develop WFD programs, modification action, operational limits, and inspection requirements to assure structural integrity of the airplanes. ARAC will provide a discussion of the relative merits of each option.

This task should be completed within 18 months of tasking.

ARAC Acceptance of Task

ARAC has accepted this task and will assign it to a working group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The working group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a plan for completion of the task, including rationale, for FAA/JAA approval within six months of publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with its work.

3. Provide a status report at each meeting of ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Group

The working group will be composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the working group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 21, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–22922 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Manager, Transport Standards Staff, ANM–110, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone (425) 227–2190, fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with the aviation authorities in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine issues. These issues involve the airworthiness standards for transport category airplanes in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135. The corresponding European airworthiness standards for transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, JAR–E and JAR–P, respectively. The corresponding Canadian Standards are contained in Chapters 525, 533 and 535 respectively.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

25.1329/25.1335 Automatic Flight Control and Guidance System Requirements Harmonization and Technology Update

1. Review §§ 25.1329/1335, JAR paragraphs 25.1329/1335 plus that material contained in NPA 25F–243 in addition to § 121.579 and the associated Advisory Circular 25.1329–1 and ACJ 25.1329. Update and harmonize the Part 25 sections and the associated guidance material, in the light of the review of regulatory materials, current certification experience, and changes in technology and system design. Address needed changes in requirements for automatic flight control and guidance functions (including speed/thrust controls), performance, safety, failure and envelope protection functions, warnings, and annunciations. Harmonize acceptable methods of demonstrating compliance with these requirements and propose relevant language for the next revision of the flight test guide AC 25–7–X.

2. Review recommendations that stem from recent transport aviation events and relate to crew error, cockpit automation and in particular, automatic flight control/guidance, made by the NTSB, the FAA Human Factors Team, and the JAA Human Factors Steering Group. Make any proposed amendments to §§ 25.1329/25.1335 and advisory materials that are needed to resolve these recommendations consistent with the entire body of proposed amendments.

The task should be completed within 18 months of tasking.

The FAA has also asked that ARAC determine if rulemaking action (e.g., NPRM, supplemental NPRM, final rule, withdrawal) should be taken, or advisory material should be issued or revised. If so, ARAC has been asked to prepare the necessary documents, including economic analysis, to justify and carry out its recommendation(s).

ARAC Acceptance Task

ARAC has accepted this task and has chosen to assign it to a new Flight/Guidance System Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Flight/Guidance System Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider Transport Airplane and Engine Issues held following the publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. For each task, draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. Provide a status report at each meeting of ARAC held to consider Transport Airplane and Engine Issues.

In addition, the working group is expected to:

1. Coordinate with All Weather Operations Harmonization Working Group (AWOHWG) on changes to operational concepts, requirements, rules, and advisory materials that would affect airworthiness requirements to ensure consistency between proposed changes to part 25 rules and advisory materials. Inform the AWOHWG of potential operational implications to proposed part 25 amendments.

2. Coordinate with other working groups to harmonize requirements related to the effects of automatic flight control systems on the loads and dynamics of the airplane.

Participation in the Working Group

The Flight/Guidance System Harmonization Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Flight/Guidance System Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 21, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–22923 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–45]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

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

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

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 17, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on August 21, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 28997.

Petitioner: IAI Commercial Aircraft Group, Israel Aircraft Industries, Ltd.

Sections of the FAR Affected: 14 CFR 25.813(a).

Description of Relief Sought: To allow encroachment into the required exit passageway by the crew observers seat.

Dispositions of Petitions

Docket No.: 28913.

Petitioner: Condor Aircraft Corporation.

Sections of the FAR Affected: 14 CFR 145.35 and 145.37.

Description of Relief Sought/Disposition: To enable Condor to apply for an amendment to its repair station certificate to perform heavy maintenance operations on Boeing B–707, B–727, and B–737, and McDonnell Douglas DC–8 and DC–9 aircraft without complying with all of the permanent housing and facility requirements of §§ 145.35 and 145.37. *Denial, August 4, 1997, Exemption No. 6664.*

Docket No.: 28880.

Petitioner: R. Mark Grady.

Sections of the FAR Affected: 14 CFR 45.29.

Description of Relief Sought/Disposition: To permit the petitioner to display 3-inch registration number markings on the vertical stabilizer of his

Cessna 152 aircraft (Registration No. N49945). *Denial, August 6, 1997, Exemption No. 6665.*

Docket No.: 28889.

Petitioner: The NORDAM Group.

Sections of the FAR Affected: 14 CFR 21.303(g).

Description of Relief Sought/Disposition: To allow the final assembly and finishing of aircraft nose radomes, produced by NORDAM under its Parts Manufacturer Approval to be accomplished by British Aerospace Systems and Equipment, a repair station located outside the United States. *Denial, August 8, 1997, Exemption No. 6666.*

Docket No.: 27202.

Petitioner: Skydive Arizona, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/Disposition: To permit nonstudent parachutists who are foreign nationals to participate in SAI-sponsored parachuting events held at SAI's facilities without complying with the parachute equipment and packing requirements of the Federal Aviation Regulations. *Grant, August 6, 1997, Exemption No. 5725B.*

Docket No.: 28708.

Petitioner: Empire Airlines, Inc.

Sections of the FAR Affected: 14 CFR 43.9.

