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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 23 at 9:00 am

WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 275, 276, 278, and 279

[Amdt. No. 356]

Food Stamp Program: Technical Amendments to Various Provisions of Food Stamp Rules

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule is implementing technical amendments to numerous provisions of the regulations governing the Food Stamp Program. These technical amendments: (1) Correct errors in spelling, grammar, regulatory references and typographical errors; (2) provide consistency or conformity with other regulatory provisions; and (3) finalize proposed technical changes published on March 28, 1991. These technical amendments do not change the substance of the affected provisions.

EFFECTIVE DATE: This final rule is effective June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302 or FAX (703) 305–2454.

SUPPLEMENTARY INFORMATION

Classification

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the proposed rule and related notices of 7 CFR part 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

The Department has also reviewed this final rule in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Nutrition Service (FNS), has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program. The amendments addressed in this final rule are technical corrections and do not change the principles nor the policy intent of the provisions affected.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3507).

Public Participation

Those portions of this final rule, which were not previously proposed in 56 FR 12857 on March 28, 1991, are being published without providing an opportunity for public comment and will become effective on the date published in the **Federal Register**. The action, with respect to those portions not previously proposed, is technical in nature and public comment would not be useful or necessary. The action concerns codification of prior approvals obtained from OMB of the information collection and recordkeeping burdens contained in Food Stamp Program regulations. These approvals were previously announced only in the preamble section of the regulations as they were individually published in the **Federal Register** over the years. For these reasons, William E. Ludwig, the Administrator of the Food and Nutrition Service has determined that, in accordance with 5 U.S.C. 553(b)(3)(B), good cause exists both for publishing this regulation without taking public comment and for making the rule effective upon publication. Those portions of this final rule which were previously proposed in 56 FR 12857 on March 28, 1991 received no comments. The remaining provisions of that proposed rule, which pertained to retail grocers, are being withdrawn by this rule.

Background

Technical Amendments and Corrections

On a periodic basis, the Department reviews the Food Stamp Program regulations to ensure the text is clear and correct. During the last review, the Department noted numerous technical errors in the text of the regulations. In order to correct these errors, the Department is making technical amendments to: (1) Correct errors in spelling, grammar, regulatory references, and other typographical errors; (2) provide consistency or conformity with other regulatory provisions; and (3) finalize proposed technical changes published on March

28, 1991 (56 FR 12857). The amendments do not change the substance of the provisions affected. There are several technical amendments that require some explanation about why the Department is making these changes.

On June 29, 1982 the Department published a final regulation at 47 FR 28067, "pursuant to the Food Stamp Act of 1977, and to legislation enacted on March 24, 1976, approving and reiterating the 'Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America', Public Law 94–241 and Public Law 96–597." That final rule added part 284 to the food stamp regulations. Part 284 describes the general terms and conditions under which a modified Food Stamp Program shall be provided by the Food and Nutrition Service (FNS) to the Commonwealth of the Northern Mariana Islands (CNMI). In preparing this final rule, the Department failed to add a reference to part 284 in 7 CFR 271.1(b), which describes the scope of food stamp regulations. The Department is taking this opportunity to include a conforming amendment to § 271.1(b) to explain that part 284 provides for a nutrition assistance program for CNMI.

Current regulations at 7 CFR 273.1(e)(1)(i), originally published on October 17, 1978 at 43 FR 47889, grant food stamp eligibility to residents of federally subsidized housing for the elderly built under either section 202 of the Housing Act of 1959 or section 236 of the National Housing Act. Subsequently in 1988, FNS Policy Interpretation Response System (PIRS) Memo 88–9, dated April 19, 1988, was issued to explain that section 236 of the National Housing Act was no longer effective and other housing programs for the elderly had been developed since § 273.1(e)(1)(i) was originally implemented. For this reason, the Department is removing the reference to section 236 of the National Housing Act in 7 CFR 273.1(e)(1)(i).

The Department is also amending 7 CFR 273.17 by removing paragraph (i), which discusses the losses of benefits that occurred prior to elimination of the purchase requirement. The purchase requirement for food stamps was terminated with the enactment of the Food Stamp Act of 1977. The Department originally implemented § 273.17(i) to protect households during the change from the purchase requirement to the current Food Stamp Program system of benefit delivery. The Department believes there is no further need for § 273.17(i) at this time and is removing this section from food stamp regulations.

Under current regulations at 7 CFR 273.20, the States of California and Wisconsin are listed as "SSI Cash-Out States". Under the "SSI Cash-Out" demonstration project, California and Wisconsin provide recipients of Supplemental Security Income (SSI) payments with the cash value of their food stamp allotment, in lieu of coupons, by increasing the SSI grant award. Residents of these states are considered ineligible for food stamp benefits.

On January 1, 1992, the State of Wisconsin officially ended its "SSI Cash-out" demonstration project, thereby making SSI recipients eligible for food stamp benefits. In order to ensure conformity, the Department is removing all references to Wisconsin throughout 7 CFR 273.20.

The Department is making several technical changes to regulations in part 278, which pertain to the participation of retail food stores, wholesale food concerns and insured financial institutions. The Department is also adding the word "accepted" immediately before the words "in accordance" in 7 CFR 278.2(g) which describes how firms may redeem coupons. The word was inadvertently omitted from the regulations when they were last published.

The Department is deleting the reference in 7 CFR 278.6(e) to "FNS regional offices" being the agent of FNS in disqualification actions taken against retail food stores and wholesale food concerns. Instead, the regulation will state that "FNS" shall take action. This change in wording is being made to reflect the fact that some FNS regional offices have delegated authority to act in these matters to their field offices.

Lastly, the Department is using this rulemaking to finalize proposed technical changes to part 279 that were originally published in a proposed rule on March 28, 1991 at 56 FR 12857. The remaining proposals in that rulemaking (pertaining to authorizing and educating retail grocers and assigning penalties to retailers who violate program rules) have been withdrawn by the Department. No comments were received concerning the proposed technical changes.

The amendments are being made to the following sections of 7 CFR:

271.1(b)
271.6(b)(1)(ii), (iii), (vi), and (vii)
271.7(d)(1)(ii)
272.1(g)(7)(viii), (g)(10), (g)(17)(i)(B), (g)(36), (g)(74), (g)(84)(i), (g)(90)
272.2(a)(2)
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279.8(a), (a)(1), (b), (c), (d), (e), (f), (g)
279.9(a), (b)
279.10(a)

Effective Date

This final rule does not change the current policy under which State agencies are operating. Therefore, the final rule does not require special implementation procedures by State agencies. This rule is effective upon the date of publication.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Penalties.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims. Food stamps, General line—wholesalers, Groceries, Groceries—retail, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, General line—

wholesalers, Groceries, Groceries—retail.

Accordingly, parts 271, 272, 273, 275, 276, 278 and 279 are amended as follows:

1. The authority citations for parts 271, 272, 273, 275, 276, 278 and 279 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.1 [Amended]

2. In § 271.1, paragraph (b) is amended by adding a new sentence between the twelfth and last sentences of the paragraph to read as follows:

§ 271.1 General purpose and scope.

* * * * *

(b) *Scope of the regulations.* * * * Part 284 provides for a nutrition assistance program for the Commonwealth of the Northern Mariana Islands (CNMI).

§ 271.6 [Amended]

3. In § 271.6:

a. Paragraph (b)(1)(ii) is amended by removing the words "1100 Spring Street NW, Room 200, Atlanta, Ga. 30367" and adding in their place the words "77 Forsyth Street SW., Suite 112, Atlanta, GA 30303–3427";

b. Paragraph (b)(1)(iii) is amended by removing the words "50 East Washington Street, Chicago, Ill. 60602" and adding in their place the words "77 West Jackson Blvd., 20th Floor, Chicago, IL 60604–3507";

c. Paragraph (b)(1)(vi) is amended by removing the words "33 North Avenue, Burlington, Mass. 01803" and adding in their place the words "10 Causeway St., Boston, MA 02222–1069";

d. Paragraph (b)(1)(vii) is amended by removing the words "2420 West 26th Avenue, Suite 430–D, Denver, Colo. 80211" and adding in their place the words "1244 Speer Blvd., Suite 903, Denver, CO 80204–3581".

§ 271.7 [Amended]

4. In § 271.7, the first sentence of paragraph (d)(1)(ii) is amended by removing the words "upcoming month's allotments" and adding in their place the words "upcoming month's allotment".

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§ 272.1 [Amended]

5. In § 272.1:

a. The third sentence of paragraph (g)(7)(viii) is amended by adding a comma after the words "Discrepancies and Other Information";

b. The second sentence of paragraph (g)(10) is amended by removing the word "seperate" and adding in its place the word "separate";

c. The second sentence of paragraph (g)(17)(i)(B) is amended by removing the words "Secretary of Health, Education, and Welfare" and adding in their place the words "Secretary of Health and Human Services";

d. The second sentence of paragraph (g)(36) is amended by removing the hyphen in the word "State-wide";

e. Paragraph (g)(74) is amended by redesignating paragraphs (g)(74) (1), (2) introductory text, (i) and (ii) as (g)(74) (i), (ii) introductory text, (A) and (B), respectively;

f. In paragraph (g)(84)(i) the second sentence is amended by removing the words "any eligible determination" and adding in their place the words "any eligibility determination";

g. The first sentence of paragraph (g)(90) is amended by removing the words "applying the provisions" and adding in their place the words "applying the provision".

§ 272.2 [Amended]

6. In § 272.2, the fifth sentence of paragraph (a)(2) is amended by removing the words "State Plan of Operations" and adding in their place the words "State Plan of Operation".

§ 272.6 [Amended]

7. In § 272.6, paragraph (c)(3) is amended by removing the words "(iii), (iv)" and adding in their place the words "(iii) or (iv)".

§ 272.8 [Amended]

8. In § 272.8, the heading of paragraph (i) is amended by removing the words "Plan of Operations" and adding in their place the words "State Plan of Operation" and the introductory text of paragraph (i) is amended by removing the words "State Agency's Plan of Operations" and adding in their place the words "State Plan of Operation."

§ 272.10 [Amended]

9. In § 272.10, the first sentence of paragraph (a)(2)(iii) is amended by adding the word "and" between the words "each planned activity," and "including a consideration".

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

10. In § 273.1:

a. Paragraphs (c)(3) (i) and (ii) are amended by removing the words "Thrifty Food Plan" and adding in their place the words "maximum food stamp allotment";

b. Paragraph (e)(1)(i) is amended by removing the words "or section 236 of the National Housing Act" at the end of the paragraph.

§ 273.8 [Amended]

11. In § 273.8, paragraph (i)(2)(i) is amended by removing the word "personnel" and adding in its place the word "personal".

§ 273.11 [Amended]

12. In § 273.11, paragraphs (b)(1)(ii) (A) and (B) are amended by removing the words "thrifty food plan" and adding in their place the words "maximum food stamp allotment".

§ 273.15 [Amended]

13. In § 273.15, the first sentence of paragraph (r)(2) is amended by adding a hyphen between the words "45" and "day".

§ 273.17 [Amended]

14. In § 273.17, paragraph (i) is removed.

§ 273.18 [Amended]

15. In § 273.18, the last sentence of paragraph (d)(2) is amended by removing the words "guilty of misrepresentation of fraud" and adding in their place the words "guilty of misrepresentation or fraud".

§ 273.20 [Amended]

16. In § 273.20, paragraphs (a), (b), and (c) are amended by removing the word "Wisconsin" wherever it appears.

§ 273.22 [Amended]

17. In § 273.22, the first sentence of paragraph (f)(6)(iii)(A) is amended by removing the comma between the words "income" and "standard".

PART 275—PERFORMANCE REPORTING SYSTEM

§ 275.8 [Amended]

18. In § 275.8, the last sentence of paragraph (a) is amended by removing the words "agencies would have 60 days" and adding in their place the words "agencies have 60 days".

§ 275.9 [Amended]

19. In § 275.9, the second sentence of paragraph (c)(1) is amended by removing the words "to determine it the project" and adding in their place the words "to determine if the project".

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

§ 276.3 [Amended]

20. In § 276.3, the first sentence in paragraph (b)(3) is amended by

removing the words "base it determinations" and adding in their place "base its determinations".

§ 276.7 [Amended]

21. In § 276.7, the last sentence in paragraph (h)(4) is amended by removing the words "prior of the expiration" and adding in their place the words "prior to the expiration".

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

§ 278.1 [Amended]

22. In § 278.1:

(a) Paragraph (j)(1) is amended by removing the reference to "paragraphs (b), (c), (d), and (e)" and adding in its place the reference to "paragraphs (b), (c), (d), (e), (f), (g), or (h)";

(b) Paragraph (k)(1)(ii) is amended by removing the reference to "paragraphs (b), (c), (d), or (e)" and adding in its place a reference to "paragraph (b), (c), (d), (e), (f), (g), or (h)".

§ 278.2 [Amended]

23. In § 278.2:

a. The first sentence of paragraph (g) is amended by adding the word "accepted" immediately preceding the words "in accordance";

b. The last sentence of paragraph (g) is amended by removing the word "and" from the words "and shelters for battered women".

§ 278.5 [Amended]

24. In § 278.5, the fourth sentence of paragraph (e) is amended by removing the words "Federal Operations Division, FNS, U.S. Department of Agriculture, Washington, DC 20250" and adding in their place the words "Benefit Redemption Division, FSP, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302".

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

§ 279.1 [Amended]

25. In § 279.1, the first and third sentences are amended by removing the words "food stamp" and adding in their place the word "administrative" each time they precede the words "review officer".

§ 279.2 [Amended]

26. In § 279.2:

a. The section heading is amended by removing the words "Food Stamp" and adding in their place the word "Administrative";

b. Paragraphs (a) and (b) are amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative".

§ 279.3 [Amended]

27. In § 279.3, paragraphs (a) and (b) are amended by removing the words "food stamp" each time they appear and replacing them with the word "administrative".

§ 279.7 [Amended]

28. In § 279.7:

a. Paragraph (b) is amended by removing the words "food stamp" in the first sentence and adding in their place the word "administrative" and by removing the word "regional" in the last sentence.

b. Paragraphs (c) and (d) are amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative".

§ 279.8 [Amended]

29. In § 279.8:

a. The section heading is amended by removing the words "food stamp" and adding in their place the word "administrative";

b. The introductory text of paragraph (a) is amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative";

c. Paragraph (a)(1) is amended by removing the words "FNS regional" and adding in their place the words "appropriate FNS";

d. Paragraph (b) is amended by removing the words "food stamp" and adding in their place the word "administrative";

e. Paragraph (c) is amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative" and by removing the word "regional" whenever it appears and adding in its place the words "appropriate FNS";

f. Paragraphs (d) and (e) are amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative";

g. The heading of paragraph (f) is amended by removing the word "regional" and adding in its place the words "appropriate FNS". The text of paragraph (f) is amended by removing the words "food stamp" and adding in their place the word "administrative", and by removing the word "regional";

h. Paragraph (g) is amended by removing the words "food stamp" and replacing them with the word "administrative".

§ 279.9 [Amended]

30. In § 279.9, paragraphs (a) and (b) are amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative".

§ 279.10 [Amended]

31. In § 279.10, paragraph (a) is amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative".

Dated: June 1, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–13864 Filed 6–8–94; 8:45 am]

BILLING CODE 3410–30–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB46

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is amending its regulations governing computation of an institution's assessment base to provide for the subtraction of certain liabilities arising under depository institution investment contracts. The subject liabilities are those not treated as insured deposits under section 11(a)(8) of the Federal Deposit Insurance Act (FDI Act). Under the final rule, these liabilities would be excluded from the deposit base on which deposit insurance premiums are assessed, thereby reducing assessment payments for affected institutions. The purpose of the amendment is to give effect, by regulation, to apparent congressional intent.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: William Farrell, Chief, Assessments Management Section, Division of Finance, (703) 516–5546; or Gerald J. Gervino, Senior Attorney, (202) 898–3723; Federal Deposit Insurance Corporation, Washington D.C. 20429.

SUPPLEMENTARY INFORMATION: Prior to December 1993, liabilities arising under bank or thrift investment contracts (BICs) that qualified as deposits under section 3(l) of the FDI Act, 12 U.S.C. 1813(l), were insured in accordance with the statutory and regulatory provisions governing federal deposit insurance coverage. Similarly, BIC liabilities that qualified as deposits were included in an institution's deposit base

for the purpose of calculating the institution's deposit insurance premiums.

Effective December 19, 1993, a new section 11(a)(8) was added to the FDI Act by section 311(a)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Under this new provision, codified at 12 U.S.C. 1821(a)(8), liabilities arising under certain depository institution investment contracts are no longer treated as insured deposits.

A companion provision to the new section 11(a)(8) was a new subparagraph (D) added to section 7(b)(6) of the FDI Act (12 U.S.C. 1817(b)(6)) by section 311(a)(2) of FDICIA, which also became effective December 19, 1993. Section 7(b)(6)(D) excluded from an institution's insurance assessment base any liability of the institution not treated as an insured deposit pursuant to section 11(a)(8).

Although section 11(a)(8) continues in force, its companion provision does not. Section 7(b)(6), as amended effective December 19, 1993, was superseded as of January 1, 1994, by a totally revised version of section 7(b) that provides for a risk-based assessment system. The existing section 7(b), 12 U.S.C. 1817(b), as amended by section 302(a) of FDICIA, omits all provisions of the superseded section 7(b) that dealt with the computation of an institution's deposit insurance assessment base. Under the existing provisions, definition of the assessment base is to be determined by the FDIC.

The Board believes that it is appropriate and desirable to give continued effect, by regulation, to the intent of Congress, as reflected in superseded section 7(b)(6), that investment contract liabilities not treated as insured deposits under section 11(a)(8) of the FDI Act should be excluded from the universe of deposits on which insurance assessments are paid. The amendment maintains the balance the Board believes Congress intended in enacting the former section 7(b)(6) as a companion to section 11(a)(8).

The FDIC invited comments on the proposal. 59 FR 9687 (March 1, 1994). Four comments were received. Two were furnished by trade associations and two by financial institutions. One comment letter from each group supported the proposal. One association commenter and one institutional commenter opposed the proposal. An association commenter strongly opposed the proposal, indicating that the amendment would favor larger banks since, according to the commenter, small banks generally do not have deposit liabilities arising under these investment contracts. It also asked that the change not be addressed until a larger review of the assessment base is made by the FDIC. Citing congressional intent, the other trade association supported the proposal. However, they suggested that the FDIC make it clear that the exclusion of BICs is a special case and should not be construed as indicative of other actions that the FDIC may take to change the assessment base.

The two institutions offered diametrically opposed comments. One felt that the exemption should be adopted quickly enough to be used in the first quarter of this year. The other institution was totally against excluding BICs from the insurance assessment. It felt that BICs were useful for large money center banks with the resources to enter complicated arrangements. It felt that any argument that BICs should not be assessed, if they are not insured, was inappropriate. The commenter noted that it pays assessments on behalf of customer deposits that are not insured because the deposits exceed $100,000. In the commenter's view, principles of fairness require that BICs be assessed for FDIC insurance purposes.

The Board has carefully considered the comments of each of the four commenters. The Board believes that the amendment is designed to give continued effect to congressional intent to exclude investment contract liabilities, that are not treated as insured deposits, from the deposit base on which premiums are assessed. Since the amendment is designed to carry out congressional intent, the Board does not believe it is appropriate to delay the amendment pending further study of the assessment base. This amendment does not reflect any policy judgment of the FDIC relating to the assessment base.

The Board does not believe that the proposal is designed to favor large banks. Any insured institution, regardless of size, may deduct deposit liabilities arising under these investment contracts from its assessment base. Any bank may potentially use the investment contracts described in the regulation.

Accordingly, the Board is amending its assessments regulation to exclude from an institution's assessment base, as computed under § 327.4, those investment contract liabilities not treated as insured deposits under section 11(a)(8) of the FDI Act.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the amendments to part 327 will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing corporation, Savings associations.

For the reasons stated in the preamble, 12 CFR part 327 is amended as follows:

PART 327—[AMENDED]

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Section 327.4 is amended by removing the period at the end of paragraph (b)(2)(iv)(B) and adding a semicolon in lieu thereof, and by adding paragraph (b)(2)(v) to read as follows:

§ 327.4 Average assessment base.

* * * * *

(b) * * *

(2) * * *

(v) Liabilities arising from a depository institution investment contract that are not treated as insured deposits under section 11(a)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(8)).

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 24th day of May 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–14008 Filed 6–8–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27583; Amendment 91–241]

Special Visual Flight Rules (SVFR); Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date; correction.

SUMMARY: This document corrects an error to a Final Rule, on "Special Visual Flight Rules (SVFR); Denver, CO", which was published on Friday, May 13, 1994 (59 FR 24915). The Amendment number is incorrect.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch (ATP–230), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION: FR Doc. 94–11690, which was published on May 13, 1994 (59 FR 24915), in the heading next to the "Docket No. 27583", please change the Amendment number to read "91–241".

Donald P. Byrne,

Manager, Regulations Division, Office of Chief Counsel.

[FR Doc. 94–13910 Filed 6–8–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

June 3, 1994.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of availability of standardized data sets and communication protocols.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is making available the Standardized Data Sets And Communication Protocols providing the standards for pipeline Electronic Bulletin Boards.

EFFECTIVE DATE: June 3, 1994.

ADDRESSES: The document can be obtained at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street NE., Washington DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0292.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington DC 20426.

Pursuant to § 284.8(b)(5) of the Commission's regulations (18 CFR 284.8(b)(5)), the Commission is making available the "Standardized Data Sets And Communication Protocols" reflecting the standards governing pipeline Electronic Bulletin Boards.[1] The document may be obtained from the Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington DC 20426.

The Standardized Data Sets And Communication Protocols are available in WordPerfect 5.1 format on two diskettes through the Commission's duplication contractor, LaDorn System Corporation (LaDorn). Disk one contains the introduction, standardized data sets and communication protocols. Disk two contains the EDI implementation guide. The diskettes can be purchased in the following ways:

(1) By written request to the Commission, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, ATTN: Mr. William McDermott, Chief, Public Reference & Files Branch.

Please enclose a check, payable to LaDorn System Corporation for $7.00 per diskette ordered and $4.40 to cover postage and handling. Allow 10–14 days for processing and delivery.

(2) Directly from LaDorn System Corporation at the cashier's window in the Commission's Public Reference Room for $7.00 per diskette plus applicable sales tax, if any. The Public Reference Room is located on the third floor, 941 N. Capitol Street NE., Washington, DC.

(3) By telephone request to LaDorn Energy Information Services at 1–800–676–FERC. Orders placed by phone will be assessed charges as follows:

(a) A $25.00 processing fee,

(b) $7.00 per diskette ordered, and

(c) Cost of shipping and handling. (The requestor will have a choice of regular mail, 2-Day Express Mail or Federal Express).

Please contact the Commission's Public Reference & Files Maintenance Branch on (202) 208–1371 or LaDorn (1–800–676–FERC) for information and the cost of purchasing the paper version of any documents.

LaDorn System Corporation employees cannot answer questions regarding the use of the record formats and software. Any questions concerning the application of the information contained in these documents should be directed to:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0292

Lois D. Cashell,

Secretary.

[FR Doc. 94–13971 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission's final rule in this docket was issued on December 23, 1993 (59 FR 516, January 5, 1994).

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[AG Order No. 1884–94]

Delegations of Authority; Bureau of Prisons

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends the delegations of authority to the Director of the Bureau of Prisons to allow for the securing, sale, assignment, transfer, or conveyance of donations on behalf of the Bureau of Prisons. This order is necessary to allow for the more efficient and direct handling of this matter.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534, telephone (202) 307–3062.

SUPPLEMENTARY INFORMATION: Section 4044 of Title 18, United States Code, provides that the Attorney General may, in accordance with rules prescribed by the Attorney General, accept in the name of the Department of Justice any form of devise, bequest, gift or donation of money or property for use by the Bureau of Prisons or Federal Prison Industries. This authority had been previously delegated to the Director of the Bureau of Prisons by Order No. 1186–87 (52 FR 17951). Additional authority given in 18 U.S.C. 4044 for securing the possession of such property and for the sale, assignment, transfer, or conveyance of such property other than money is herein delegated to the Director for reasons of efficiency of operation.

This order is a matter of internal department management. It will not have a significant economic impact on a substantial number of small entities. It is not a significant regulatory action within the meaning of or subject to Executive Order 12866.

List of Subjects in 28 CFR Part 0

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

Accordingly, by virtue of the authority vested in the Attorney General by law, including 5 U.S.C. 301 and 28 U.S.C. 509–510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for 28 CFR part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. In § 0.96, paragraph (s) is revised to read as follows:

§ 0.96 Delegations.

* * * * *

(s) Authority to accept, in accordance with regulations prescribed by the Director, any form of devise, bequest, gift or donation of money or property for use by the Bureau of Prisons or Federal Prison Industries, and authority to take all appropriate steps to secure possession of such property, and to sell, assign, transfer, or convey such property other than money (18 U.S.C. 4044).

* * * * *

Dated: May 31, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–13950 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 16

[AAG/A Order No. 88–94]

Exemption of System of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Drug Enforcement Administration (DEA) amends its Privacy Act Regulations. First, DEA removes the exemptions from subsections (e)(4), (G), (H), (f), and (h) of the Privacy Act (5 U.S.C. 552a). Second, DEA is providing a greater degree of specificity with respect to the reasons given for those exemptions which have been retained, and with respect to subsections (j) and (k) of the Act upon which such exemptions are based.

The exemptions from subsections (e)(4)(G), (H), and (f), and (h) are removed because they are unnecessary in that DEA complies with the provisions thereof. The additional specificity is provided regarding the remaining exemptions (and the subsections upon which they are based) to provide clarity and add to public understanding.

Information in this system relates to official Federal investigations and matters of law enforcement of the DEA and the exemptions are necessary to avoid interference with DEA's law enforcement responsibilities. Reasons for the exemptions are set forth in the text below.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely on (202) 616–0178.

SUPPLEMENTARY INFORMATION: The revisions to 28 CFR 16.98 affect twelve DEA Privacy Act systems of records, including the Investigative Reporting and Filing System, Justice/DEA–008. A revised description of that system is published in today's **Federal Register**. This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

In addition, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), it has been determined that it is impracticable and unnecessary to provide for public comment and that it is not in the public interest to delay the effective date of this rule.

List of Subjects in Part 16

Administrative practices and procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR 16.98 is revised as set forth below.

Dated: June 3, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.98 is revised as set forth below.

§ 16.98 Exemption of the Drug Enforcement Administration (DEA)—limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (d):

(1) Automated Records and Consummated Orders System/Diversion Analysis and Detection System (ARCOS/DADS) (Justice/DEA–003)

(2) Controlled Substances Act Registration Records (Justice/DEA–005)

(3) Registration Status/Investigatory Records (Justice/DEA–012)

(b) These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2). Exemptions from the particular

subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of the disclosure accounting would enable the subject of an investigation to gain valuable information concerning the nature and scope of the investigation and seriously hamper the regulatory functions of the DEA.

(2) From subsection (d) because access to records contained in these systems may provide the subject of an investigation information that could enable him to avoid compliance with the Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91–513).

(c) Systems of records identified in paragraphs (c)(1) through (c)(6) below are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(5), (e)(8) and (g) of 5 U.S.C. 552a. In addition, systems of records identified in paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) below are also exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d) and (e)(1). Finally, systems of records identified in paragraphs (c)(1), (c)(2), (c) (3) and (c)(5) below are also exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) from subsections (c)(3), (d) and (e)(1):

(1) Air Intelligence Program (Justice/DEA–001)

(2) Investigative Reporting and Filing System (Justice/DEA–008)

(3) Planning and Inspection Division Records (Justice/DEA–010)

(4) Operations Files (Justice/DEA–011)

(5) Security Files (Justice/DEA–013)

(6) System to Retrieve Information from Drug Evidence (Stride/Ballistics) (Justice/DEA–014)

(d) Exemptions apply to the following systems of records only to the extent that information in the systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2): Air Intelligence Program (Justice/DEA–001); Planning and Inspection Division Records (Justice/DEA–010); and Security Files (Justice/DEA–013). Exemptions apply to the Investigative Reporting and Filing System (Justice/DEA–008) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(1). Exemptions apply to the Operations Files (Justice/DEA–011) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Exemptions apply to the System to Retrieve Information from Drug Evidence (STRIDE/Ballistics) (Justice/DEA–014) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of disclosure accounting would provide to the subjects of an investigation significant information concerning the nature of the investigation and thus would present the same impediments to law enforcement as those enumerated in paragraph (d)(3) regarding exemption from subsection (d).

(2) From subsection (c)(4) to the extent that it is not applicable because an exemption is being claimed from subsection (d).

(3) From the access provisions of subsection (d) because access to records in this system of records would present a serious impediment to law enforcement. Specifically, it could inform the record subject of an actual or potential criminal, civil, or regulatory investigation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. Similarly, it may alert collateral suspects yet unprosecuted in closed cases. It could prevent the successful completion of the investigation; endanger the life, health, or physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; or it may simply reveal a sensitive investigative technique. In addition, granting access to such information could result in the disclosure of confidential/security-sensitive or other information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. From the amendment provisions of subsection (d) because amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the DEA for the following reasons:

(i) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations during which DEA may obtain properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(ii) During the DEA's investigative activities DEA may detect the violation of either drug-related or non-drug related laws. In the interests of effective law enforcement, it is necessary that DEA retain all information obtained because it can aid in establishing patterns of activity and provide valuable leads for Federal and other law enforcement agencies or otherwise assist such agencies in discharging their law enforcement responsibilities. Such information may include properly classified information, the retention of which could be in the interests of national defense and/or foreign policy.

(5) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(i) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(ii) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts must be obtained from other sources.

(iii) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful prosecution.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (3)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of an actual or potential confidential investigation, reveal the identity of confidential sources of information and endanger the life, health or physical safety of confidential informants, witnesses, and investigators/law enforcement personnel.

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to

determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1) and (k)(2) of the Privacy Act.

(e) The following systems of records are exempt from 5 U.S.C. 552a (d)(1) and (e)(1):

(1) Grants of Confidentiality Files (GCF) (Justice/DEA–017), and

(2) DEA Applicant Investigations (Justice/DEA–018).

(f) These exemptio9ns apply only to the extent that information in these systems is subject to exception pursuant to 5 U.S.C. 552a(k)(5). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning an applicant for a grant of confidentiality with DEA. By permitting access to information which may reveal the identity of the source of that information—after a promise of confidentiality has been given—DEA would breach the promised confidentiality. Ultimately, such breaches would restrict the free flow of information which is vital to a determination of an applicant's qualifications for a grant.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluation purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other apparently irrelevant information, can on occasion provide a composite picture of an applicant which assists in determining whether a grant of confidentiality is warranted.

(g) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(5), (e)(8) and (g) of 5 U.S.C. 552a. In addition, this system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1):

Freedom of Information/Privacy Act Records (Justice/DEA–006)

(h) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the reasons given in paragraphs (b)(1) and (d)(1).

(2) From subsection (c)(4) to the extent that is not applicable because an exemption is being claimed from subsection (d).

(3) From subsection (d) for the reasons given in paragraphs (b)(2), (d)(3), and (f)(1).

(4) From subsection (e)(1) for reasons given in paragraphs (d)(4) and (f)(2).

(5) From subsection (e)(2) for reasons given in paragraph (d)(5).

(6) From subsection (e)(3) for reasons given in paragraph (d)(6).

(7) From subsection (e)(5) for reasons given in paragraph (d)(7).

(8) From subsection (e)(8) for the reasons given in paragraph (d)(8).

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1) and (k)(2) of the Privacy Act.

[FR Doc. 94–14012 Filed 6–8–94; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Hopi Tribe Abandoned Mine Land Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Secretary of the Interior concurs with the Hopi Tribe's certification that the Tribe has abated or reclaimed all coal-related abandoned mine land problems under the Hopi Tribe AMLR plan (hereinafter, referred to as the "Hopi Tribe plan"). The Hopi Tribe made the certification in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Hopi Tribe is now authorized to utilize AMLR funds for noncoal reclamation purposes.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA established an AMLR program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Lands and water eligible for reclamation under Title IV are those that were mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, Tribal, or other laws.

Title IV provides for State or Tribal submittal to OSM of an AMLR plan. The Secretary adopted regulations in 30 CFR part 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the plans submitted by States and Tribes and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a State or Tribe had the ability and necessary legislation to implement provisions of Title IV. After making such a determination, the Secretary decided whether to approve the State or Tribe program. Approval granted the State or Tribe exclusive authority to administer its approved plan.

Ordinarily, under section 405 of SMCRA, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR plan to OSM. However, on July 11, 1987, the President signed a supplemental appropriations bill (Pub. L. 100–71) that authorized the Crow and Hopi Tribes and the Navajo Nation to adopt AMLR programs without approval of Tribal surface mining regulatory programs.

Upon approval of a State's or Tribe's plan by the Secretary, the State or Tribe may submit to OSM, on an annual basis, an application for funds to be expended by that State or Tribe on specific projects that are necessary to implement the approved plan. Such annual requests are reviewed and approved by

OSM in accordance with the requirements of 30 CFR part 886.

II. Background on the Hopi Tribe Plan

On June 28, 1988, the Secretary of the Interior approved the Hopi Tribe plan as submitted on June 10, 1982, and revised on July 25, 1983, and March and May 1988. General background information on the Hopi Tribe plan, including the Secretary's findings, the disposition of comments, and the approval of the Hopi Tribe plan can be found in the June 28, 1988, **Federal Register** (53 FR 24262). Approval of the Hopi Tribe plan is codified at 30 CFR 756.15.

III. Request for Certification

By letter dated February 2, 1994, the Chairman and Chief Executive Officer of the Hopi Tribe notified the Secretary that the Tribe had satisfied the requirements of SMCRA in regard to abandoned coal mine reclamation and was, therefore, requesting the Secretary's concurrence with certification of completion of all known coal-related problems (administrative record No. HO–135).

OSM announced receipt of the Hopi Tribe's request for the Secretary's concurrence with its certification in the April 14, 1994, **Federal Register** (59 FR 17748), provided an opportunity for a public hearing on the Tribe's certification, and invited public comments concerning any known or suspected unreclaimed lands and water resources on Hopi lands that may have been adversely impacted by coal mining practices prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, Tribal, or other laws (administrative record No. HO–140). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 16, 1994.