Description of Relief Sought/Disposition: To permit Empire's authorized technicians to use electronic signatures in lieu of physical signatures to satisfy the signature requirement of § 43.9 for Empire's 14 CFR part 121 and 14 CFR part 135 operations. *Grant, August 7, 1997, Exemption No. 6668.*

[FR Doc. 97–22920 Filed 8–27–97; 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 Miami International Airport, Miami, Florida

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 PFC at Miami International 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 September 29, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary Dellapa, Director of the Dade County Aviation Department at the following address: Dade County Aviation Department, PO Box 592075, Miami, Florida 33159.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dade County Aviation Department under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Airport Plans & Programs Manager, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822, 407–812–6331. 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 and use the revenue from a PFC at Miami International 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 August 21, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Dade County Aviation Department was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 28, 1997.

The following is a brief overview of PFC Application No. 97–03–C–00–MIA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1998.

Proposed charge expiration date: January 31, 2006.

Total estimated PFC revenue: $334,463,000.

Brief Description of Proposed Project(s)

Midfield Area Dev. Taxiways Phase III
Midfield Rescue and Fire Fighting Facility
Terminal Expansion North Phase III
Concourse ''F'' Improvements Gates F4, F6, F8
Aircraft Apron for Inboard Gates at Concourse ''H''
H–J Utility and Pavement Project
Central Boulevard Corridor Improvements
Perimeter Road Modifications
GTI Bid Pkg. C–1 Ext. of Upper Vehicle Drive South Side
Central Chiller Plants East & West Expansions

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

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 Dade County Aviation Department.

Issued in Orlando, Florida on August 21, 1997.

W. Dean Stringer,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 97–22971 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose Only and Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Santa Barbara Municipal Airport, Goleta, California

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 and impose and use PFC revenue from a PFC at the Santa Barbara 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 as recodified by Title 49 U.S.C. 40117 [C(3)]) and 14 CFR part 158. On July 30, 1997, the FAA determined that the application to impose only and impose and use the revenue from a PFC submitted by the city of Santa Barbara was substantially complete within the requirements of § 158.25 of part 158.

The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 1997.

DATES: Comments must be received on or before September 29, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, PO 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. Karen Ramsdell, Airport Director, Santa Barbara Municipal Airport, 601 Firestone Road, Goleta, CA 93117. Comments from air carriers may be in the same form as provided to the city of Santa Barbara under section 158.23 of FAR Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor Standards Section, Airports Division, PO Box 92007, WPC, Los Angeles, CA 90009, Telephone: (301) 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 and impose and use the revenue from a PFC at the Santa Barbara 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 as recodified by Title 49 U.S.C. 40117 [C(3)]) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On July 30, 1997, the FAA determined that the application to impose only and impose and use the revenue from a PFC submitted by the city of Santa Barbara was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 1997.

The following is a brief overview of the application No. AWP–97–01–C–00–SBA:

Level of the Proposed PFC: $3.00.

Proposed Charge Effective Date: January 1, 1998.

Proposed Charge Expiration Date: December 31, 2001.

Total Estimated PFC Revenue: $2,572,182.

Brief Description of the Proposed Projects

Impose Only

Design and Construct Safety Areas for Runway 7–25—Total $694,000
Design and Construct Taxiway A—Total $119,000

Impose and Use

Final Design and Construction of Existing Safety Areas—Total $502,989
Relocate Beacon and Lighting Controls for New Tower—Total $32,025
Rehabilitate Runway 7–25 and all MITLS—Total $23,600
Clean Water Act/Storm Drainage Projects—Total $48,600
Construct New Helipads—Total $51,700
Design for Rehabilitation of Taxiways A, F and G—Total $14,730
General Aviation Ramp Expansion—Totals $42,000
General Aviation Ramp Rehabilitation—Total $68,149
Procure Airport Sweeper—Total $15,000
Terminal Area Waste Transfer Station—Total $6,700
General Aviation Ramp Reconstruction—Total $22,048
Terminal Upgrades to Comply with A.D.A.—Total $72,720
Rehabilitate Airfield Signage—Total $63,450
Construct Portion of ARFF Station—Total $86,940
Rehabilitate Taxiway B—Total $48,583
General Aviation Concrete Ramp Reconstruction—Total $17,623
Rehabilitate Taxiway C and Runway 15R–33L—Total $22,545
Install Security Access Control System—Total $117,847
Design for Safety Area Grading—Total $23,085
Overlay Runway 15L–33R—Total $75,667
Construct Runway 7/25 Balst Pads—Total $24,300
Sealcoat Taxiways H & J—Total $16,605
Reconstruct Taxiway C Area Apron—Total $27,675
Construct (6) Six Helipads—Total $9,045
Rehabilitate Taxiway B—Total $32,535
Overlay Runway 7–25—Total $293,020

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled part 135 Air Taxi Operators. 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 Santa Barbara Municipal Airport Administration Office.

Issued in Hawthorne, Calif., on August 21, 1997.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 97–22970 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–97–2800]

Notice of Request for Reinstatement of an Expired Information Collection; Motor Carrier Safety Assistance Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3051, 3506(c)(2)(A)), the FHWA is requesting public comment on its intent to ask the Office of Management and Budget (OMB) to reinstate the expired information collection required by the Motor Carrier Safety Assistance Program (MCSAP). That information consists of Basic and Special Grant preparation, and that which documents the results of driver/vehicle inspections performed by the States.

DATES: Comments must be submitted on or before October 27, 1997.

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

FOR FURTHER INFORMATION CONTACT: Mr. James D. McCauley, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, Office of Motor Carrier Safety and Technology, (202) 366–0133. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Electronic Availability. An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register**'s web page at: http://www.access.gpo.gov/su__docs.