IV. Director's Findings

Since the Secretary's approval of the Hopi Tribe AMLR plan, the Tribe has conducted reclamation to correct or mitigate the problems caused by post coal mining. The Tribe completed this reclamation in the order of priority set forth in section 403(a) of SMCRA. Based upon the Hopi Tribe's February 2, 1994, certification, and the absence of any known unreclaimed coal-related impacts, the Director of OSM, on behalf of the Secretary, concurs with the Hopi Tribe's certification that all coal-related abandoned mine land problems have been abated or reclaimed, and finds that the Hopi Tribe has satisfied the requirements of section 403 of SMCRA. If a coal problem occurs or is identified in the future, the Hopi Tribe would have to seek immediate funding to reclaim the coal-related problem.

Furthermore, the Director finds, pursuant to 30 CFR 884.14(a), that (1) the public was given adequate notice and opportunity to comment; (2) views of other Federal, State, and Tribal agencies were solicited; (3) the Hopi Tribe has the legal authority, policies, and administrative structure necessary to implement the Tribe's AMLR program; (4) the request for the Secretary's concurrence with certification of completion of coal reclamation meets all requirements of OSM's AMLR program provisions; and (5) the certification is in compliance with all applicable State, Federal, and Tribal laws and regulations.

Because the Hopi Tribe has, as discussed above, reclaimed all lands adversely impacted by past coal mining, the Hopi Tribe may submit annual grant requests for AMLR funds to address eligible lands, waters, and facilities impacted by noncoal mining and construction of new facilities in accordance with the provisions of section 411 of SMCRA.

V. Summary and Disposition of Comments

1. Public Comments

In accordance with section 411 of SMCRA and the Federal regulations at 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited public comments and provided an opportunity for a public hearing on the Hopi Tribe's request for the Secretary's concurrence with the Tribe's certification of completion of coal reclamation. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited comments from other Federal, State, and Tribal agencies with an actual or potential interest in the Hopi Tribe's AMLR plan. No agency comments were received.

VI. Director's Decision

Based on the above findings, the Director, on behalf of the Secretary, concurs with the Hopi Tribe's certification, as submitted by the Tribe on February 2, 1994, that all abandoned coal mine-related problems have been abated or reclaimed under its AMLR program in accordance with Title IV of SMCRA. The effect of the Director's concurrence with the Tribe's certification is to allow the Hopi Tribe to use its AMLR funds for noncoal reclamation and construction of public facilities in areas of the Hopi Reservation impacted by coal development, mining, or processing as provided in section 411 of SMCRA.

The Director is codifying this AMLR plan decision at 30 CFR 756.16. This final rule is being made effective immediately to expedite the Indian Tribe AMLR plan amendment process.

VII. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State or Tribal AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed State or Tribal AMLR plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribal submittal that is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and

certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

VIII. List of Subjects in 30 CFR Part 756

Indian lands, Abandoned mine land reclamation program.

Dated: June 2, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter E of the Code of Federal Regulations is amended as set forth below:

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAM

1. The authority citation for part 756 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq* and Pub. L. 100–71.

2. Section 756.16 is added to read as follows:

§ 756.16 Approval of Amendments to the Hopi Tribe's Abandoned Mine Land Reclamation Plan.

The Hopi Tribe certification of completion of coal reclamation, as submitted on February 2, 1994, is approved effective June 9, 1994.

[FR Doc. 94–13854 Filed 6–8–94; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule sets forth amended regulations pertaining to the Department of the Navy's Freedom of Information Act Program. The rule reflects changes in the Secretary of the Navy's procedures.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris M. Lama (N09B30P), Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000. Telephone: (703) 614–2004/2817.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR part 701, subparts A, B, C, and D derived from the Secretary of the Navy Instruction 5720.42 series, which implements within the Department of the Navy the provisions of Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program (32 CFR part 286). This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on these changes to the Department of the Navy's implementing instruction prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR parts 286 and 701, subpart E. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR part 701, subparts A, B, C, and D, or the instruction upon which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Mrs. Doris M. Lama (N09B30P), Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20530–2000. It has been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291 and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 701

Administrative practice and procedure. Freedom of Information, Privacy.

Accordingly, 32 CFR part 701 is amended as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

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

Authority: 5 U.S.C. 552.

2. Part 701 is amended by removing "(OP–09B30)" and adding in its place "(N09B30)", and removing "CMC (MI–3)" and adding in its place "CMC (ARAD)", wherever those respective terms appear.

§ 701.3 [Amended]

3. Section 701.3 is amended by removing paragraph (i).

§ 701.5 [Amended]

4. Section 701.5, paragraph (b), is amended by removing "Director, Manpower Management Information Systems Division (HQMC (Code MI))" and adding in its place "Director of Administration and Resource Management (Code AR)".

5. Section 701.5, paragraph (e)(2)(i), is amended by removing "Naval Intelligence Command" and adding in its place "Office of Naval Intelligence", and is further amended by removing "Naval Oceanography Command" and adding in its place "Naval Meteorology and Oceanography Command".

6. Section 701.5, paragraph (e)(2)(iii)(B), is amended by removing "Commander, Naval Investigative Service Command" and adding in its place "Director, Naval Criminal Investigative Service".

7. Section 701.8 is amended by removing paragraph (k); redesignating paragraphs (l) through (p) as (k) through (o), respectively, and revising paragraphs (b) and newly designated (k), to read as follows:

§ 701.8 Records requiring special handling.

* * * * *

(b) *Naval Investigative Service (NIS)/ Naval Criminal Investigative Service (NCIS) reports.* The Director, Naval Criminal Investigative Service, is the release/denial authority for all NIS/ NCIS reports. Accordingly, a request for a NIS/NCIS report shall be promptly readdressed to NCIS and the requester notified of the referral. Direct liaison with NCIS prior to the referral is encouraged.

* * * * *

(k) *Naval Nuclear Propulsion Information (NNPI).* The Director, Naval Nuclear Propulsion Program (N00N/ NAVSEA 08) is the release/denial authority for all information concerning NNPI. Naval activities receiving such requests are responsible for searching their files for responsive records. If no documents are located, the naval activity should respond to the requester and provide N00N with a copy of the request and response. If documents are located, the request, responsive records, and a recommendation regarding release should be promptly readdressed to the

CNO (N00N/NAVSEA 08), who will ensure proper coordination and review.

* * * * *

§ 701.9 [Amended]

8. Section 701.9, paragraph (j)(2), is amended by removing "the Records Disposal Manual" and adding in its place "SECNAVINST 5212.5C (Records Disposal Manual)".

§ 701.10 [Amended]

9. Section 701.10, paragraph (c), is amended by adding after the term "Principal Deputy OGC" the phrase "or Deputy General Counsel (Logistics),".

10. Section 701.10, paragraph (c)(2)(ii)(H), is amended by removing the period at the end of the paragraph and adding in its place "; and".

11. Section 701.10 is amended by adding paragraph (c)(2)(ii)(I) to read as follows:

§ 701.10 FOIA appeals/judicial actions.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(I) Environmental matters.

* * * * *

12. Section 701.10, paragraph (d)(2), is amended by removing "General Counsel, Navy Department, Washington, DC 20360–5110" and adding in its place "General Counsel of the Navy, 2211 Jefferson Davis Highway, Arlington, VA 22244–5103".

13. Section 701.25 is amended by revising paragraphs (b) through (j) and adding paragraphs (k) through (s) to read as follows:

§ 701.25 Exemption (b)(3).

* * * * *

(b) Confidentiality of identity of employee who complains to the IG (5 U.S.C. App., Inspector General Act of 1978, section 7).

(c) Ethics in Government Act of 1978—Protecting Financial Disclosure Reports of Special Government Employees (5 U.S.C. App., Ethics in Government Act of 1978, section 207(a)(1) and (2)).

(d) Civil Service Reform Act—Representation Rights and Duties. Labor Unions, 5 U.S.C. 7114(b)(4).

(e) Authority to Withhold Unclassified Special Nuclear Weapons Information, 10 U.S.C. 128. This statute prohibits the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material.

(f) Authority to Withhold Unclassified Technical Data with Military or Space Application, 10 U.S.C. 130.

(g) Action on Reports of Selection Boards, 10 U.S.C. 618.

(h) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(i) Confidentiality of Financial Records, 12 U.S.C. 3403.

(j) Communication Intelligence, 18 U.S.C. 798.

(k) Confidential Status of Patent Applications, 35 U.S.C. 122.

(l) Secrecy of Certain Inventions and Withholding of Patents (specific applicable section(s) must be involved, 35 U.S.C. 181 through 188.

(m) Confidentiality of Inventions Information, 35 U.S.C. 205.

(n) Procurement Integrity, 41 U.S.C. 423.

(o) Confidentiality of Patient Records, 42 U.S.C. 290dd–2.

(p) Information regarding Atomic Energy: Restricted and Formerly Restricted Data (Atomic Energy Act of 1954), specific applicable exemptions must be invoked (*e.g.*, 42 U.S.C. 2161 through 2168).

(q) Protection of Intelligence Sources and Methods, 50 U.S.C. 403(d)(3).

(r) Protection of identities of US undercover intelligence officers, agents, informants and sources, 50 U.S.C. 421.

(s) Examples of statutes which DO NOT qualify under exemption (b)(3) include: 5 U.S.C. 552a, Privacy Act; 17 U.S.C. 101 *et seq.*, Copyright Act; 18 U.S.C. 793, Gathering, Transmitting or Losing Defense Information to Aid Foreign Governments; 18 U.S.C. 1905, Trade Secrets Act; and 28 U.S.C. 1498, Patent and Copyright Cases.

14. Section 701.31 is amended by revising the second sentence of paragraph (d)(2); the first sentence of paragraph (f); paragraph (g)(1); paragraph (g)(3); the final sentence of paragraph (h)(1); and paragraph (m)(5), to read as follows:

§ 701.31 Addresses for requests for Department of the Navy records.

* * * * *

(d) * * *

(2) * * * If unknown, submit requests for Navy contracts to the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000, and Marine Corps contracts to the Deputy Chief of Staff for Installations and Logistics, Headquarters U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

* * * * *

(f) Send requests for Navy hotline complaints and all other investigations and inspections conducted by the NAVINSGEN to the Naval Inspector General, Building 200, room 100, 901 M Street SE., Washington, DC 20374–5006.

* * *

(g) * * *

(1) Send requests for NCIS investigatory records and related matters to the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 901 M Street SE., Washington, DC 20388–5380.

* * * * *

(3) Send requests for mishap investigative reports to Commander. Naval Safety Center, 375 A Street, Norfolk, VA 23511–4399.

(h) * * * If unknown, submit to the General Counsel of the Navy, 2211 Jefferson Davis Highway, Arlington, VA 22344–5103.

* * * * *

(m) * * *

(5) *Supply.* Send requests for information on naval supply matters to the Commander, Naval Supply Systems Command, 1931 Jefferson Davis Highway, Arlington, VA 22341–5360, and for Marine Corps supply matters to the Commandant of the Marine Corps, HQ USMC, 2 Navy Annex, Washington, DC 20380–0001.

* * * * *

15. Section 701.31, paragraph (i)(5), is amended by removing "Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120", and adding in its place "Chief, Bureau of Medicine and Surgery, 2300 E Street, NW., Washington, DC 20372–5120".

16. Section 701.31, paragraph (j)(1), is amended by removing "Chief, Bureau of Naval Personnel, Navy Department, Washington, DC 20378–5000" and adding in its place "Chief of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001".

17. Section 701.31, paragraph (k)(1), is amended by removing "Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120–5099" and adding in its place "Aviation Supply Office, Naval Publications and Forms Directorate, Customer Service, Code 1013, 5801 Tabor Avenue, Philadelphia, PA 19120–5099".

18. Section 701.31, paragraph (k)(2), is amended by removing "CNO (OP–09B30), Pentagon, Washington, DC 20350–2000" and adding in its place "CNO (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000".

19. Section 701.31, paragraph (k)(3), is amended by removing "Navy Department, Washington, DC 20380–0001" and adding in its place "HQ USMC, 2 Navy Annex, Washington, DC 20380–0001".

20. Section 701.31, paragraph (k)(4), is amended by removing "Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120–5099" and adding in its place "Defense Printing Service Detachment Office, Customer Service, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094".

21. Section 701.31, paragraph (l), is amended by removing "5000" and adding in its place "5660".

22. Section 701.31, paragraph (m)(1), is amended by removing "Naval Air Systems Command Headquarters, Washington, DC 20361–0001" and adding in its place "1421 Jefferson Davis Highway, Arlington, VA 22243–5120".

23. Section 701.31, paragraph (m)(3), is amended by removing "Naval Sea Systems Command Headquarters, Washington, DC 20362–5101" and adding in its place "2531 Jefferson Davis Highway, Arlington, VA 22242–5160".

24. Section 701.31, paragraph (m)(4), is amended by removing "Washington, DC 20363–5100" and adding in its place "2451 Crystal Drive, Arlington, VA 22245–5200".

25. Section 701.31, paragraph (n), is amended by removing "Director, Naval Historical Center, Ships' Histories Section, Washington Navy Yard, Washington, DC 20374" and adding in its place "Director, Naval Historical Center, Ships' Histories Branch, 901 M Street SE., Washington Navy Yard, Washington, DC 20374–0571".

26. Section 701.31, paragraph (q), is amended by removing "Chief of Naval Operations (Code 09B30), Pentagon, Washington, DC 20350–2000 and Marine Corps matters to Commandant of the Marine Corps, HQMC (Code MI–3), Navy Department, Washington, DC 20380–0001" and adding in its place "Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000, and Marine Corps matters to Commandant of the Marine Corps (Code ARAD), HQ USMC, 2 Navy Annex, Washington, DC 20380–0001".

§ 701.51 [Amended]

27. Section 701.51, paragraph (b), is amended by removing "naval industrially funded (NIF)" and adding in its place "Defense Business Operating Fund (DBOF)".

28. Section 701.51, paragraph (c), is amended by removing "NIF" in the two instances where it appears and adding in its place "DBOF".

Dated: June 3, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–13966 Filed 6–8–94; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG73

Disease Associated With Exposure to Certain Herbicide Agents (Multiple Myeloma and Respiratory Cancers)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning presumptive service connection for certain diseases even though there is no record of the disease during service. This amendment is necessary to implement a decision of the Secretary of Veterans Affairs under the authority granted by the Agent Orange Act of 1991 that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of multiple myeloma and respiratory cancers. The intended effect of this amendment is to establish presumptive service connection for those conditions based on herbicide exposure.

EFFECTIVE DATE: This amendment is effective on June 9, 1994, as provided by Public Law 102–4.

FOR FURTHER INFORMATION CONTACT: Donald England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.307(a) and 3.309(e) to establish presumptive service connection for multiple myeloma and respiratory cancers based on exposure to herbicides in the **Federal Register** of February 3, 1994 (59 FR 5161–63). As explained in that notice, these presumptions of service connection, like various others, are rebuttable under 38 U.S.C. 1113 by affirmative evidence to the contrary; evidence establishing an intercurrent, post-service cause of the disease; or evidence establishing that the disease is due to the veteran's own willful misconduct. Interested persons were invited to submit written comments, suggestions or objections concerning the proposal on or before March 7, 1994. We received one comment from the General Counsel and Director of Litigation for the National Veterans Legal Services Project.

The commenter suggested changes not only to the proposed rule concerning multiple myeloma and respiratory cancers published on February 3, 1994, but also to the final rule effective February 3, 1994, that established presumptive service connection for Hodgkin's disease and porphyria cutanea tarda (See 59 FR 5106–07) based on exposure to herbicides, to the final rule published on October 15, 1991, that established service connection for soft-tissue sarcoma (See 56 FR 51651–53) based on exposure to herbicides containing dioxin, and to the final rule published on October 21, 1991, that extended the period during which chloracne must appear following exposure to a herbicide containing dioxin in order to establish service connection (See 56 FR 52473–74).

To the extent that these comments pertain to rulemaking other than the proposed rule concerning multiple myeloma and respiratory cancers published on February 3, 1994, the comments are beyond the scope of the current rulemaking.

The commenter stated that the proposal concerning multiple myeloma and respiratory cancers is in error since it specifies an effective date that is not consistent with the Final Stipulation and Order entered in *Nehmer* v. *United States Veterans Administration*, C.A. No. C–86–6160 (TEH) (N.D. Cal.), and the procedural instructions contained in Circular 21–94–1, Processing of Claims Based on Exposure to Herbicide Agents (February 15, 1994). The commenter suggested that the final rule should specify an effective date for the payment of benefits that conforms with the *Nehmer* stipulation.

VA does not concur. 38 U.S.C. 1116(c)(2), which was added by the Agent Orange Act of 1991, Public Law 102–4, clearly and unambiguously requires that regulations promulgated as a result of a decision of the Secretary of Veterans Affairs that a positive association exists between exposure to herbicides and a specified condition or disease be effective on the date of issuance, i.e., the date the final rule is published in the **Federal Register**. The effective date for this rule conforms to that statutory mandate.

Further, the commenter recognized that the effective date of this regulation and the date of entitlement in an individual claim for benefits are not synonymous. In fact, there is a specific regulatory framework that governs the assignment of the date of entitlement (See 38 CFR 3.400 through 3.404). In addition, the Final Stipulation and Order entered in the *Nehmer* case contains provisions governing effective dates of entitlement applicable to certain groups of claimants. VA is

bound by these provisions. This notice merely specifies the effective date of the regulatory amendment and does not purport to modify provisions governing effective dates of entitlement contained in regulations or in the *Nehmer* stipulation.

Under the *Nehmer* stipulation, when the Secretary of Veterans Affairs issues regulations under Public Law 102–4 establishing a presumption of service connection for a disease associated with herbicide exposure, VA will review herbicide-exposure claims based on disability or death resulting from that disease which were: (1) Denied under regulations voided by the court in *Nehmer* and never finally decided under a valid regulation, or, (2) filed after the date of the court's decision and before issuance of the new regulations. Where benefits are awarded under such reviews, the effective date of entitlement will be based on the later of the date of receipt of the claim or the date on which disability or death occurred, subject to the provisions of 38 U.S.C. 5110 (b)(1) and (d)(1) allowing earlier effective dates in some cases where claims are filed within one year of service discharge or death. Under the stipulation, the date of entitlement may be based on the date of claim, if otherwise appropriate, without regard to whether the claim was filed prior to September 25, 1985, the effective date of the voided regulations, if the claim was denied under those regulations.

As to the suggestion that the regulation restate the provisions governing effective dates of entitlement found in the *Nehmer* stipulation, that stipulation applies to a specific class of claimants whose claims for benefits based on exposure to dioxin were denied on or after September 25, 1985, or who have claims pending at the time of issuance of regulations under Public Law 102–4. This regulation will apply to a broader class of veterans and dependents, including those whose claims were denied prior to September 25, 1985, and those who file claims in the future. Individuals will continue to have specific rights under the terms of the *Nehmer* stipulation and it is not necessary to include them in a regulation of general applicability. To the extent that class counsel believes that class members are not sufficiently aware of their rights under the stipulation, the stipulation provides class counsel with a means to contact class members concerning their rights.

For those reasons, as well as the fact that the effective date established by this rule is in accordance with 38 U.S.C. 1116(c)(2), VA finds that it is neither necessary nor appropriate to include requirements affecting a specific class of claimants in a rule which is for broader application.

VA appreciates the comment submitted in response to the proposed rule which is now adopted without change.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

These regulations have been reviewed by the Office of Management and Budget under E.O. 12866.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: April 28, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.307, paragraph (a)(6)(ii) is revised to read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) * * *

(6) * * *

(ii) The diseases listed at § 3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne and porphyria cutanea tarda shall have become manifest to a degree of 10 percent or more within a year, and respiratory cancers within 30 years, after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

* * * * *

§ 3.309 [Amended]

3. In § 3.309(e) in the listing of diseases, after the words "Hodgkin's disease" and before the words "Non-Hodgkin's lymphoma", add the words "Multiple myeloma"; and after the words "Porphyria cutanea tarda" and before the words "Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)", add the words "Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)".

[FR Doc. 94–14124 Filed 6–7–94; 12:16 pm]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 241

Discontinuance of Post Offices

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The regulations that govern the discontinuance of post offices, which are set forth in the Postal Operations Manual (POM), are hereby also included in the Code of Federal Regulations (CFR), in order to make them more accessible to the public.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Matalik, (202) 268–3500, or Kevin Coleman, (202) 268–2851.

SUPPLEMENTARY INFORMATION: Formerly the regulations governing the discontinuance of post offices were set forth in part 113 of the Domestic Mail Manual (DMM), a publication incorporated by reference in the Code of Federal Regulations (CFR) under 39 CFR 111.1. The DMM was restructured and revised effective July 1, 1993 (58 FR 34887, June 30, 1993), at which time the discontinuance regulations were published in the Domestic Mail Manual Transition Book (DMMT). On September 20, 1993, these DMMT regulations were revised, reorganized, and moved to the POM. The POM contains official regulations, 39 CFR 221.2(a)(2), but is chiefly designed for use within the Postal Service and is not incorporated by reference in the CFR. In order to ensure the broadest availability of these provisions to the public, the Postal Service has determined also to publish them in the CFR.

The Postal Service therefore amends part 241 of title 39 of the CFR to set forth, without substantive amendment, its post office discontinuance regulations.

List of Subjects in 39 CFR Part 241

Organization and functions (Government agencies), Postal Service.

1. The authority citation for part 241 continues to read as follows:

Authority: 39 U.S.C. 401.

PART 241—ESTABLISHMENT CLASSIFICATION, AND DISCONTINUANCE

2. The part heading for part 241 is revised as set forth above.

3. Part 241 is amended by adding new § 241.3 to read as follows:

§ 241.3 Discontinuance of post offices.

(a) *Introduction*—(1) *Coverage.* This section establishes the rules governing the Postal Service's consideration of whether an existing post office should be discontinued. The rules cover any proposal to replace a post office with a community post office, station or branch, consolidation with another post office, and any proposal to discontinue a post office without providing a replacement facility.

(2) *Legal requirements.* Under 39 U.S.C. 404(b), any decision to close or consolidate a post office must be based on certain criteria. These include the effect on the community served; the effect on employees of the post office; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply as follows:

(i) The public must be given 60 days' notice of a proposed action to enable the persons served by a post office to evaluate the proposal and provide comments.

(ii) After public comments are received and taken into account, any final determination to close or consolidate a post office must be made in writing and must include findings covering all the required considerations.

(iii) The written determination must be made available to persons served by the post office at least 60 days before the discontinuance takes effect.

(iv) Within the first 30 days after the written determination is made available, any person regularly served by the affected post office may appeal the decision to the Postal Rate Commission.

(v) The Commission may only affirm the Postal Service determination or return the matter for further consideration but may not modify the determination.

(vi) The Commission is required by 39 U.S.C. 404(b)(5) to make a determination on the appeal no later than 120 days after receiving the appeal.

(vii) The following is a summary table of the notice and appeal periods under the statute for these regulations.

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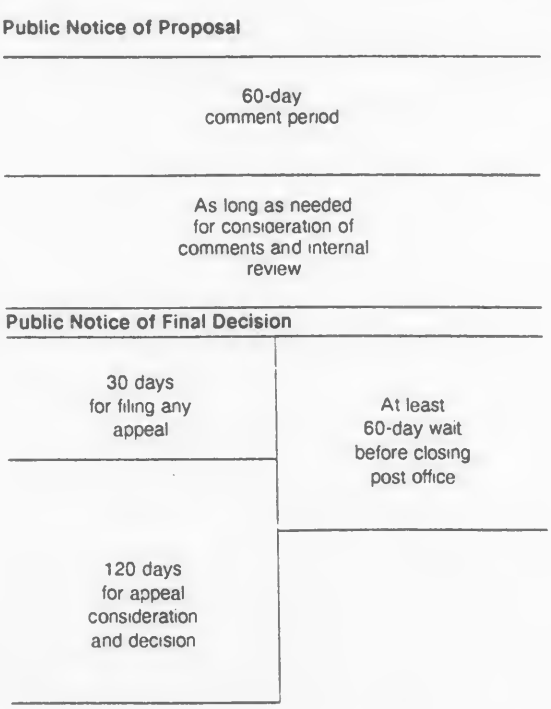

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(3) *Additional requirements.* This section also includes:

(i) Rules to ensure that the community's identity as a postal address is preserved.

(ii) Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading a district manager, Customer Service and Sales, to propose the discontinuance of a particular post office are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(b) *Preservation of community address*—(1) *Policy.* The Postal Service permits the use of a community's separate address to the extent practicable.

(2) *ZIP Code assignment.* The ZIP Code for each address formerly served from the discontinued post office should be the ZIP Code of the facility providing replacement service to that address. In some cases, the ZIP Code originally assigned to the discontinued post office may be kept, if the responsible district manager, Customer Service and Sales, submits a request with justification to Address Management, Postal Service Headquarters, before the proposal to discontinue the post office is posted.

(i) In a consolidation, the ZIP Code for the replacement community post office, station, or branch is either (A) the ZIP Code originally assigned to the discontinued post office, or (B) the ZIP Code of the replacement facility's parent post office, whichever provides the most expeditious distribution and delivery of mail addressed to the customers of the replacement facility.

(ii) If the ZIP Code is changed and the parent post office covers several ZIP Codes, the ZIP Code must be that of the delivery area within which the facility is located.

(3) *Post office name in address.* If all the delivery addresses using the name of the post office to be discontinued are assigned the same ZIP Code, customers may continue to use the discontinued post office name in their addresses, instead of the new delivering post office name.

(4) *Name of facility established by consolidation.* If a post office to be discontinued is consolidated with one or more other post offices by establishing in its place a community post office, classified or contract station, or branch affiliated with another post office involved in the consolidation, the replacement unit is given the same name of the discontinued post office.

(5) *List of discontinued post offices.* Publication 65, National Five-Digit ZIP Code and Post Office Directory, lists all post offices discontinued after March 14, 1977, for mailing address purposes only if they are used in addresses. The ZIP Codes listed for discontinued offices are those assigned under this subsection.

(c) *Initial proposal*—(1) *In general.* If a district manager, Customer Service and Sales, believes that the discontinuance of a post office within his or her responsibility may be warranted, the manager:

(i) Must use the standards and procedures in § 241.3 (c) and (d).

(ii) Must investigate the situation.

(iii) May propose the post office be discontinued.

(2) *Consolidation.* The proposed action may include a consolidation of post offices to substitute a community post office or a classified or contract station or branch for the discontinued post office if:

(i) The communities served by two or more post offices are being merged into a single incorporated village, town, or city; or

(ii) A replacement facility is necessary for regular and effective service to the area served by the post office considered for discontinuance.

(3) *Views of postmasters.* Whether the discontinuance under consideration involves a consolidation or not, the district manager, Customer Service and Sales, must discuss the matter with the postmaster (or the officer in charge) of the post office considered for discontinuance, and with the postmaster of any other post office affected by the change. The manager should make sure that these officials submit written comments and suggestions as part of the record when the proposal is reviewed.

(4) *Preparation of written proposal.* The district manager, Customer Service and Sales, must gather and preserve for the record all documentation used to assess the proposed change. If the manager thinks the proposed action is warranted, he or she must prepare a document titled "Proposal to (Close) (Consolidate) the (Name) Post Office." This document must describe, analyze, and justify in sufficient detail to Postal Service management and affected customers the proposed service change. The written proposal must address each of the following matters in separate sections:

(i) *Responsiveness to community postal needs.* It is the policy of the Government, as established by law, that the Postal Service will provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. The proposal should (A) contrast the services available before and after the proposed change; (B) describe how the changes respond to the postal needs of the affected customers; and (C) highlight particular aspects of customer service that might be less advantageous as well as more advantageous.

(ii) *Effect on community.* The proposal must include an analysis of the effect the proposed discontinuance might have on the community served, and discuss the application of the requirements in § 241.3(b).

(iii) *Effect on employees.* The written proposal must summarize the possible effects of the change on the postmaster, supervisors, and other employees of the post office considered for discontinuance. (The district manager, Customer Service and Sales, must suggest measures to comply with personnel regulations related to post office discontinuance and consolidation.)

(iv) *Savings.* The proposal must include an analysis of the economic savings to the Postal Service from the proposed action, including the cost or savings expected from each major factor contributing to the overall estimate.

(v) *Other factors.* The proposal should include an analysis of other factors that the district manager, Customer Service and Sales, determines are necessary for a complete evaluation of the proposed change, whether favorable or unfavorable.

(vi) *Summary.* The proposal must include a summary that explains why the proposed action is necessary, and assesses how the factors supporting the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service is paramount.

(vii) *Notice.* The proposal must include the following notice: "This Is A Proposal. It Is Not A Final Determination To (Close) (Consolidate) This Post Office."

(A) If a final determination is made to close or consolidate this post office, after public comments on this proposal are received and taken into account, a notice of that final determination must be posted in this post office.

(B) The final determination must contain instructions on how affected customers may appeal that decision to the Postal Rate Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final determination.

(d) *Notice, public comment, and record*—(1) *Posting proposal and comment notice.* A copy of the written proposal and a signed invitation for comments must be posted prominently in each affected post office. The invitation for comments must:

(i) Ask interested persons to provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, on the potential effect of the proposed change on postal services and the community.

(ii) State that copies of the proposal with attached optional comment forms are available in the affected post offices.

(iii) Provide a name and telephone number to call for information.

(2) *Proposal and comment notice.* The following is a sample format that may be used for the proposal and comment notice.

BILLING CODE 7710-12-P

UNITED STATES POSTAL SERVICE
Proposal to (Close)(Consolidate) the (Name) Post Office and Optional Comment Form

Attached is a proposal that we are considering to attempt to provide your community's postal service more economically and efficiently, while also providing regular and effective service. Please read the proposal carefully and then let us have your comments and suggestions. If you choose, you may use the form provided below. Your comments will be carefully considered and will be made part of a public record. If you use the form provided below and need additional room, please attach additional sheets of paper.
Return the completed form to _____ by _____.

In considering this proposal, if you have any questions you want to ask a postal official, you may call _____ whose telephone number is _____.

I. Effect on Your Postal Services
Please describe any favorable or unfavorable effects that you believe the proposal would have on the regularity or effectiveness of your postal service.

_____

_____

_____

_____

II. Effect on Your Community
Please describe any favorable or unfavorable effects that you believe the proposal would have on your community.

_____

_____

_____

_____

III. Other Comments
Please provide any other view or information that you believe the USPS should consider in deciding whether to adopt the proposal.

_____

_____

_____

_____

_____

_____

_____

(Signature of Postal Customer) (Date)

_____

(Mailing Address)

_____

(City) (State) (ZIP Code)

BILLING CODE 7710-12-C

(3) *Other steps.* In addition to providing notice and inviting comment, the district manager, Customer Service and Sales, must take any other steps necessary to ensure that the persons served by the affected post office understand the nature and implications of the proposed action (e.g., meeting with community groups and following up on comments received that seem to be based on incorrect assumptions or information).

(i) If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the district manager, Customer Service and Sales, should encourage persons offering the views or information to provide written comments to preserve them for the record.

(ii) As a factor in making his or her decision, the district manager, Customer Service and Sales, may not rely on communications received from anyone unless submitted in writing for the record.

(4) *Record.* The district manager, Customer Service and Sales, must keep as part of the record for his or her consideration and for review by the senior vice president of Customer Service and Sales all the documentation gathered about the proposed change.

(i) The record must include all information that the district manager, Customer Service and Sales, considered, and the decision must stand on the record. No information or views submitted by customers may be excluded.

(ii) The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consolidation.

(iii) The record must include a chronological index in which each document contained is identified and numbered as filed.

(iv) As written communications are received in response to the public notice and invitation for comments, they are included in the record.

(v) A complete copy of the record must be available for public inspection during normal office hours at the post office proposed for discontinuance or at the post office providing alternative service, if the office to be discontinued was temporarily suspended, beginning no later than the date on which notice is posted and extending through the comment period.

(vi) Copies of documents in the record (except the proposal and comment form) are provided on request and on payment of fees as noted in the Administrative Support Manual (ASM) § 352.6.

(e) *Consideration of public comments and final local recommendation.*—(1) *Analysis of comments.* After waiting not less than 60 days after notice is posted under § 241.3(d)(1) the district manager, Customer Service and Sales, must prepare an analysis of the public comments received for consideration and inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each point favorable to the proposal and each point unfavorable to the proposal. The analysis should identify to the extent possible how many comments support each point listed.

(2) *Re-evaluation of proposal.* After completing the analysis, the district manager, Customer Service and Sales, must review the proposal and re-evaluate all the tentative conclusions previously made in light of additional customer information and views in the record.

(i) *Discontinuance not warranted.* If the district manager, Customer Service and Sales, decides against the proposed discontinuance, he or she must post, in the post office considered for discontinuance, a notice stating that the proposed closing or consolidation is not warranted.

(ii) *Discontinuance warranted.* If the district manager, Customer Service and Sales, decides that the proposed discontinuance is justified, the appropriate sections of the proposal must be revised, taking into account the comments received from the public. After making necessary revisions, the manager must:

(A) Forward the revised proposal and the entire record to the senior vice president of Customer Service and Sales for final review.

(B) Attach a certificate that all documents in the record are originals or true and correct copies.

(f) *Postal Service decision.*—(1) *In general.* The senior vice president of Customer Service and Sales or a designee must review the proposal of the district manager, Customer Service and Sales. This review and the decision on the proposal must be based on and supported by the record developed by the district manager, Customer Service and Sales. The senior vice president can instruct the district manager to provide more information to supplement the record. Each such instruction and the response must be added to the record. The decision on the proposal of the district manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth below.

(2) *Approval.* The senior vice president of Customer Service and Sales or a designee may approve the proposal of the district manager, Customer Service and Sales, with or without further revisions. If approved, the term "Final Determination" is substituted for "Proposal" in the title. A copy of the Final Determination must be provided to the district manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(b). The Final Determination must include the following notices:

(i) *Supporting materials.* "Copies of all materials on which this Final Determination is based are available for public inspection at the (Name) Post Office during normal office hours."

(ii) *Appeal rights.* "This Final Determination to (close) (consolidate) the (name) Post Office may be appealed by any person served by that office to the Postal Rate Commission. Any appeal must be received by the Commission within 30 days of the date this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Rate Commission, or the parties to the appeal, must be made available for public inspection at the (name) Post Office during normal office hours."

(3) *Disapproval.* The senior vice president of Customer Service and Sales or a designee may disapprove the proposal of the district manager, Customer Service and Sales, and return it and the record to the manager with written reasons for disapproval. The manager must post a notice in each affected post office that the proposed closing or consolidation has been determined to be unwarranted.

(4) *Return for further action.* The senior vice president of Customer Service and Sales or a designee may return the proposal of the district manager, Customer Service and Sales, with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) *Public file.* Copies of each Final Determination and each disapproval of a proposal by the senior vice president of Customer Service and Sales, must be placed on file in the Postal Service Headquarters Library.