Title: MCSAP Grants.

OMB Number: 2125–0536.

Background: Sections 401–404 of the Surface Transportation Assistance Act of 1982 (STAA) established a program of

financial assistance to the States' implementation of programs for the enforcement of (a) Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety and (b) compatible State rules, regulations, standards, and orders. This grant-in-aid program is known as the Motor Carrier Safety Assistance Program (MCSAP). The Intermodal Surface Transportation Safety Act of 1991 (ISTEA) added programs, such as drug interdiction, traffic enforcement, and size and weight activities to the core program established by the STAA.

Pursuant to the STAA, in order to qualify for a grant, participating States must submit a plan which is adequate to promote the objectives of Section 402 and meet a number of specified requirements. Section 402(c) of the STAA requires that the Secretary, on the basis of reports submitted by the State agency and the Secretary's own inspections make a continuing evaluation of the manner in which each State is carrying out its approved plan. This provision is implemented in 49 CFR 350.19 and Appendix B, paragraph G.

In order for the Secretary (i.e. Federal Highway Administration [FHWA]) to make this evaluation, it is necessary for the State to provide and/or maintain information concerning past, present, and future enforcement activity. The application by a State for a grant must contain the information required by 49 CFR 350.9 or 350.11, 350.13 and 350.15. This information is necessary to enable the FHWA to determine whether a State meets the statutory and administrative criteria to be eligible for a grant. It is necessary that a State's work activities and accomplishments be reported so that FHWA may monitor and evaluate a State's progress under its approved plan and make the determinations and decisions required of 49 CFR 350.19, 350.23, and 350.25.

The FHWA is required to determine whether any changes are needed in a State's efforts to meet the intended objectives of its plans. In the event of nonconformity to any approved plan and failure on the part of a State to remedy deficiencies, the FHWA is required to take action to cease Federal participation in the plan. The final rule in the **Federal Register**, Vol. 49, No. 189 was published September 27, 1984. The rules mandated by the ISTEA of 1991, which amend the STAA were published in the **Federal Register** on Tuesday, September 8, 1992 (57 FR 174).

Respondents: State MCSAP lead agencies.

Estimated Total Annual Burden: Basic Grant preparation: 2,240 hours; Special Grant preparation: 1,120 hours; inspection data upload: 66,667 hours.

Interested parties are invited to send comments regarding any aspect of these information collections, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information.

Authority: 49 U.S.C. 315 and 49 CFR 1.48.

Issued On: August 13, 1997.

George S. Moore,

Associate Administrator for Administration.

[FR Doc. 97–22969 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Raleigh County, West Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway improvement project in Raleigh County, West Virginia.

FOR FURTHER INFORMATION CONTACT: David A. Leighow, Division Environmental Coordinator, Federal Highway Administration, Geary Plaza, Suite 200, 700 Washington Street E., Charleston, WV 25301 Telephone: (304 347–5268.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Division of Highways (DOH), will prepare an Environmental Impact Statement (EIS) for the proposed East Beckley Bypass, beginning on I–64 just east of Beckley and extending generally northward to connect with Appalachian Corridor L (US 19) at the existing interchange just east of the Crossroads Mall, a distance of approximately 11 km. A bypass is considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include (1) taking no action; (2) using alternate travel modes; (3) improve the existing system by constructing a four lane, limited access highway on a new location. Incorporated into the study with the various building alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public meeting will be held in Beckley after the draft EIS is available. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The Draft EIS will be available for public and agency review and comment prior to the public meeting. A scoping package will be distributed after this notice is published.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program.)

Issued on: August 20, 1997.

David A. Leighow,

Environmental Coordinator, Charleston, West Virginia.

[FR Doc. 97–22871 Filed 8–27–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20910]

Adirondack Transit Lines, Inc., Pine Hill-Kingston Bus Corp., and Passenger Bus Corporation—Pooling—Greyhound Lines, Inc., and Vermont Transit Co., Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed revenue pooling application.

SUMMARY: Applicants, the Adirondack Group (Adirondack Transit Lines, d/b/a Adirondack Trailways (Adirondack), and its corporate affiliates, Pine Hill-Kingston Bus Corp., d/b/a Pine Hill Trailways (Pine Hill), and Passenger Bus Corporation, d/b/a New York Trailways (PBC), all of Kingston, NY) and the Greyhound System [Greyhound Lines, Inc. (Greyhound), of Dallas, TX, and its corporate affiliate, Vermont Transit Co.,

Inc. (Vermont), of Burlington, VT], jointly seek approval of a revenue pooling agreement under 49 U.S.C. 14302 with respect to their pooled motor passenger and package express transportation services between various points in New York, including services extending between New York, NY, and Montreal, Quebec, Canada.

DATES: Comments on the proposed agreement may be filed with the Board in the form of verified statements on or before September 29, 1997. If comments are filed, applicants' rebuttal statement is due on or before October 17, 1997.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20910 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of any comments to each of applicants' representatives: (1) Lawrence E. Lindeman, Suite 311, 218 N. Lee Street, Alexandria, VA 22314–2531; (2) Mark E. Southerst, Greyhound Lines, Inc., P.O. Box 660362, Dallas, TX 75266–0362; and (3) Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In *Adirondack Transit Lines, Inc., Pine Hill-Kingston Bus Corp., and Passenger Bus Corporation—Pooling—Greyhound Lines, Inc., and Vermont Transit Company, Inc.,* STB No. MC–F–19190 (Sub-No. 1) (STB served Nov. 26, 1996), the Board approved, in addition to their existing pooled route between New York City and Albany, NY, a service pooling agreement between the Adirondack Group and the Greyhound System over routes that they both operate: (1) Between New York City, and Buffalo, NY; (2) between Albany and Buffalo; (3) between Albany and Long Island, NY; and (4) between New York City and Montreal, Quebec, Canada. These routes serve such intermediate points as Syracuse and Rochester, NY. Under the proposed arrangement, the Adirondack Group and the Greyhound System will also pool their passenger and package express revenues over all of these pooled routes.