(g) *Implementation of final determination*—(1) *Notice of final determination to discontinue post office.* The district manager, Customer Service and Sales, must:

(i) Provide notice of the Final Determination by posting a copy prominently in the affected post office

or offices. The date of posting must be noted on the first page of the posted copy as follows:

"Date of posting:"

The district manager, Customer Service and Sales, must notify the senior vice president of Customer Service and Sales in writing of the date of posting.

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each post office where the Final Determination is posted for 30 days from the posting date.

(iii) Provide copies of documents in the record on request and payment of fees as noted in the ASM 352.6.

(2) *Implementation of determinations not appealed.* If no appeal is filed pursuant to 39 U.S.C. 404(b)(5), the official closing date of the office must be published in the Postal Bulletin, effective the first Saturday 90 days after the Final Determination was posted. A district manager, Customer Service and Sales, may request a different date for official discontinuance in the Post Office Change Announcement document submitted to the senior vice president of Customer Service and Sales. However, the post office may not be discontinued sooner than 60 days after the posting of the notice required by § 241.3(g)(1).

(3) *Actions during appeal*—(i) *Implementation of discontinuance.* If an appeal is filed, only the senior vice president of Customer Service and Sales may direct a discontinuance before disposition of the appeal. However, the post office may not be discontinued sooner than 60 days after the posting of notice required by § 241.3(g)(1).

(ii) *Display of appeal documents.* Classification and Customer Service, Postal Service General Counsel, must provide the district manager, Customer Service and Sales, with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(A) The district manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the post office to be discontinued. If the operation of that post office has been suspended, the manager must display copies in the affected post offices.

(B) All documents except the Postal Rate Commission's final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed for 30 days.

(4) *Actions following appeal decision*—(i) *Determination affirmed.* If the Commission dismisses the appeal or affirms the Postal Service's determination, the official closing date of the office must be published in the Postal Bulletin, effective the first Saturday 90 days after the Commission renders its opinion, if not previously implemented under § 241.3(g)(3)(i). However, the post office may not be discontinued sooner than 60 days after the posting of the notice required under § 241.3(g)(1).

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the senior vice president of Customer Service and Sales must direct that either (A) notice be provided under § 241.3(f)(3) that the proposed discontinuance is determined not to be warranted or (B) the matter be returned to an appropriate stage under these regulations for further consideration following such instructions as the senior vice president may provide.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–14057 Filed 6–8–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD23–1–6369; FRL–4893–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery at Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This submittal consists of regulations requiring Stage II gasoline vapor recovery in the Baltimore ozone nonattainment area and the Maryland portion of the Washington, DC and Philadelphia ozone nonattainment areas. The intended effect of this action is to approve the addition of Maryland's Stage II vapor recovery regulations into Maryland's ozone SIP. This action is being taken in accordance with the SIP submittal and revision provisions of the Clean Air Act (the Act).

EFFECTIVE DATE: This final rule will become effective on June 10, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597–9337, at the EPA Regional office listed in the Addresses section.

SUPPLEMENTARY INFORMATION: On November 24, 1993 (58 FR 62065), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the addition of COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities, into Maryland's ozone SIP. Maryland formally submitted COMAR 26.11.24 to EPA as a SIP revision on January 18, 1993 to comply with the Stage II vapor recovery requirements of section 182(b)(3) of the Act.

This rulemaking action is approving the addition of COMAR 26.11.24 into the Maryland ozone SIP. COMAR 26.11.24 requires Stage II vapor recovery at existing gasoline dispensing facilities which dispense 10,000 gallons per month (gpm) or more, and at gasoline dispensing facilities which are owned by independent small business marketers (ISBMs) and which dispense 50,000 gpm or more. All new facilities with storage tank capacity greater than 2000 gallons, for which the Maryland Department of the Environment issued or issues a permit to construct after 11/15/90, regardless of ISBM ownership, are covered by this regulation.

Other specific requirements of COMAR 26.11.24 and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving the addition of COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities, which Maryland submitted to EPA on January 18, 1993.

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

This action has been classified as a Table 3 action for signature by the

Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to corrections to VOC regulations in the Maryland ozone SIP, must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 25, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(107) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(107) Revisions to the Maryland State Implementation Plan submitted on January 18, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of January 18, 1993 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) The addition of COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities, adopted by the Secretary of the Environment on January 18, 1993, effective February 15, 1993.

(ii) Additional material.

(A) Remainder of the January 18, 1993 State submittal pertaining to COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities.

[FR Doc. 94–14084 Filed 6–9–94; 8:45 am]

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40 CFR Part 52

[CA–37–2–6310 FRL–4889–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approvals and limited disapprovals of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on July 26, 1993. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from gasoline loading operations. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This final rule is effective July 11, 1994.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

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

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

FOR FURTHER INFORMATION CONTACT: Susanne Wong, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1152

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1993, in 58 FR 39717, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: SMAQMD Rules 448, Gasoline Transfer into Stationary Storage Containers, and 449, Transfer of Gasoline into Vehicle Fuel Tanks. Rules 448 and 449 were adopted by SMAQMD on December 17, 1991. These rules were submitted by the California Air Resources Board (CARB) to EPA on June 19, 1992. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the notice of proposed rulemaking (NPR) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRs. EPA is finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. Both rules contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. Both rules allow the Control Officer to use "equivalent" test methods for determining compliance. A detailed discussion of the rule provisions and evaluations has been provided in the NPRs and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated February 1, 1993 for Rules 448 and 449).

Response to Public Comments

A 30-day public comment period was provided in 58 FR 39717. EPA received no comment letters on the NPR.

EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the NPR. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the NPR, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered by this final rule have been adopted by the SMAQMD and are currently in effect in the District. EPA's limited disapproval action in this final rule does not prevent SMAQMD or EPA from enforcing these rules.

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

Regulatory Process

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1994. 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)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Administrator for Air and Radiation on October 4, 1993 (Michael H. Shapiro's memorandum to Regional Administrators). A future document will inform the general public of these tables. Under the revised tables, this action remains classified as a Table 3 action. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 29, 1994.

David Howekamp,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (188)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(188) * * *

(i) * * *

(F) Sacramento Metropolitan Air Quality Management District.

(*1*) Rules 448 and 449 adopted on December 17, 1991.

* * * * *

[FR Doc. 94–14069 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[CO32–1–6417; FRL–4894–5]

Clean Air Act Approval and Promulgation of PM–10 Implementation Plan for Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving the State implementation plan (SIP) submitted by the State of Colorado for the purposes of bringing about the attainment of the National ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The SIP was submitted by the State on May 27, 1993 to satisfy certain Federal requirements for an approvable nonattainment area PM–10 plan for Lamar, Colorado.

EFFECTIVE DATE: This rule will become effective on July 11, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following

locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

Lamar, Colorado was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (Act) upon enactment of the Clean Air Act Amendments of 1990.[1] (See 56 FR 56694, November 6, 1991; 40 CFR 81.306 (specifying nonattainment designation for Lamar.)) The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of part D of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this final action and the supporting rationale.

Those states containing initial moderate PM–10 nonattainment areas (i.e., those areas designated nonattainment for PM–10 under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology–RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Revisions to satisfy these requirements were submitted by the State on January 14, 1993, and EPA will be taking action on these requirements in a separate **Federal Register** document. Such States were also required to submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. (See section 172(c)(9) of the Act and 57 FR 13543–13544.) The State submitted PM–10 contingency measures for the Lamar PM–10 nonattainment area on December 9, 1993. EPA will take action on these contingency measures in a separate **Federal Register** document.

On April 6, 1994, EPA announced its proposed approval of the Lamar, Colorado PM–10 nonattainment area SIP as meeting those moderate PM–10 nonattainment area requirements due on November 15, 1991 (see 59 FR 16158–16162). In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of title I and its rationale for proposing to approve the Lamar moderate nonattainment area PM–10 SIP, taking into consideration the specific factual issues presented. EPA requested public comments on all aspects of the proposed rulemaking pertaining to Lamar (see 59 FR 16162). No comments were received on the proposed rulemaking.

This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). On May 27, 1993, the Governor of Colorado submitted revisions to the SIP which were intended to satisfy those moderate PM–10 nonattainment area SIP requirements due for Lamar on November 15, 1991. As described in EPA's notice of proposed approval of this SIP submittal, the Lamar moderate PM–10 nonattainment area plan includes, among other things: (1) A comprehensive and accurate emissions inventory; (2) reliance on existing Federal control measures that satisfy the RACM requirement; (3) a demonstration (including air quality modeling) that attainment of the PM–10 NAAQS will be achieved in Lamar by December 31, 1994 and maintained through December 31, 1997; (4) an explanation that the implementation of available control measures are not reasonably required for attainment and maintenance of the PM–10 NAAQS in Lamar, thus satisfying the November 15, 1994 quantitative milestone and RFP requirements; and (5) enforceability documentation. In that document, EPA also proposed to determine that major sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS in Lamar. Please refer to EPA's April 6, 1994 notice of proposed rulemaking (59 FR 16158–16162) and the TSD for that action for a more detailed discussion of these elements of the Lamar plan.

EPA finds that the State of Colorado's PM–10 SIP for the Lamar moderate PM–10 nonattainment area meets the RACM, including RACT, requirement. Wind erosion from agricultural lands was identified as the principal contributor to the PM–10 nonattainment problem in Lamar and, therefore, was targeted for control in the SIP. The State chose to rely on the soil conservation measures of the Federal Food Security Act (FSA) to control emissions from agricultural land wind erosion. While the State is relying on these provisions to reduce PM–10 emissions from wind erosion in the Lamar area, the State did not adopt these measures into the SIP because these measures are federally-mandated and will be implemented by the U.S. Department of Agriculture. Further, no credit was taken for these measures because of the difficulty in estimating the effectiveness of these measures and because no credit was needed to demonstrate attainment or maintenance of the PM–10 NAAQS in Lamar. Nevertheless, EPA does believe that the provisions of the FSA will have a

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401 *et seq.*

significant impact on the emissions from wind erosion from agricultural land in the Lamar area. It does not appear that applying further control measures to these or other sources would expedite attainment. Thus, EPA believes the Lamar PM–10 moderate nonattainment area plan has adequately satisfied the RACM (including RACT) requirement.

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD accompanying EPA's proposed approval of the Lamar moderate PM–10 nonattainment area SIP.

The Lamar PM–10 nonattainment area plan adequately demonstrates that the Lamar area will attain the PM–10 NAAQS by December 31, 1994 and maintain the PM–10 NAAQS through December 31. 1997. Thus, EPA believes the State has met all of the moderate PM–10 nonattainment area requirements for the Lamar moderate PM–10 nonattainment area which were due to EPA on November 15, 1991 and submitted by the State on May 27, 1993. By this action, EPA is approving the Lamar PM–10 moderate nonattainment area plan.

In this document, EPA is also announcing its determination that major stationary sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS in Lamar. [2]

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

Final Action

This document makes final the action proposed on April 6, 1994 (59 FR 16158). As noted elsewhere in this final action, EPA received no public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1994. 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 file, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: June 1, 1994.

Nola Y. Cooke,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.332 is amended by adding paragraph (c) to read as follows:

§ 52.332 Moderate PM–10 nonattainment area plans.

* * * * *

(c) On May 27, 1993, the Governor of Colorado submitted the moderate PM–10 nonattainment area plan for the Lamar area. The submittal was made to satisfy those moderate PM–10 nonattainment area SIP requirements which were due for Lamar on November 15, 1991.

[FR Doc. 94–14015 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–F

[2] The consequences of this finding are to exclude these sources from the applicability of PM–10 nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

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40 CFR Part 271

[FRL–4894–6]

New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of New Mexico has applied for final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), and the Environmental Protection Agency (EPA) has reviewed New Mexico's application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve New Mexico's hazardous waste program revision subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. New Mexico's application for the program revision is available for public review and comment.

DATES: This final authorization for New Mexico shall be effective August 23, 1994, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on New Mexico's program revision application must be received by the close of business July 25, 1994.

ADDRESSES: Copies of the New Mexico program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: New Mexico Environment Department, 1190 St. Francis Drive, Sante Fe, New Mexico 87502 and USEPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain

Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 655–6444. Written comments, referring to Docket Number NM–94–1, should be sent to Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, USEPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, USEPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268, and 270.

B. New Mexico

New Mexico received final authorization January 25, 1985 (see 50 FR 1515), to implement its base hazardous waste management program. New Mexico received authorization for revisions to its program on April 10, 1990 (see 55 FR 4604), July 25, 1990 (see 55 FR 28397), and December 4, 1992 (see 57 FR 45717). The authorized New Mexico RCRA program was incorporated by reference into the Code of Federal Regulations (CFR), effective December 13, 1993 (see 58 FR 52677). New Mexico submitted a final complete program revision application for additional program approvals. Today, New Mexico is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA reviewed New Mexico's application, and made an immediate final decision that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to New Mexico. The public may submit written comments on EPA's final decision until July 25, 1994. Copies of New Mexico's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of New Mexico's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a document containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

New Mexico's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264, 265, 266 and 270 that were published in the **Federal Register** through December 4, 1992. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Petroleum Refinery Primary and Secondary Oil/Water/Solids separation Sludge Listings (F037 and F038), November 2, 1990 (55 FR 46354–46397), as amended on December 17, 1990 (55 FR 51707). (Checklists 81 and 81.1).	New Mexico Statutes Annotated (NMSA) 1978, Sections 74–4–4A(1) and 74–4–4E (Replacement Pamphlet 1993); New Mexico Hazardous Waste Management Regulations (HWMR), HWMR–7; Part II, Section 201, as amended November 20, 1992.
2. Wood Preserving Listings, (55 FR 50450–50490), December 6, 1990. (Checklist 82).	NMSA 1978, Sections 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART I, PART II, PART III, PART V, PART VI and PART IX, Sections 101, 102, 201, 301, 501 & 502(A) 601, 602(A)(B), 901, and 902, as amended November 20, 1992.
3. Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments, (56 FR 3864–3928), January 31, 1991. (Checklist 83).	NMSA 1978, Sections 74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7 PART I, PART II, PART V, and PART VI, and PART VII, Sections 101, 102, 201, 501, 502, 601, 602, and 701, as amended November 20, 1992.
4. Burning of Hazardous Waste in Boilers and Industrial Furnaces, February 21, 1991 (56 FR 7134–7240). (Checklist 85).	NMSA 1978, Sections 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART I, PART II, PART V, PART VI, and PART VII. Sections 101, 102, 201, 501, 502, 601, 602 and 701, as amended November 20, 1992.
5. Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment, (56 FR 7567–7568), February 25, 1991. (Checklist 86).	NMSA 1978, Sections 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, Section 201, as amended November 20, 1992.
6. Organic Air Emission Standards for process Vents and Equipment Leaks; Technical Amendment, April 26, 1991 (56 FR 19290). (Checklist 87).	NMSA 1978, Section 74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7 PART II, PART V, PART VI and PART IX. Sections 201, 501, 502, 601, 602, and 901, as amended November 20, 1992.
7. Administrative Stay for K069 Listing, May 1, 1991 (56 FR 19951). (Checklist 88).	NMSA 1978, Sections 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7 PART II, Section 201, as amended November 20, 1992.
8. Mining Waste Exclusion III, June 13, 1991 (56 FR 27300). (Checklist 90).	NMSA 1978, Sections 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7 PART II, Section 201, as amended November 20, 1992.
9. Wood Preserving Listings, June 13, 1991 (56 FR 27332). (Checklist 91).	NMSA 1978, Sections 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7 PART II Section 201, as amended November 20, 1992.

New Mexico is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that New Mexico's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, New Mexico is granted

final authorization to operate its hazardous waste program as revised. New Mexico now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. New Mexico also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize New Mexico's program and for incorporation by reference of those provisions of New Mexico's Statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart GG until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 11, 1994.

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 94–13960 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 931249–3349; I.D. 052794B]

Pacific Coast Groundfish Fishery

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the "regular" season for sablefish taken with nontrawl gear by vessels with limited entry permits, a 72-hour closure, and reimposition of a daily trip limit of 250 lbs (113 kg) north of 36°00′ N. lat. and 350 lbs (159 kg) south of 36°00′ N. lat. off Washington, Oregon and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The daily trip limits are necessary to keep landings within the nontrawl harvest guideline for sablefish.

DATES: Effective from 0001 hours (local time) June 4, 1994, through December 31, 1994. Comments must be received by June 24, 1994.

ADDRESSES: Submit comments to J. Gary Smith, Acting Regional Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN–C15700, Seattle, WA 98115–0070; or Rodney McInnis, Acting Regional Director, Southwest Region, NMFS, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: The notice of 1994 groundfish fishery specifications and management measures (59 FR 685, January 6, 1994) announced that, in the 1994 limited entry fishery, a daily trip limit of 250 lbs (113 kg) north of 36°00′ N. lat. and 350 lbs (159 kg) south of 36°00′ N. lat. for the nontrawl sablefish fishery would apply until the first 72-hour closure before the start of the regular season, and again, after a second 72-hour closure after the end of the regular season. The daily trip limits are reimposed on the date necessary to extend the nontrawl allocation for sablefish to the end of the year. During the regular season, the only trip limit in effect applies to sablefish smaller than 22 inches (55.9 cm) (total length). The 72-hour closure is authorized at 50 CFR 663.23(b)(2), which also sets a flexible starting date for the regular season (58 FR 16629, March 30, 1993).

The regular season began on May 15, 1994 (59 FR 685, January 6, 1994). The best available data on May 26, 1994, indicate that 1,107 mt of sablefish had been harvested through May 24, 1994, with landings averaging 120 mt per day during the regular season. At that rate, the nontrawl allocation will be reached by June 4, 1994, if landings are not further curtailed. For these reasons, NMFS is closing the limited entry fishery for sablefish caught with nontrawl gear at 0001 hours (local time) June 4, 1994 (the end of the regular season), and reimposing 72 hours later, the 250-lb (113 kg) daily trip limit north of 36°00′ N. lat. and the 350-lb (159 kg) daily trip limit south of 36°00′ N. lat. on June 7, 1994. This action is intended to leave less than 100 mt to be harvested under the daily trip limits for the rest of the year. The 72-hour closure and these fishing restrictions apply only to vessels operating in the limited entry fishery off Washington, Oregon, and California.

Secretarial Action

NMFS hereby announces the following actions pursuant to 50 CFR 663.23(b)(2)(iii):

(1) From 0001 hours (local time) June 4, 1994, through 2400 hours (local time) June 6, 1994, the taking and retention, possession, or landing of sablefish taken with nontrawl gear by a vessel operating in the limited entry fishery is prohibited.

(2) Beginning at 0001 hours (local time) June 7, 1994, the daily trip limit for sablefish caught with nontrawl gear by a vessel in the limited entry fishery is 250 lbs (113 kg) north of 36°00′ N. lat., and 350 lbs (159 kg) south of 36°00′ N. lat., through December 31, 1994. These trip limits apply to sablefish of any size.

(3) These restrictions apply to all sablefish caught with nontrawl gear by vessels operating in the limited entry fishery between 3 and 200 nautical miles (nm) offshore of Washington, Oregon, and California. The sablefish trip limits for "open access" gear are not changed. All sablefish caught with nontrawl gear and possessed 0–200 nm offshore, or landed in Washington, Oregon, or California, are presumed to have been taken and retained from the fishery management area (3–200 nm offshore Washington, Oregon, and

California) unless otherwise demonstrated by the person in possession of those fish.

The determination to reimpose the daily limits for the limited entry nontrawl sablefish fishery is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours.

Classification

Because any delay in the implementation of this action could result in exceeding the nontrawl sablefish fishery allocation, NMFS therefore finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness requirement of the Administrative Procedure Act.

This action is taken under the authority of 50 CFR 663.23 (b) and (c), is exempt from OMB review under E.O. 12866, and is in compliance with the Regulatory Flexibility Act.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Reporting and recordkeeping requirements.

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

Dated: June 3, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–13969 Filed 6–3–94; 4:31 pm]

BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 931100–4043; I.D. 052794E]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Recision of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Greenland turbot in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1994 total allowable catch (TAC) for Greenland turbot in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 6, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery for Greenland turbot in the AI was prohibited on May 4, 1994, under § 675.20(a)(8), (59 FR 22762, May 3, 1994) to prevent exceeding the Greenland turbot TAC in that subarea.

The Director, Alaska Region, NMFS, has determined that 517 metric tons remain in the directed fishing allowance for Greenland turbot in this area as of May 14, 1994. Therefore, NMFS is rescinding the May 4, 1994, closure and is reopening directed fishing for Greenland turbot in the AI effective from 12 noon, A.l.t., June 6, 1994, until 12 midnight, A.l.t., December 31, 1994.

Other closures remain in full force and effect, including the closure to directed fishing for aggregate species in the Greenland turbot/arrowtooth flounder/sablefish trawl fishery category by vessels using trawl gear in the BSAI (59 FR 27246, May 26, 1994).

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

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

Dated: June 6, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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Proposed Rules

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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.

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1320

Controlling Paperwork Burden on the Public, Delegation of Review and Approval Authority to the Managing Director of the Federal Communications Commission (FCC)

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking seeks comments on the proposal to delegate to the Managing Director of the Federal Communications Commission (Commission) the authority, under the Paperwork Reduction Act of 1980, as amended (the Act), and 5 CFR 1320.9, to reauthorize information collection requests, information collection requirements, and collections of information in current rules conducted or sponsored by the Commission. This delegation applies to collections of information that have been initially approved by the Office of Management and Budget (OMB) and have an annual total public burden that is 5,000 hours or less and an estimated burden per respondent of less than 500 hours. In exercising this delegated authority, the Commission is to afford the public an opportunity to participate in the reauthorization review process. Commission-reauthorized collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A report of delegated approval for each information collection reauthorized by the Commission will be placed in OMB's public docket files when that approval is made. Under the Act, OMB may limit, condition, or rescind this delegation at any time, but it is intended that OMB will exercise this authority only rarely and in unusual circumstances.

DATES: Comments need to be received on or before August 8, 1994.

ADDRESSES: Comments may be mailed to Timothy R. Fain, Policy Analyst, Office of Information and Regulatory Affairs, Room 3221 New Executive Office Building, 725 17th Street N.W., Washington DC 20503.

Written comments will be available for inspection in the Docket Library, Room 3201 of the above address, between 9:00 am and 5:00 pm, Monday through Friday. Call (202) 395–6880 for an appointment.

FOR FURTHER INFORMATION CONTACT: Timothy R. Fain, (202) 395–7231.

SUPPLEMENTARY INFORMATION: Section 3507(e) of the Paperwork Reduction Act of 1980 and 5 CFR 1320.9 authorize OMB to delegate its authority to approve collections of information to an agency's designated senior official for paperwork reduction or to the agency head if certain conditions are met. The Act and OMB's implementing regulations require OMB to comply with the notice and comment procedures of title 5, United States Code, chapter 5, before providing delegation to any agency. OMB has preliminarily determined that the FCC meets all of the requirements for delegation of the authority requested. Accordingly, OMB is seeking public comment on this proposal.

The delegation would be granted to the Commission's Managing Director who, as the Commission's designated senior official, will have the authority to reauthorize the Commission's extension of collections of information, subject to the Paperwork Reduction Act. OMB approval will still be required for new, revised, and expired information collections or those collections that represent more than a total annual burden of 5,000 hours or an individual respondent's burden of greater than 500 hours.

Under the terms of the delegation, each quarter, the agency clearance officer will identify the information collections that will need to be reauthorized during the next quarter and notify the appropriate functional Bureau and Office (B/O) of the Commission. Sponsoring B/Os will analyze each of these collections and consider: the continued need for the information, including the need for individual report items; how the Commission has used this information in the past; the reporting frequency; and selection of the reporting instrument. The review will cover clarity of format and instructions, reporting deadlines, costs and burdens, any public comments the Commission received during the previous clearance period, and other relevant items. For those eligible collections that the B/Os choose to extend, the reauthorization process would be initiated by B/O preparation of a "request for extension of an information collection." This request, and the accompanying supporting statement, will be submitted to the agency clearance officer in the Office of the Managing Director. After screening by the agency clearance officer, a **Federal Register** notice and a FCC **Public Notice** will be issued requesting public comment during a 30-day review period beginning on the date of publication of the notice. Public comments will be evaluated and, where appropriate, incorporated into the collection. The agency clearance officer will provide written responses to all public comments. The Managing Director will not reauthorize collections with substantive changes. Finally, when appropriate, the Managing Director will reauthorize the collection for use and submit a report of delegated approval to OMB.

This entire process will occur under the general direction of the Managing Director in his capacity as the Commission's designated senior official for Paperwork Reduction. The Commission's clearance process will be under the day-to-day supervision and management of the agency clearance officer who reports to the Managing Director and is outside and independent of any program office that would originate requests to extend information collections. The agency clearance officer would maintain administrative control throughout the review process regardless of how or where the request for extension originates. Each B/O will designate staff to act as liaison with the review structure described above and to help ensure their organization's adherence to the paperwork clearance standards and procedures. The agency clearance officer will ensure public access to the Commission's information collection files in compliance with approved retention and disposition schedules. Over the longer term, the agency clearance officer will work towards making summary information available electronically.

OMB believes that this review and reauthorization process meets the requirements for a delegation of OMB's Paperwork Reduction Act approval authority. These requirements and the reasons why OMB believes that the Commission fully meets them follow.

(1) The agency review process must exhibit independence from program office responsibility.

Virtually all of these collections are contained in regulatory requirements. The Commissioners generally establish overall policies with the functional B/Os responsible for the decisions to initiate or sponsor a collection of information. The Commission's Managing Director serves as the senior official for management and administrative matters and is independent of and separate from the functional B/Os. The Managing Director will serve as the final approval authority on all FCC decisions to reauthorize information collections. The agency clearance officer in the Office of the Managing Director will review each information collection to determine if the original purpose and intent of the collection warrants its continued existence. This review will also assess whether the collection remains necessary for the Commission to perform its duties and responsibilities as identified in the Communications Act of 1934, as amended, and the relevant parts of the Code of Federal Regulations.

(2) The agency must have sufficient resources to carry out paperwork responsibilities.

OMB believes that the Managing Director has demonstrated a commitment to conduct reviews of information collections that include the use of resources and personnel from all areas within the Commission. Each functional B/O having programmatic responsibilities will provide staff resources to prepare the analytical materials described above. The agency clearance officer in the Office of the Managing Director will then conduct the reviews identified above. To ensure that the agency clearance officer can perform an adequate review of each information collection, the records management division in the Office of the Managing Director has been assigned a staff of two senior analysts. These individuals, under the direct supervision of the agency clearance officer, each have extensive experience in addressing issues related to the Paperwork Reduction Act and information collections. Finally, the resources of the Office of General Counsel will be available if additional assistance is needed to evaluate the necessity of information collection in its current form. The Managing Director of the FCC has requested a delegation to review and reauthorize collections of information that represent a narrow scope of the Commission's collections. We believe that the limited number and complexity of these collections will not overburden the ability of the agency clearance officer to perform these reviews.

(3) The agency review process must evaluate fairly whether the proposed collections of information should be approved.

OMB believes that the Commission has developed a process that ensures that the Office of the Managing Director can fairly evaluate and reauthorize collections of information. The Office of the Managing Director has assembled an experienced staff under the direction of a paperwork clearance officer who is independent from the program B/Os. Additionally, the Managing Director has proposed a process for reauthorizing extensions to approved information collections that will: maintain public participation; allow OMB the opportunity to consult during the review process; ensure prompt notification of OMB concerning decisions made about individual information collections and any public comments received during this process; and provide OMB with information necessary to maintain its inventory of approved collections. Under the proposed delegation, the Commission would continue to request OMB approval for new, expired, or revised information collections.

The Commission recognizes that OMB can and will continue to have a consultative role in the approval process. The Commission will work closely with OMB should an assessment of the existing information collection indicate that a modification would benefit the Commission or the public.

(4) Evidence of successful performance of paperwork review activities.

Despite a dynamic regulatory environment that has resulted in the creation of numerous new information collection requirements, the Commission has been actively working to reduce its overall paperwork burden. The FCC has been working closely with the public to improve its ability to collect and evaluate information, particularly in the use of information technology to reduce or minimize the reporting burden of its information collections. Recent FCC innovations include: a) use of "800" telephone lines to provide direct access to program experts who provide advice on completing the collection; b) providing forms that can be faxed by the respondents directly to the program office for FCC advice or action; and c) allowing submission of certain financial information in electronic format. The FCC is aggressively pursuing other applications of information technology to reduce the burden placed on the public.

In May 1990, the FCC erred in implementing the Paperwork Reduction Act when rules prescribing an information collection entitled "Authorization to Construct a Cellular Telephone System" were found to have been ambiguous concerning submission of certain documents required to be filed in support of an application. The Commission concurred with OMB's finding concerning this ambiguity and reopened the proceeding involving this collection. Since then, the Commission has upgraded the training of both the program B/Os and the Office of the Managing Director, and the Commission has been conscientious in managing its information collections.

Summary

Based on these facts, OMB proposes to grant the Managing Director of the FCC a delegation to reauthorize its approved information collections subject to three exclusions.

The first exclusion would apply to changes to an existing collection. Any change, revision, or modification, other than non-substantive clarifications or corrections of spelling or grammatical errors, would cause a collection of information to be submitted to OMB for review and approval.

The second exclusion would apply to new collections of information or reauthorization of collections for which approval has lapsed. New or lapsed collections of information would continue to be submitted to OMB for review and approval.

The third exclusion would apply to the reauthorization of information collections employing statistical methods. Because OMB believes that the agency clearance officer lacks the resources required to effectively evaluate such collections, these collections would continue to be submitted to OMB for review and approval. Voluntary customer surveys will be treated under streamlined procedures established by OMB Memorandum M–93–14 dated September 29, 1993.

The Commission will continue to follow OMB rules with respect to information collections excluded from this delegation. The Commission may also, at its option, request OMB to conduct any delegated review.

The Commission's final action on the reauthorization of a collection of information would be taken after the public has a reasonable opportunity to comment through notice in the **Federal Register** and **FCC Public Notice.** The comment period will extend for at least 30 days following publication of the notice in the **Federal Register.** These notices will advise the public that a copy of comments may also be submitted to the OMB/Office of Information and Regulatory Affairs (OIRA) desk officer for the Commission.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

List of Subjects in 5 CFR Part 1320

Reporting and recordkeeping requirements, paperwork, collection of information, delegated review authority.

For the reasons set forth in the preamble, OMB proposes to amend 5 CFR part 1320 as follows:

PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

1. The authority citation for part 1320 is revised to read as follows and the authority citation at the end of appendix A is removed:

Authority: 31 U.S.C. 18a and 1111 and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

2. Appendix A to part 1320 is amended by adding a new entry at the end of the appendix to read as follows:

Appendix A to Part 1320—Agencies With Delegated Review and Approval Authority

* * * * *

2. The Managing Director of the Federal Communications Commission.

(a) Authority to review and approve currently valid (OMB-approved) collections of information, including collections of information contained in existing rules, that have a total annual burden of 5,000 hours or less and a burden of less than 500 hours per respondent is delegated to the Managing Director of the Federal Communications Commission.

(1) This delegation does not include review and approval authority over any new collection of information, any collections whose approval has lapsed, any substantive or material modification to existing collections, any reauthorization of information collections employing statistical methods, or any information collections that exceed a total annual burden of 5,000 hours or an estimated burden of 500 hours per respondent.

(2) The Managing Director may ask that OMB review and approve collections of information covered by the delegation.

(3) In exercising delegated authority the Managing Director will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action on reauthorizing an existing collection. Reasonable opportunity for public comment will include publishing a notice in the **Federal Register** and a **FCC Public Notice** informing the public that a collection of information is being extended and announcing the beginning of a 30-day comment period, notifying the public of the "intent to extend an information collection," and providing the public with the opportunity to comment. Such notices shall advise the public that they may also send a copy of their comments to the OMB/Office of Information and Regulatory Affairs desk officer for the Commission.

(A) Should the Managing Director determine that a collection of information that falls within the scope of this delegation must be reauthorized quickly and that public participation in the reauthorization process interferes with the Commission's ability to perform its statutory obligation, the Managing Director may temporarily reauthorize the extension of an information collection, for a period not to exceed 90 days, without providing opportunity for public comment.

(B) At the earliest practical date after granting this temporary extension to an information collection, the Managing Director will conduct a normal delegated review and publish a **Federal Register Notice** soliciting public comment on its intention to extend the collection of information for a period not to exceed 3 years.

(ii) Assure that approved collections of information are reviewed not less frequently than once every 3 years and that such reviews are conducted before the expiration date of the prior approval. When the review is not completed prior to the expiration date, the Managing Director will submit the lapsed information collection to OMB for review and reauthorization.

(iii) Assure that each reauthorized collection of information displays an OMB control number and, except for those contained in regulations or specifically designated by OMB, displays the expiration date of the approval.

(iv) Transmit to OMB for incorporation into OMB's public docket files, a report of delegated approval certifying that the Managing Director has reauthorized each collection of information in accordance with the provisions of this delegation. Such transmittal shall be made no later than 15 days after the Managing Director has taken final action reauthorizing the extension of an information collection.

(b) OMB will:

(1) Provide notice to the Commission acknowledging receipt of the report of delegated approval and its incorporation into OMB's public docket files and inventory of currently approved collections of information.

(2) Act upon any request by the Commission to review a collection of information referred by the Commission in accordance with the provisions of section 2(a)(2) of this Appendix.

(3) Periodically assess, at its discretion, the Commission's paperwork review process as administered under the delegation. The Managing Director will cooperate in carrying out such an assessment. The Managing Director will respond to any recommendations resulting from such a review and, if it finds the recommendations to be appropriate, will either accept the recommendation or propose an alternative approach to achieve the intended purpose.

(c) This delegation may, as provided by 5 CFR 1320.9(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances.

[FR Doc. 94–13895 Filed 6–8–94; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket No. 94–11]

RIN 1557–AB39

Management Interlocks Small Market Share Exemption

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to amend its regulations that implement the Depository Institution Management Interlocks Act (Interlocks Act or Act) as part of a joint initiative by the Federal depository institution regulatory agencies. The Interlocks Act generally prohibits certain management official interlocks between unaffiliated depository institutions, depository holding companies, and their affiliates. The proposed amendment creates limited exemptions to the prohibition on management official interlocks between certain depository organizations located in the same community or relevant metropolitan statistical area. These exemptions would permit management official interlocks between depository organizations that together control only a small percentage of the total deposits in the community or relevant metropolitan statistical area. The exemptions are based on the OCC's belief that management interlocks between certain depository organizations do not threaten to inhibit or restrict competition within a particular market and that the present restrictions are not necessary, and may actually impede healthy competition.