Adirondack holds operating authority in No. MC–2835; Pine Hill, in No. MC–2060; and PBC, in No. MC–276393. The Adirondack Group operates more than 1,500 miles of intercity bus routes, predominantly in New York.

Greyhound holds operating authority in No. MC–1515; and Vermont, in No. MC–45626. The Greyhound System operates more than 90,000 miles of intercity bus routes throughout the nation.

Applicants formerly were direct competitors over the pooled routes. Under their service pooling agreements, they state that they have been able to reduce the number of schedules each of them operates, while providing additional departure times. Applicants note that load factors on their buses have improved, making their operations more economical and efficient than they otherwise would have been. By pooling their revenues as well as their services on these routes, applicants expect to strengthen their commitment to providing safe, convenient, and comfortable bus transportation at reasonable and competitive fares, as each applicant will share financially in the vicissitudes of the pooled-route operations of the other. Applicants assert that their revenue pooling agreement will also facilitate the sharing of certain terminals, to the benefit of the traveling public. They note that they continue to experience keen competition from other modes of passenger travel in the region, including rail passenger service operated by Amtrak, air service operated by at least four airlines, and automobile travel over interstate highways.

Copies of the pooling application may be obtained free of charge by contacting applicants' representatives. A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: August 20, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–22957 Filed 8–27–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub–No. 1)]

Railroad Revenue Adequacy—1996 Determination

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision.

SUMMARY: On August 28, 1997, the Board served a decision announcing the 1996 revenue adequacy determinations for the Nation's Class I railroads. Three carriers (Illinois Central Railroad Company, Norfolk Southern Railroad Company, and Soo Line Railroad Company) are found to be revenue adequate.

EFFECTIVE DATE: This decision is effective August 28, 1997.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 1996, determined to be 11.9% in *Railroad Cost of Capital—1996,* STB Ex Parte No. 558 (STB served July 16, 1997). In this proceeding, the Board applied the revenue adequacy standards to each Class I railroad, and it found 3 carriers, Illinois Central Railroad Company, Norfolk Southern Railroad Company, and Soo Line Railroad Company, to be revenue adequate.

Additional information is contained in the Board's formal decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20423. Telephone: (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: August 14, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–22960 Filed 8–27–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub–No. 81X)]

Boston and Maine Corporation—Abandonment Exemption—in Waterbury, CT

The Boston and Maine Corporation (B&M) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon an approximately 0.47-mile line railroad on the Waterbury Industrial Track between milepost 0.52 and milepost 0.99, in Waterbury, CT. The line traverses United States Postal Service Zip Code 06722.

B&M has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 27, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 8, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 17, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John R. Nadolny, Esq., General Counsel, Law Department, Boston and Maine Corporation, Iron Horse Park, No. Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

B&M has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 2, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by August 28, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: August 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–22961 Filed 8–27–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–268 (Sub–No. 10X)]

Portland Terminal Company—Abandonment Exemption—in Cumberland County, ME

The Portland Terminal Company (PT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon an approximately 2.049-mile line of railroad on the Union Branch between milepost 0.00 and milepost 2.049, in Portland, Cumberland County, ME. The line traverses United States Postal Service Zip Code 04101.

PT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 27, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 8, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 17, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John R. Nadolny, Esq., General Counsel, Law Department, Guilford Rail System, Iron Horse Park, No. Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

PT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 2, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PT's filing of a notice of consummation by August 28, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: August 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–22958 Filed 8–27–97; 8:45 am]

BILLING CODE 4915–00–P

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–268 (Sub–No. 15X)]

Portland Terminal Company—Abandonment Exemption—in Cumberland County, ME

The Portland Terminal Company (PT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon an approximately 1.09-mile line of railroad on the Yard 3 Track between Engineering Station 82+03 and Engineering Station 23+97, in Portland, Cumberland County, ME. The line traverses United States Postal Service Zip Code 04101.

PT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 27, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 8, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 17, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John R. Nadolny, Esq., General Counsel, Law Department, Guilford Rail System, Iron Horse Park, No. Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

PT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 2, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PT's filing of a notice of consummation by August 28, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: August 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–22959 Filed 8–27–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; Computer Matching Program

AGENCY: Financial Management Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of Financial Management Service (FMS) matching activities which may be programs of computer matches.

EFFECTIVE DATE: September 29, 1997.

ADDRESS: Comments or inquiries may be submitted to the Debt Management Services, Financial Management Service, 401 14th Street, SW, Room 151, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, Debt Management Services, (202) 874–6660.

SUPPLEMENTARY INFORMATION: FMS is the central disbursing source for the Federal Government and currently receives recurring and non-recurring payment certification records from departments and agencies of the Government. FMS has a ''system of records'' (as defined in the Privacy Act of 1974) for recurring payments entitled ''Payment Issue Records for Regular Recurring Benefit Payments,'' identified as Treasury/FMS .002. In addition, FMS has a ''system of records'' (as defined in the Privacy Act of 1974) for non-recurring payments entitled ''Payment Records for Other than Regular Recurring Benefit Payments,'' identified as Treasury/FMS .016.