DATES: Written comments must be received on or before August 8, 1994.

ADDRESSES: Comments may be mailed to the Communications Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219, attention: Docket No. 94–11. Comments will be available for public inspection and photocopying at the same location on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: William W. Templeton, Senior Attorney, Legislative, Regulatory and International Activities Division (202/874–5090); Sue Auerbach, Senior Attorney, Corporate Organization and Resolution Division (202/874–5300); Sheila Ogilvie, Licensing and Policy Systems, Bank Organization and Structure (202/874–5060); or Emily McNaughton, Office of the Chief National Bank Examiner (202/874–5170).

SUPPLEMENTARY INFORMATION:

I. Background

The general purpose of the Interlocks Act (12 U.S.C. 3201 *et seq.*) is to foster competition among depository institutions, depository holding companies, and their affiliates by prohibiting certain management interlocks that may contribute to anticompetitive practices. The primary concern is that interlocking management may enable certain depository institutions to control the flow and availability of credit in the markets in which they operate.

The Interlocks Act prohibits, among other things, a management official of a depository organization [1] from serving as a management official of an unaffiliated depository organization if an office of one of the depository organizations (or any depository institution affiliate thereof) is located in the same community [2] or metropolitan statistical area [3] as an office of the other depository organization (or any depository institution affiliate thereof). The RMSA restriction, however, does not apply in the case of depository institutions with assets of less than $20 million. Section 203 of the Interlocks Act (12 U.S.C. 3202). Congress included RMSAs as appropriate regions within which to restrict management interlocks because RMSAs are "economic trade areas and reflect the area in which financial institutions compete." S. Rep. No. 323, 95th Cong., 1st Sess. 14 (1977).[4]

In the Interlocks Act, Congress authorized the Federal depository institutions regulatory agencies (the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision, the National Credit Union Administration, and the OCC, hereinafter the "Agencies") to implement rules and regulations to carry out the Act, including rules or regulations that permit service by a management official that would otherwise be prohibited by the Act. Section 209 of the Interlocks Act (12 U.S.C. 3207). The legislative history of the Act indicates that the Agencies may exercise this rulemaking authority to exempt management official interlocks that otherwise might be prohibited by the statute if they establish that the exemption has a pro-competitive effect. H.R. Rep. No. 1383, 95th Cong., 2d Sess. 15 (1978).

Pursuant to this rulemaking authority, the Agencies have previously established exemptions for institutions located in low- and moderate-income areas, minority and womens'organizations, newly-chartered institutions, and institutions facing conditions endangering their safety and soundness. See, *e.g.*, 12 CFR 26.4(b). These exemptions are available on a temporary basis upon a demonstration that the exempted management official interlock is necessary to provide management or operating expertise to the requesting institution.

The OCC now seeks comment on a proposal to establish an additional exemption from the prohibitions of the Act. The exemption would be available to depository organizations that between them control a small percentage of deposits in a community or RMSA. The exemption would be available without the prior approval of the OCC.[5] Each of the Agencies is proposing an identical deposit share exemption although each Agency is publishing its proposal separately.

The OCC also proposes an amendment to exempt honorary and advisory directors that serve institutions with less than $100 million in assets from the definition of a "management official" in the Interlocks Act. This change brings the definition in 12 CFR 26.2 into conformance with the statutory definition of that term. See 12 U.S.C. 3201(4). The proposal also makes certain technical amendments to conform the regulation to the proper **Federal Register** style.

In addition to the proposed new exemption, the OCC, together with the other Agencies, is considering a more comprehensive revision of the regulations implementing the Act. The Agencies intend to simplify the regulations, broaden existing exemptions, and consider new exemptions that would foster competition in relevant RMSAs and communities. These actions would reduce unnecessary regulatory burdens while still fulfilling the requirements of the Interlocks Act.

II. The Proposal

The Interlocks Act prevents two or more competing institutions from adversely affecting competition in the products and services they offer by virtue of their shared management officials. Where two depository institutions dominate a large portion of the market, these risks are real. But when a particular market is served by many institutions, the risks diminish that two depository institutions with interlocking management can adversely affect the products and services available in their markets.

The OCC believes that an examination of the market share of the deposits held by two institutions provides a meaningful assessment of the capacity of the two institutions to control credit and related services in that market. Analyses of market structure and performance in banking and other industries usually conclude that a small market share means a limited ability to influence market prices or terms. This proposal recognizes that two depository institutions with a small proportion of the market they serve are not capable of exerting sufficient market influence to materially restrict the terms and availability of credit in their market. For most institutions located in an RMSA, the RMSA constitutes the relevant market.

The Interlocks Act and regulations provide that the relevant market for organizations which are not located in

[1] "Depository organization" is defined to mean a depository institution or a depository holding company. 12 CFR 26.2(g).

[2] "Community" is defined under the OCC's regulations to mean a city, town, or village, or contiguous or adjacent cities, towns, or villages. 12 CFR 26.2(c).

[3] Specifically, the restriction relates to a primary metropolitan statistical area, a metropolitan statistical area, or a consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget. These areas are referred to herein as "RMSAs". See 12 CFR 26.2(n).

[4] The prohibitions apply if both organizations are depository institutions, each with an office in the same RMSA; if offices of depository institution affiliates of both organizations are located in the same RMSA; or if one organization is a depository institution that has an office in the same RMSA as a depository institution affiliate of the other organization. The RMSA prohibition does not apply to depository institutions with less than $20 million in assets. See 12 CFR 26.3.

[5] For the purpose of ascertaining whether depository organizations qualify for the exception, deposit information regarding specific communities and RMSAs will be available at the appropriate Federal Reserve Bank.

an RMSA and organizations with total assets of less than $20 million that are located within an RMSA, is the city, town, or village and contiguous and adjacent communities in which the organizations are located. The OCC believes that providing a similar small market share exemption for these community-based organizations also is appropriate.

This exemption for community-based organizations is available on the same basis as the exemption for organizations whose relevant market is the RMSA. A community-based organization that intends to use the small market share exemption may qualify for the exemption in the same manner as any depository institution located in an RMSA.

III. The Small Market Share Exemption

The proposal would amend the management interlocks regulations (12 CFR part 26) to permit two depository organizations that serve the same RMSA to share management officials in circumstances where neither organization controls a significant portion of the deposits in that market. Specifically, the proposal would permit two competing depository organizations, each with assets in excess of $20 million, to share management officials if the organizations together control no more than 20 percent of the deposits in the RMSA. The proposal also would require that the organizations control no more than 20 percent of the deposits in other RMSAs where they may compete directly through offices or through affiliated depository institutions.

The proposal treats management interlocks between institutions with assets of less than $20 million that are located within an RMSA and all depository institutions located outside of an RMSA in a similar manner. Specifically, the amendment exempts any management interlock between two depository organizations located in a community, as defined by the regulation, if their combined share of the total deposits in the community is no more than 20 percent. Similarly, the organizations may not together control more than 20 percent of the deposits in any community in which they or their depository institution affiliates compete.

To illustrate by example, if an RMSA has an assumed total deposit base of $1 billion, a depository institution which is located within that RMSA may engage in a management interlock with another institution if the organizations control no more than $200 million of deposits between them in that RMSA. If a community has an assumed total deposit base of $100 million, a depository institution located in that community may engage in a management interlock with another institution if the organizations control no more than $20 million of deposits between them in that community. When an interlock is sought for institutions that have offices in more than one RMSA or community, the same calculation must be made for each area in which both institutions have an office.

These exemptions would only be available if management interlocks between the two organizations are not otherwise prohibited by the Act. For example, the exemption would not be available if the interlock is prohibited by the major assets provision of the Act. (12 U.S.C. 3203).[6]

The availability of the exemption will be determined in reliance upon the deposit data provided by depository organizations to their primary federal regulatory agency in the Summary of Deposits (the "Summary"). The Summary is filed as an addendum to the Report of Condition and Income due from all insured depository institutions on June 30 of each year. As the Summary breaks total deposits out by branch, it will provide the necessary information to determine deposit share by RMSA and community.[7]

For the purpose of ascertaining whether depository organizations qualify for the exception, deposit information regarding specific communities and RMSAs will be available at each Federal Reserve Bank. Under the proposal, a national bank would request appropriate deposit share data from its Federal Reserve Bank (FRB) and then determine whether it qualifies for the exemption in reliance upon this information. The process would involve neither an application nor an approval from the OCC. The burden of determining the applicability of the exemption falls upon the depository organizations. The exemption is intended to be self-implementing. Management is responsible for compliance with the terms of the exemption and for maintaining sufficient supporting documentation.

Upon the request of any national bank, the FRB will provide the most recently available deposit share data to allow the requesting organizations to determine whether they are entitled to the small market share exemption. The process of collecting and compiling the deposit share data takes some time. In any given year, the FRB may provide the deposit share data compiled for the previous year if the new deposit share data from the June 30 Summary for that year has been collected and analyzed. When the current year data becomes available, institutions may request that the FRB provide the new data.

While deposit share data can be pre-sorted and made readily available by RMSA, the deposit share data cannot be pre-sorted by community. For example, two national banks seeking to rely on the small market share exemption must first determine the total deposits in their community. To do this, the national banks must request deposit share data from their FRB with sufficient specificity to delineate the community defined by the Interlocks Act that both the interlocking institutions will serve. Only then can they determine the portion of deposits that the institutions would be deemed to control in their relevant market if they engage in the interlock.

Institutions that determine they are entitled to the small market share exemption in reliance on the Summary filed on June 30 of a particular year will continue to enjoy that status until such time as the deposit share data from the June 30 Summary for the following year is available from the FRB. The institutions must then determine that the required level of deposits has not been exceeded. If at that point the level of deposits controlled exceeds 20 percent of deposits in the community or RMSA as measured in the new Summary, the depository organizations have up to 15 months to correct the prohibited interlock. Institutions will be required to retain records supporting the applicability of the exemption.

The OCC is interested in receiving comment on the effect of this proposal on the geographic markets covered by the Interlocks Act. The OCC has attempted to determine the potential consequences of the proposal for RMSA markets by examining summary data for two very large RMSAs, two RMSAs of moderate size, and two smaller RMSAs. The OCC has not attempted to assess the

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[6] Section 204 of the Act provides that a depository institution or a depository holding company with assets in excess of $1 billion (or any affiliate thereof) may not enter into a management interlock with a depository institution or a depository holding company with assets in excess of $500 million (or any affiliate thereof).

[7] The Summary does not include the deposits held by federally-chartered credit unions, which are insured by the National Credit Union Share Insurance Fund, and state-chartered credit unions. Typically, these credit union deposits comprise only a small part of the total deposits in a relevant market. If included, the deposit figures for a particular market would be slightly increased. As such, the data will not include the credit union deposits, but will still serve as a reliable approximation of the total deposits in the relevant market.

effect of the rule on communities because of the unique delineation of each community.

Depository organizations in each of the six RMSAs were ranked by their proportional share of total deposits in the market. The data was not analyzed, however, for proportional shares of total deposits in other RMSAs or other communities where the depository organizations may also compete against one another. Moreover, since the data was taken from the Summary for June 30, 1992, the data does not reflect recent consolidations in the six markets.

OCC's preliminary analysis indicates that the exemption would be available to the great majority of depository organizations operating in markets where they have a limited share of the market. In general, this exemption would allow smaller depository organizations in the six RMSAs to interlock with each other. Smaller depository organizations could not interlock with larger depository organizations, however, when the latter possesses a dominant share of the market. It is unlikely that the larger organizations in the six markets studied could interlock with each other because of their large share of the deposits in their markets or because of other Interlocks Act provisions such as the major assets provision. (See footnote 5.)

The purpose of the proposed small market share exemption is to provide an opportunity to a number of smaller institutions to share management talent and improve their ability to compete with larger institutions in their markets. The OCC's ability to measure the actual effect of the proposed exemption in the RMSAs is limited. A prompt determination of the effect of the exemption in a community is not possible because of the OCC's difficulty in delineating specific communities. For these reasons, the OCC seeks comment on whether the availability of the exemption would have a detrimental effect on competition in the affected markets.

The OCC believes that this proposal will, on balance, have a pro-competitive effect. Since the deposit base of the exempted interlocking institutions is small, the risk of anticompetitive control over the market is remote. To provide to these particular institutions this limited relief from the management interlocks restrictions enlarges the pool of experienced management talent upon which they may draw and enhances their operational effectiveness. The result will be better managed, more competitive, and healthier depository institutions.

Request for Comment

The OCC invites comment on any aspect of this proposal. The OCC specifically requests comment on the following:

1. Whether 20 percent or less of the deposits of a community or RMSA is an appropriate threshold for the exemptions, or whether a different level is more appropriate.

2. Should the community and RMSA exemptions rely on the same or a different threshold level?

3. Should the exemption require depository organizations to demonstrate that they control no more than 20% of the deposits of communities within an RMSA? For example, if two depository organizations with more than $20 million in assets operate in a community within an RMSA, should the exemption require that the depository organizations control no more than 20% of the deposits in the community and no more than 20% of the deposits in the RMSA? (Consider depository organizations that compete in several communities within the same RMSA.)

4. Whether the proposed procedure to employ the deposit data collected in connection with the Report of Condition and Income will permit depository organizations to determine easily and effectively whether they qualify for the small market share exemption.

5. Whether the exemption for community-based institutions will be easy to use, or whether these institutions might be better served by another approach to the exemption.

6. Whether the exemption would enable depository organizations to frustrate the purposes of the Interlocks Act by establishing multiple interlocks involving several individuals and several depository organizations. For example, could each of several directors of one depository organization serve as a director of a different unaffiliated depository organization, facilitating diminished competition among the several depository organizations?

7. Could several depository organizations be linked through a series of separate interlocks involving different individuals? The OCC seeks comment on whether this concern is justified, and if so, whether it is exacerbated by the fact that the threshold limit for the exemption is set at 20 percent of the deposits in the RMSA or community, rather than a smaller percentage.

8. Whether the availability of the exemption would have a detrimental effect on competition in the affected markets.

In addition to this proposal, the OCC plans a comprehensive revision of the regulations implementing the Interlocks Act. The OCC intends to simplify the regulation, revise the interlocks prohibitions and exemptions, and consider new exemptions that promote competition without fostering anticompetitive practices. The comprehensive revision will eliminate unnecessary regulatory burden in a manner consistent with the Interlocks Act and the stated objectives of the OCC. Toward this end, the OCC welcomes comment on how to clarify and improve the entire rule in a manner consistent with the purpose of the Interlocks Act.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC hereby certifies that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. The effect of the rule, if adopted as proposed, would be slight but beneficial. The rule would reduce the compliance requirements imposed upon small entities by creating a regulatory exemption to the prohibition on management interlocks between certain organizations. Furthermore, the proposed rule would affect the management structure of only a few institutions.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557–AB39, 250 E. Street, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project, Attention Treasury Desk Officer, (1557–AB39) Washington, DC 20503.

The collections of information in this proposed regulation are in 12 CFR 26.4(d)(2). This information is required by the OCC to support a national bank's determination that it qualifies for a small market share exemption to the Interlocks Act. This information will be used by the OCC to assess the bank's compliance with Federal law and regulation.

The likely respondents are for-profit institutions.

The estimated annual burden per recordkeeper will average three hours.

Estimated number of respondents and/or recordkeepers: 100.

Executive Order 12866

It has been determined that this document is not a significant regulatory action.

List of Subjects in 12 CFR Part 26

Antitrust, Holding companies, Management official interlocks, National banks.

Authority and Issuance

For the reasons set out in the preamble, part 26 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 26—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority for part 26 is revised to read as follows:

Authority: 12 U.S.C 93a and 3201 *et seq.*

2. In § 26.2, paragraph (h)(1)(ii) is revised to read as follows:

§ 26.2 Definitions.

* * * * *

(h) (1) * * *

(ii) A director (including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000);

* * * * *

3. In § 26.4 a new paragraph (d) is added to read as follows:

§ 26.4 Permitted interlocking relationships.

* * * * *

(d) *Small market share exemption.*—(1) *Depository organizations controlling no more than 20 percent of the deposits in a community or Relevant Metropolitan Statistical Area.* A management official may serve two unaffiliated depository organizations in a capacity which would otherwise be prohibited by § 26.3(a) or (b) if the following conditions are met:

(i) The interlock is not prohibited by § 26.3(c); and

(ii) The two depository organizations hold in the aggregate no more than 20 percent of the deposits, as reported annually in connection with the Summary of Deposits in each Relevant Metropolitan Statistical Area or community in which the depository organizations have offices or in which depository institution affiliates of both depository organizations are located.

(2) *Confirmation and records.* Depository organizations must maintain records sufficient to support their determination that the interlocking relationship is exempt under this paragraph (d) and must reconfirm that determination on an annual basis.

(3) *Termination.* An interlock permitted by this exemption may continue as long as the conditions of this paragraph (d) are satisfied. Any increase in the aggregated deposit holdings of the depository organizations as reported in the Summary of Deposits that causes the interlock to become prohibited will be treated as a change in circumstances under § 26.6.

(The collection of information contained in this section was approved by the Office of Management and Budget under OMB control number 1557-____.)