FMS also is the lead agency in the Federal Government for debt collection and collects delinquent non-tax debts owed to the Federal Government, delinquent debts owed to States, and past-due support being enforced by States. FMS has a ''system of records'' for debt collection entitled ''Debt Collection Operations System,'' identified as Treasury/FMS .014.

The Debt Collection Improvement Act of 1996 (DCIA) amended the administrative offset statute, 31 U.S.C. 3716, to statutorily provide for centralized administrative offset by disbursing officials of the United States. This statutory provision takes advantage of FMS' role as the primary disbursing agency for the Federal Government. These matches of records contained in the two payment systems of records identified above with records contained in the Debt Collection Operations System are intended to help implement centralized offset by disbursing officials within the Department of the Treasury.

As matches of Treasury systems of records, the intended matches may be internal matches which are not subject to the requirements of the Computer Matching and Privacy Protection Act of 1988 (see 5 U.S.C. 552a(a)(8)(B)(v)(II)). The preparation of this Notice and any other documents which would be required for matching programs is intended to assure compliance with the Computer Matching and Privacy Protection Act of 1988, if judicial interpretation would deem either or both of these types of computerized comparisons a ''matching program.'' This notice should not be construed as a determination or admission by the agency that these matches are ''matching programs.''

The DCIA provides authority for Treasury to waive subsections (o) and (p) of 5 U.S.C. 552a (relating to computer matching agreements and post-offset notification and verification) upon written certification by the head of a State or an executive, judicial, or legislative agency seeking to collect the claim that the requirements of subsection (a) of 31 U.S.C. 3716 have been met. Such waiver(s) will be in effect prior to the commencement of the computer matching program(s). Interested parties may obtain documentation concerning the waiver from the contact listed above.

FMS previously published two notices concerning these matching activities. The first notice, published in the **Federal Register** on February 23, 1996, Volume 61 at page 7041, covered the matching of records contained in FMS systems .014 and .002. That computer matching notice, which predated the passage of the DCIA, concerned collection of delinquent debts owed to the Federal Government by Federal civil service annuitants through administrative offset of Federal employee retirement payments.

The second notice, published in the **Federal Register** on February 20, 1997, Volume 62 at page 7825, covered the matching of records contained in FMS systems .014 and .016. The purpose of those computer matches is to collect, through offset, delinquent debt owed to the Federal Government.

Computer matches performed pursuant to this notice may be broader than those described in the previous matching notices. Records concerning individuals who owe delinquent debts to States and/or past-due support being enforced by States, as well as those who owe debts to the Federal Government, will be included in the matches. The matching of records contained in Treasury/FMS .002 will not be limited to records concerning civil service annuitants. The matching of records contained in Treasury/FMS .002 and Treasury/FMS .014 will be performed in accordance with the requirements of the Computer Matching and Privacy Protection Act of 1988, except for the requirements of subsections (o) and (p) of 552a which will have been waived.

NAME OF SOURCE AGENCY:

Financial Management Service

NAME OF RECIPIENT AGENCY:

Financial Management Service

BEGINNING AND COMPLETION DATES:

These programs of computer matches will commence not earlier than the thirtieth day after this notice appears in the **Federal Register**. The matching will continue indefinitely, or until the waiver from the requirements of 5 U.S.C. 552a(o) and (p) is revoked.

PURPOSE:

The purpose of these programs of computer matches is to identify payments made to individuals who owe delinquent debts to the Federal Government or to State Governments, as well as individuals who owe past-due support which will be collected by offset pursuant to 31 U.S.C. 3716, and to offset such payments where appropriate to satisfy those debts.

AUTHORITY:

Authority for these programs of computer matches is granted under 31 U.S.C. 3716.

CATEGORIES OF INDIVIDUALS COVERED:

Individuals receiving payments from the Federal Government which are disbursed by the Financial Management Service; and individuals who owe debts to the United States and/or a State Government, or who owe past-due support being enforced by a State Government, and whose debts may be collected by offset in accordance with 31 U.S.C. 3716.

CATEGORIES OF RECORDS COVERED:

Included in these programs of computer matches is information concerning the debtor contained in the Debt Collection Operations System (Treasury/FMS .014) including name, taxpayer identification number, the amount of the indebtedness, the name and address of the State or Federal agency who is principally responsible for collecting the debt, and the name, phone number and address of a State or

agency contact. Information contained in Payment Issue Records for Regular Recurring Benefit Payments (Treasury/FMS .002) and Payment Records for Other than Regular Recurring Benefit Payments (Treasury/FMS .016) which shall be included in these programs of computer matches shall include name, taxpayer identification number, mailing address, and the amount of payment.

Dated: August 21, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 97–22938 Filed 8–27–97; 8:45 am]

BILLING CODE: 4810–35–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

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 Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Crime Gun Information Referral/Request Form.

DATES: Written comments should be received on or before October 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dale Armstrong, Firearms Enforcement Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8250.

SUPPLEMENTARY INFORMATION:

Title: Crime Gun Information Referral/Request Form.

OMB Number: 1512–0541.

Form Number: ATF F 3312.1.

Abstract: ATF F 3312.1 is used by Federal, State and local law enforcement to request that ATF trace firearms used, or suspected to have been used, in crimes. The form is also used by the national law enforcement community to refer information regarding stolen firearms, obliterated serial numbers, or suspect guns to the ATF National Tracing Center. The record retention requirement for this information collection is 20 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: State, Local or Tribal Government, Federal Government.

Estimated Number of Respondents: 23,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 12,166.

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: August 22, 1997.

John W. Magaw,

Director.

[FR Doc. 97–22932 Filed 8–27–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letter Application to Obtain Authorization For the Assembly of a Nonsporting Rifle or Nonsporting Shotgun For the Purpose of Testing and Evaluation.

DATES: Written comments should be received on or before October 27, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dottie Morales, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8051.

SUPPLEMENTARY INFORMATION:

Title: Letter Application to Obtain Authorization For the Assembly of A Nonsporting Rifle or Nonsporting Shotgun For the Purpose of Testing and Evaluation.

OMB Number: 1512–0510.

Abstract: This information collection is required by ATF to provide a means to obtain authorization for the assembly of a nonsporting rifle or nonsporting shotgun for the purpose of testing or evaluation.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 5.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 3.

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: August 22, 1997.

John W. Magaw,

Director.

[FR Doc. 97–22933 Filed 8–27–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letter Applications and Notices Filed by Brewers.

DATES: Written comments should be received on or before October 27, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Charles Bacon, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Letter Applications and Notices Filed by Brewers.

OMB Number: 1512–0045.

Form Number: ATF F 5130.10.

Recordkeeping Requirement ID Number: ATF REC 5130/2.

Abstract: The Internal Revenue Code requires brewers to file a notice of intent to operate a brewery. ATF F 5130.10, Brewer's Notice, is similar to a permit to operate. Letterhead applications and notices are necessary to identify specific activities that brewers engage in to insure that proposed activities will not jeopardize Federal revenues. General record retention requirements for on-going operational breweries is 3 years. However, notices are different because they are qualifying documents which gives them permission to operate. Records are kept as long as the brewery is in operation.

Current Actions: The only change to this information collection is an increase in burden hours due to an increase in the number of brewers, which necessitates the filing of a larger number of applications and notices with ATF.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 9,100.

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: August 22, 1997.

John W. Magaw,

Director.

[FR Doc. 97–22934 Filed 8–27–97; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register

Vol. 62, No. 167

Thursday, August 28, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Commission's Reparations Jurisdiction Over Commodity Trading Advisors Exempt From Registration Under Section 4m(1) of the Commodity Exchange Act

Correction

In rule document 97–21829, beginning on page 43930, in the issue of Monday, August 18, 1997, make the following corrections:

1. On page 43930, in the **SUMMARY:**, in the fifth line, ''participations'' should read ''participants''

2. On the same page, in the second column, in the second paragraph of the footnote 3, in the 10th line, ''876-76 '' should read ''875-76''

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-206]

RIN 2137-AB75

Improvements to Hazardous Materials Identification Systems; Corrections and Responses to Petitions for Reconsideration

Correction

In rule document 97–18995, beginning on page 39398, in the issue of Tuesday, July 22, 1997, make the following correction:

§ 172.313 [Corrected]

On page 39405, in § 172.313 in amendatory instruction 6., in the first line ''added'' should read ''amended''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM-215B; Amdt Nos. 171-153, 172-154, 173-261, 175-86, 176-43, 178-119]

RIN 2137-AC82

Hazardous Materials: Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

Correction

In rule document 97–10481, beginning on page 24690, in the issue of Tuesday, May 6, 1997, make the following corrections:

§ 172.101 [Corrected]

1. On page 24702, in the table, insert seven asterisks (*) under ''n-Amylene''.

2. On page 24706, in the table, ''Dn-Butyl bromide, see 1-Bromobutane'' should read ''n-Butyl bromide, see 1-Bromobutane''. Also, move the phrase from column (1) to column (2).

3. On page 24707, in the table, in column (1), ''1'' should read ''I''.

4. On the same page, in the table, for the last five entries, column 5 should be blank and all other column information is moved over one.

5. On page 24711, in the table, in the fourth entry, in column (9B), ''30 I'' should read ''30 1''.

§ 173.62 [Corrected]

6. On page 24725, in the table, in the second line from the bottom, ''Receptacles'' should removed.

7. On page 24726, in the table, in the last line, ''No'' should read ''Not''.

8. On page 24727, in the table, in the last line, in both places, ''Receptables'' should read ''Receptacles''.

9. On page 24728, in the table, in the second column, remove the leaders after ''fibreboard, metal, plastics, wood, dividing, and partitions''.

§ 173.132 [Corrected]

10. On page 24732, in § 173.132(c)(3), in the formula, remove the ''+'' after the inferior ''A''.

§ 173.224 [Corrected]

11. On page 24734, in § 173.224(b), in the table, in column (5), ''x5'' should read ''-5''.

12. On pages 24736 through 24740, in § 173.224, in the table, the following entries are corrected to read as follows:

ORGANIC PEROXIDE TABLE

Technical name	ID number	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
tert-Butyl cumyl peroxide	UN3105	>42 – 100					OP7			1, 9
tert-Butyl peroxybenzoate	UN3105	<52–77	≥23				OP7			1
tert-Butyl peroxybenzoate	UN3106	≤52			≥48		OP7			
tert-Butyl peroxybutyl fumarate	UN3105	≤52	≥48				OP7			
tert-Butyl peroxycrotonate	UN3105	≤77	≥23				OP7			
tert-Butyl peroxydiethylacetate [and] tert-Butyl peroxybenzoate	UN3105	≤33+≤33	≥33				OP7			
tert-Butyl peroxy-2-ethylhexanoate	UN3117	≤52		≥48			OP8	+30	+35	
tert-Butyl peroxy-2-ethylhexanoate	UN3118	≤52			≥48		OP8	+20	+25	
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68			OP8	+40	+45	
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68			IBC	+30	+35	10
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN3115	≤31+≤36		≥33			OP7	+35	+40	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID number	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN3106	≤12+≤14	≥14		≥60		OP7			
tert-Butyl peroxy-2- ethylhexylcarbonate	UN3105	≤100					OP7			
tert-Butyl peroxyisobutyrate	UN3115	≤52		≥48			OP7	+15	+20	
tert-Butylperoxy isopropylcarbonate	UN3103	≤77	≥23				OP5			
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene	UN3105	≤77	≥23				OP7			
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene	UN3108	≤42			≥58		OP8			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤13	≥13	≥74			OP8			7
Peroxyacetic acid, type D, stabilized	UN3105	≤43					OP7			13, 20

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federal register

Thursday
August 28, 1997

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Harvest Information Program; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD08

Migratory Bird Harvest Information Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) and State wildlife agencies (States) are cooperatively establishing a national Migratory Bird Harvest Information Program (Program). The Program requires licensed migratory game bird hunters to supply their names, addresses, and other necessary information to the hunting licensing authority of the State in which they hunt. The Program improves the quality and extent of information about the harvests of migratory game birds to better manage these populations. The Program requires hunters to have evidence of current Program participation (Program validation) on their person while hunting migratory game birds in participating States. Hunters' names and addresses will provide a sample frame for voluntary hunter surveys needed to improve harvest estimates for all migratory game birds. States will gather migratory bird hunters' names and addresses and the Service will conduct the harvest surveys. This specific action adds five States to the list of those participating in the Program, bringing the total to 22.

DATE: This rule takes effect on September 1, 1997.

FOR FURTHER INFORMATION CONTACT: Paul I. Padding, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, Maryland 20708–4028, (301) 497–5980, FAX (301) 497–5981.

SUPPLEMENTARY INFORMATION: This final rule facilitates the collection of needed information about migratory game bird harvests. A proposed rule was published in the March 14, 1997, **Federal Register** (62 FR 12524). This final rule amends Section 20.20 of 50 CFR by adding Arizona, Delaware, Florida, Kentucky, and North Carolina to the list of participating States. Licensed hunters, as a condition for hunting migratory game birds in these States, will be required to annually provide their names, addresses, and other necessary information to the licensing authority of the State in which they hunt. This information will provide a nationwide sampling frame of migratory bird hunters, from which representative samples of hunters will be selected and asked to participate in voluntary harvest surveys that the Service will conduct annually.

The Service and States are currently implementing this Program over a 5-year period, starting with the 1994–95 hunting season. During this implementation, the Program's participation requirement will not apply on Federal Indian Reservations or to tribal members hunting on ceded lands. Participating States will provide the sample frame by annually collecting the name, address, and date of birth of each State licensed migratory bird hunter. To reduce survey costs and to identify hunters who hunt less commonly-hunted species, States will also request that each migratory bird hunter provide a brief summary of his or her migratory bird hunting activity for the previous year. States will send this information to the Service, and the Service will sample hunters and conduct national hunter activity and harvest surveys.

A notice of intent to establish the Program was published in the June 24, 1991, **Federal Register** (56 FR 28812). A final rule establishing the Program and initiating a 2-year pilot phase in three volunteer States (California, Missouri, and South Dakota) was published in the March 19, 1993, **Federal Register** (58 FR 15093). The pilot phase was completed following the 1993–94 migratory bird hunting seasons in California, Missouri, and South Dakota.

The Service formed a State/Federal group to evaluate Program requirements, the different approaches used by the pilot States, and the Service's survey procedures during the pilot phase. Their evaluation resulted in Program changes specified in a final rule, published in the October 21, 1994, **Federal Register** (59 FR 53334), initiating the implementation phase of the Program.

Currently, all licensed migratory game birds hunters in participating States are required to have a Program validation, indicating that they have identified themselves as migratory bird hunters and have provided the required information to the State wildlife agency. Hunters must provide the required information to each State in which they hunt migratory birds. Validations are printed on or attached to the annual State hunting license or on a State-specific supplementary permit.

Names, addresses, and other information are needed in time to distribute hunting record forms to selected hunters before they forget the details of their hunts. Previously, the Service's survey design required participating States to send the required information to the Service within 5 business days of the hunting license or permit issuance (10 business days if the information is in electronic form). Several States expressed concern that they could not meet this time requirement. The Service conducted an experiment during the 1994–95 hunting season to determine whether extending the time requirement would adversely affect the accuracy of survey results. Based on the results of that experiment, the Service now requires participating States to forward hunter information to the Service within 30 calendar days from the date of license or permit issuance.

The Service does not require hunters exempted from State permit and licensing requirements to participate in the Program. This would include junior hunters, senior hunters, landowners, and other special categories. Exemptions vary on a State-by-State basis. Excluding these hunters from the Program also excludes their harvest from the estimates which may result in serious bias. Thus States may require exempted hunters to participate; and the Service encourages States to provide any available information about these groups (for example, junior hunter safety course participant lists and State harvest estimates for exempted categories) to the Service for use in improving harvest estimates. Methodology may vary by State and will be incorporated into individual Memoranda of Agreement with the Service.

The Service will use the names and addresses only for conducting hunter surveys, and will delete names and addresses after the surveys. State uses of these names and addresses will be governed by State laws.

Under 5 U.S.C. 553(d)(3), at least 30 days is required for a rule to become effective unless an agency has good cause to make it sooner. The Service and the States are currently implementing this Program over a five-year period at the request of the International Association of Fish and Wildlife Agencies. The States added by this rule to the list of participating States, Arizona, Delaware, Florida, Kentucky, and North Carolina, have prepared for a September 1 implementation date of the Program. Generally, migratory game bird hunting seasons may begin as early as September 1, 1997, and since migratory game bird hunters are required to have a Program validation on their person while hunting migratory game birds in these States, the Service believes good cause exists to make this rule effective on September 1, 1997.

Review of Comments and the Service's Response

The Service received comments on the proposed rule from two States.

1. Implementation Phase—Schedule of State Participation

Comment: Delaware requested that its scheduled implementation be advanced from 1998 to 1997. Delaware will implement a telephone license sales system in 1997 and prefers to implement the Program at the same time.

Service Response: The Service welcomes Delaware's proposed advance and will accommodate this change in the schedule.

Comment: Texas indicated that it experienced some technical difficulties with the electronic license sales system that it implemented last year. Texas requested that the Program's requirements be waived for a portion of its 1997–98 hunting license year, to give the State additional time to resolve those problems. Thus, Texas proposed to begin collecting the required information from migratory bird hunters on October 1, 1997.

Service Response: The Service recognizes the unique problems associated with implementing a new electronic license system in Texas, where the number of licensed hunters exceeds 1,000,000. However, this proposal will result in an incomplete sample frame from Texas. Therefore, the Service will not conduct Harvest Information Program surveys of Texas' migratory bird hunters during the 1997 hunting season. The Service will conduct the traditional waterfowl harvest survey based upon a sample of Federal duck stamp purchasers in Texas. To avoid confusion among hunters and law enforcement personnel in Texas, the Service will omit Texas from the list of States in which hunters are required to participate in the Program in 1997.

NEPA Consideration

The Service considered the establishment of this Harvest Information Program and options in the ''Environmental Assessment: Migratory Bird Harvest Information Program.'' Copies of this document are available from the Service at the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Regulatory Flexibility Act

On June 14, 1991, the Assistant Secretary for Fish and Wildlife and Parks concluded that the rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will eventually affect about 3–5 million migratory game bird hunters when it is fully implemented. It will require licensed migratory game bird hunters to identify themselves and to supply their names, addresses, and birth dates to the State licensing authority. Additional information will be requested in order that they can be efficiently sampled for a voluntary national harvest survey. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds.

The States may require a handling fee to cover their administrative costs. Many of the State hunting-license vendors are small entities, but this rule should not economically impact those vendors. Only migratory game bird hunters, individuals, would be required to provide this information, so this rule should not adversely affect small entities.

Collection of Information: Migratory Bird Harvest Information Program

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the U.S. Fish and Wildlife Service has received approval for this collection of information, with approval number 1018–0015, with the expiration date of August 31, 1998.

The information to be collected includes: the name, address, and date of birth of each licensed migratory bird hunter in each participating State. Hunters' names, addresses, and other information will be used to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. The Service needs and uses the information to improve the quality and extent of information about harvests of migratory game birds in order to better manage these populations.

All information is to be collected once annually from licensed migratory bird hunters in participating States by the State license authority. Participating States are required to forward the hunter information to the Service within 30 calendar days of license or permit issuance. Annual reporting and record keeping burden for this collection of information is estimated to average 0.015 hours per response for 1,650,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 24,750 hours. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Service Information Collection Clearance Officer, ms 224—ARLSQ, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

The Department considered comments by the public on this proposed collection of information in--

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

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

(3) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(4) Minimizing the burden or 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.

Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

Unfunded Mandates Reform Act

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a loss of $100 million or more in any given year on local or state governments or private entities.

Civil Justice Reform—Executive Order 12988

The Department has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Authorship

The primary author of this rule is Paul I. Padding, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and record keeping requirements, Transportation, Wildlife.

For the reasons set out in the preamble, 50 CFR part 20 is amended as set forth below.

PART 20—MIGRATORY BIRD HUNTING

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

AUTHORITY: 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a—j.

2. In Section 20.20 paragraphs (a), (b) and (e) are revised to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

(a) *Information collection requirements.* The collections of information contained in § 20.20 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015. The information will be used to provide a sampling frame for the national Migratory Bird Harvest Survey. Response is required from licensed hunters to obtain the benefit of hunting migratory game birds. Public reporting burden for this information is estimated to average 0.015 hours per response for 1,650,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total annual reporting and record keeping burden for this collection is estimated to be 24,750 hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Officer, MS—224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

(b) *General provisions.* Each person hunting migratory game birds in Alabama, Arizona, California, Delaware, Florida, Georgia, Idaho, Illinois, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, and Vermont must have identified himself or herself as a migratory bird hunter and given his or her name, address, and date of birth to the respective State hunting licensing authority and must have on his or her person evidence, provided by that State, of compliance with this requirement.

* * * * *

(e) *Implementation schedule.* The Service is completing the implementation of this Program in 1998, which will incorporate approximately 1.6 million additional migratory bird hunters. The State of Texas will collect the name, address, and other necessary information from migratory bird hunters who are issued hunting licenses in Texas on or after October 1, 1997. All States must participate in the Program in 1998.

Dated: August 21, 1997.

William L. Leary,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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