Dated: April 5, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94-13855 Filed 6-8-94; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-52-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6-45 or CF6-50 Engines or Pratt & Whitney JT9D Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require installation of a seal on the wing front spar at each engine strut. This proposal is prompted by a report of a fire that occurred due to fuel leakage from the fuel line coupling in the engine strut area along with the wing front spar while the airplane was on the ground after engine shutdown. The actions specified by the proposed AD are intended to ensure that fuel is contained within the strut drainage area and channeled away from ignition sources.

DATES: Comments must be received by August 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-52-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2689; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-52-AD." The postcard will be date stamped and returned to the commenter. Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-52-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has received a report of a strut fire that occurred due to fuel

leakage from the fuel line (Wiggins) coupling in the engine strut area of a Boeing Model 747 series airplane that was on the ground. Fuel leaked from the fuel line coupling and flowed along the wing front spar. After engine shutdown, fuel dripped from the wing onto the engine exhaust section and ignited. The flame also ignited fuel that was contained in the strut. This condition, if not corrected, could result in a strut fire.

Although airflow when the airplane is in flight or airflow from the engine running when the airplane is on the ground prevents fuel from leaking onto hot engine surfaces, the FAA has determined that a potential unsafe condition exists because a fire can occur after engine shutdown.

The FAA has reviewed and approved Boeing Service Bulletin 747–28–2160, Revision 1, dated December 16, 1993, that describes procedures for installing a seal on the wing front spar at each engine strut. Installation of this seal will contain fuel leaks within the strut drainage area and channel any leakage away from ignition sources.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of a seal on the wing front spar at each engine strut. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 610 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 183 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $57 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $151,341, or $827 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Docket 94–NM–52–AD.

Applicability: Model 747 series airplanes, equipped with General Electric CF6–45 or CF6–50 engines, or Pratt & Whitney JT9D series engines; as listed in Boeing Service Bulletin 747–28–2160, Revision 1, dated December 16, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that fuel is contained within the strut drainage area and channeled away from ignition sources, accomplish the following:

(a) Within 12 months after the effective date of this AD, install a seal on the wing front spar at each engine strut in accordance with Boeing Service Bulletin 747–28–2160 dated July 23, 1992, or Revision 1, dated December 16, 1993.

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

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

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

Issued in Renton, Washington, on June 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–14019 Filed 6–8–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 94–NM–32–AD]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model L–1011–385 series airplanes. This proposal would require various modifications and inspections of the flight controls, doors, and horizontal stabilizers. This proposal is prompted by a recommendation by the Systems Review Task Force (SRTF) for accomplishment of certain modifications and inspections that will enhance the controllability of these airplanes in the unlikely event of flight control malfunction or failure. The actions specified by the proposed AD are intended to ensure airplane survivability in the event of damage to fully powered flight control systems.

DATES: Comments must be received by August 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–32–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field

Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–32–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–32–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

In July 1989, a transport category airplane was involved in an accident in Sioux City, Iowa, resulting in the deaths of 110 passengers and one crewmember. The National Transportation Safety Board (NTSB) identified the catastrophic disintegration of the stage 1 fan disk of one of the engines as a probable cause of the accident. The resulting debris damaged the hydraulic systems that power the flight controls, resulting in the loss of virtually all control capability.

Following the accident, the Administrator of the Federal Aviation Administration convened a Systems Review Task Force (SRTF) to investigate means for enhancing airplane survivability following damage to fully powered flight control systems. The SRTF formed working groups to perform these investigations for specific airplane models to determine what actions could be effective in protecting other transport category airplanes with powered flight control systems from similar engine or systems failures.

The SRTF working group assigned to review Lockheed Model L–1011–385 series airplanes has completed its review of the Model L–1011–385 design, including existing service bulletins, and has issued a report recommending accomplishment of certain modifications and inspections described in a Lockheed L–1011–385 service bulletin. A copy of the report is contained in the Rules Docket for this AD action.

The FAA has reviewed and approved Lockheed Service Bulletin 093–27–301 ["Flight Controls, Modifications and Inspections, Collector Service Bulletin" (CSB)], dated June 9, 1992, which was issued in response to the SRTF report. Accomplishment of the inspections and modifications specified in the CSB will enhance the controllability of the airplane in the unlikely event of flight control malfunction or failure.

The CSB lists 34 individual service bulletins that describe procedures for accomplishment of various modifications and inspections recommended by the SRTF. The FAA has determined that the modifications and inspections described in 8 of the 34 service bulletins identified in the CSB must be accomplished in order to ensure airplane survivability in the event of damage to fully powered flight control systems. All 8 of these service bulletins have been reviewed and approved by the FAA. The remaining 26 service bulletins contained in the CSB address service problems and systems enhancements that are not directly related to increasing in-flight controllability of the airplane.

Six of the eight individual Lockheed service bulletins discussed previously describe procedures for various modifications and inspections involving the flight controls and are identified as follows:

1. Alert Service Bulletin 093–27–A102, dated March 13, 1974, "Flight Controls—Pitch and Roll Disconnects. Inspection of Cable Attachments."
2. Service Bulletin 093–27–178, dated April 30, 1979, "Flight Controls—Horizontal Stabilizer—Pitch Override Bungee Fasteners Torque Verification."
3. Service Bulletin 093–27–200, Revision 2, dated September 28, 1982, "Flight Controls—Aileron and Horizontal Stabilizer Control Systems—Pitch and Roll Disconnect Handle Support Bosses and Disconnect Mechanism Inspection/Modification."
4. Service Bulletin 093–27–279, Revision 1, dated February 1; 1984, "Flight Controls—Stabilizer Servo Cross-Tie Interlock Bungee Inspection/Modification and Bracket Modification."
5. Service Bulletin 093–27–289, dated December 3, 1984, "Control Wheel Roll Interconnect Inspection."
6. Service Bulletin 093–27–292, Revision 3, dated March 28, 1991, "Flight Controls—Horizontal Stabilizer Control System—Modification of Torque Tube Assembly Support Brackets.

One of the eight individual service bulletins describes procedures for modification of the doors and is identified as follows:

7. Service Bulletin 093–52–061, Revision 1, dated November 1, 1974, "Doors—Ram Air Turbine Doors—Modification of Linkage.

The eighth individual service bulletin describes procedures for modification of the horizontal stabilizers and is identified as follows:

8. Service Bulletin 093–55–030, Revision 1, dated March 20, 1991, "Stabilizers—Horizontal Stabilizers—Left and Right Pivot Bearing Assembly—Replacement of Setscrews with Safety Wired Fillister Head Screws.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require various modifications and inspections of the flight controls, doors, and horizontal stabilizers. The actions would be required to be accomplished in accordance with the CSB described previously.

There are approximately 236 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD, that it would take

approximately 87 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts for certain modifications would be supplied by the manufacturer at no cost to operators. Required parts for certain other modifications would be minimal in cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $559,845, or $4,785 per airplane.

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

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as "stand alone" actions. However, the 4-year compliance time specified in paragraph (a) of this proposed AD should allow ample time for the modifications and inspections to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Lockheed Aeronautical Systems Company: Docket 94–NM–32–AD.

Applicability: Model L–1011–385 series airplanes; as listed in Lockheed Service Bulletin 093–27–301 ["Flight Controls—Modifications and Inspections—Collector Service Bulletin" (CSB)], dated June 9, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure airplane survivability in the event of damage to fully powered flight control systems, accomplish the following:

(a) Within 4 years after the effective date of this AD, accomplish modifications and inspections of the flight controls, modification of the doors, and modification of the horizontal stabilizers, in accordance with Lockheed Service Bulletin 093–27–301 ["Flight Controls—Modifications and Inspections—Collector Service Bulletin" (CSB)], dated June 9, 1992 (hereinafter referred to as the CSB). This paragraph requires accomplishment of certain Lockheed service bulletins identified in the CSB, as listed below. Modifications or inspections accomplished previously in accordance with earlier revisions of the service bulletins listed below are acceptable for compliance with this AD.

Service bulletin No.	Revision level	Date of issuance
093–27–A102 (Alert Service Bulletin).	Original ...	March 13, 1974.
093–27–178	Original ...	April 30, 1979.
093–27–200	2	September 28, 1982.
093–27–279	1	February 1, 1984.
093–27–289	Original ...	December 3, 1984.
093–27–292	3	March 28, 1991.
093–52–061	1	November 1, 1974.
093–55–030	1	March 20, 1991.

Note 1: Paragraph (a) of this AD does not require accomplishment of any of the service bulletins listed in the CSB other than those identified above.

Note 2: Accomplishment of the actions described in Lockheed Service Bulletin 093–27–280, dated December 16, 1983, is considered an acceptable means of compliance for accomplishment of the inspection and modification described in Lockheed Service Bulletin 093–27–279, Revision 1, dated February 1, 1984.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

Issued in Renton, Washington, on June 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–14020 Filed 6–8–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 90–94]

Exemption of System of Records Under the Privacy Act

AGENCY: Departmet of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, FBI, proposes to exempt a Privacy Act system of records from subsections 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act. The system of records is the FBI Counterdrug Information Indices System. Information in the system consists of automated indices related to the law enforcement activities and responsibilities of the FBI regarding drug law enforcement. These exemptions are necessary to avoid interference with the law enforcement functions and responsibilities of the FBI. Reasons for the exemptions are set forth in the text below.

DATES: Submit any comments by July 11, 1994.

ADDRESSES: Address all comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division , DOJ, Washington, DC (Room 850, WCTR Bldg.)

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, (202) 616–0178.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the FBI provides a description of the FBI Counterdrug Information Indices System.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subject in Part 16

Administrative Practices and Procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16, as set forth below.

Dated: June 3, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203 (a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.96 by adding paragraphs (*l*) and (m) as set forth below.

§ 16.96 Exemption of Federal Bureau of Investigation (FBI)—limited access.

* * * * *

(l) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g).

(1) FBI Counterdrug Information Indices System (CIIS) (JUSTICE/FBI–016)

(m) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest by not only the FBI, but also by the recipient agency. This would permit the record subject to take appropriate measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses or flee the area to avoid the thrust of the investigation.

(2) From subsection (c)(4) to the extent it is not applicable because an exemption is being claimed from subsection (d).

(3) (i) From subsections (d), (e)(4) (G) and (H) because these provisions concern individual access to records, compliance with which could compromise sensitive information, interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

(ii) In addition, from paragraph (d), because to require the FBI to amend information thought to be incorrect, irrelevant or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(4) From subsection (e)(1) because it is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(ii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed otherwise. It is only after the information is assessed that its relevancy and necessity in a specified investigative activity can be established.

(iii) In any investigation the FBI might obtain information concerning violations of law not under its jurisdiction, but in the interest of effective law enforcement, dissemination will be made to the agency charged with enforcing such law.

(iv) In interviewing individuals or obtaining other forms of evidence during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(5) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual often can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to principally rely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3) because disclosure would provide the subject with information which could impede or compromise the investigation. The individual could seriously interfere with undercover investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(9) From subsection (f) to the extent that this system is exempt from the provisions of subsection (d).

(10) From subsection (g) to the extent that this system of records is exempt from the provisions of subsection (d).

[FR Doc. 94–14014 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for proposed Program Amendment Number 63 (PA 63) to the Ohio permanent regulatory program and AML program (hereinafter referred to as the Ohio programs) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has submitted additional information to expand upon its original submission of PA 63.

DATES: Written comments must be received by 4 p.m., E.D.T., June 24, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Richard J. Seibel, Director, Columbus Field Office, at the address listed below.

Copies of the Ohio programs, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Columbus Field Office.

Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 4480 Refugee Road, suite 201, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio programs. Information on the general background of the Ohio program submissions, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio programs, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

By letter dated March 15, 1993 (Administrative Record No. OH–1845), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed PA 63. In that submission, Ohio proposed to reduce the staff of the Ohio programs by abolishing 28 existing positions. Ohio also proposed to reorganize the remaining staff positions to assume the existing job duties.

PA 63 included seven attachments intended to describe Ohio's proposal for the staffing reduction and reorganization and to provide the rationale for those actions. The amendment contains no proposed revisions to Ohio's coal mining law in the Ohio Revised Code or coal mining rules in the Ohio Administrative Code.

The seven attachments to PA 63 are summarized briefly in the notice of the receipt of the proposed amendment which OSM published in the **Federal Register** (55 FR 18185) on April 8, 1993. The public comment period ended on May 10, 1993. The public hearing scheduled for May 3, 1993, was not held because no one requested an opportunity to testify.

By letter dated June 16, 1993 (Administrative Record No. OH–1890), Ohio submitted additional information concerning the reduction of staffing levels. In addition, Ohio included seven attachments. The first attachment was a chart for the years 1987 through 1992 showing coal production, active mining permits, and new permits issued; the second attachment was a chart showing the acreage of Phase I, Phase II, and Phase III bond releases from 1983 through 1992; the third attachment was a draft policy/procedure directive concerning the role of the inspectors in inspecting forfeited sites and in assisting in plan review and preparation and in completing the paperwork associated with forfeitures; the fourth attachment was the monthly enforcement report; the fifth attachment was a draft policy/procedure directive concerning the participation of Abandoned Mine Lands (AML) staff in small project designs; the sixth attachment was a description of the workload of the inspection and enforcement engineer; and the seventh attachment concerned engineering guidelines. Through an oversight, OSM did not reopen the comment period at that time.

Subsequently, by letter dated November 2, 1993 (Administrative Record No. OH–1948), OSM provided its questions and comments to Ohio on the March 15, 1993, and June 16, 1993, submissions of PA 63. OSM's questions and comments were listed under the following six headings: Streamlining of AML Designs; Engineering—Bond Forfeitures; Engineering—Inspection and Enforcement Issues; Position Descriptions; Bond Forfeiture Program; and SOAP Program.

By letter dated December 6, 1993 (Administrative Record No. OH–1971), Ohio provided its responses to OSM's questions and comments under the six headings listed above. In addition, Ohio included two attachments. One attachment is a letter addressed to OSM dated November 5, 1993. This letter explains organizational responsibilities in Ohio's engineering/geotechnical support group and the AML program.

The other attachment is a log of engineering inspection and enforcement activity.

OSM announced receipt of Ohio's additional Administrative Record information in the January 21, 1994, **Federal Register** (59 FR 3325), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 7, 1994.

In response to OSM's concerns regarding engineering practices and engineering workload, on April 21, 1994 (Administrative Record No. OH–2014), Ohio submitted additional information on both of these items.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Ohio program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted.

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–14055 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FR–4895–1]

Open Meeting on the Definition of Solid Waste and Hazardous Waste Recycling

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is conducting a public meeting on revising the regulatory definition of solid waste under the Resource Conservation and Recovery Act (RCRA). The revisions are intended to simplify the regulations and to eliminate disincentives to recycling while maintaining full protection of human health and the environment. They are also intended to reduce any possible current underregulation of hazardous waste recycling.

DATES: The meeting will take place on June 23, 1994 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will take place at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008. Telephone: (202) 234–0700.

FOR FURTHER INFORMATION CONTACT: For additional information on the meeting, please contact Sharon Brent of EPA's Office of Solid Waste at (202) 260–4627.

SUPPLEMENTARY INFORMATION: The Agency has selected fifteen individuals to provide technical and policy expertise at the meeting. These individuals will provide their opinions about the issues of hazardous waste recycling and how the federal solid waste rules affect such recycling. The individuals are:

Dorothy Kelly (Ciba-Geigy Corp.)
John Fognani (Gibson, Dunn, and Crutcher)
Harvey Alter (Chamber of Commerce)
Jeff Reamy (Phillips Petroleum Co.)
Jon Jewett (Solite Corp.)
Robert Westcott (Wesco Parts Cleaners)
Richard Fortuna (Hazardous Waste Treatment Council)
John Wittenborn (Collier, Rill, Shannon, and Scott)
William Collinson (General Motors Corp.)
Gerald Dumas (RSR Corp.)
Kevin Igli (Waste Management Inc.)
Karen Florini (Consultant)
David Lennett (Consultant)
Roy Brower (State of Oregon)
Pat Matuseski (State of Minnesota)

EPA participants in the discussions will be James Berlow, Director of the Definition of Solid Waste Task Force, and Andy Bellina, EPA Region II. In addition, any interested member of the public may attend the meeting.

Dated: June 6, 1994.

Deborah Dalton,

Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 94–14077 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Part 63

[AD–FRL–4892–6]

RIN 2060–AE04

National Emission Standards for Hazardous Air Pollutants (NESHAP) (Secondary Lead Smelters)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule; notice of public hearing.

SUMMARY: This action proposes standards that would limit emissions of hazardous air pollutants (HAP's) from new and existing secondary lead smelters. The proposed standards partially implement section 112(d) of the Clean Air Act (the Act) as amended in November 1990, which requires the Administrator to regulate categories of major and area sources of HAP's listed in section 112(b) of the Act. The intent of the standards is to reduce HAP emissions from secondary lead smelters to the maximum degree achievable through the application of maximum achievable control technology (MACT). The EPA is also proposing to add secondary lead smelters that are area sources to the list of source categories that will be subject to MACT standards.

DATES: *Comments.* Comments must be received on or before August 8, 1994.

Public Hearing. If a request to speak at a public hearing is received, the hearing will be held on July 11, 1994, beginning at 10 a.m. Requests to speak at a public hearing must be received by the EPA by June 30, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if

possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–92–43, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is requested, it will be held at the EPA Office of Administration auditorium in Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Mary Hinson, Industrial Studies Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5601.

Background Information Document. The Background Information Document (BID) for the proposed standard may be obtained from the docket or from the US EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Secondary Lead Smelting—Background Information Document for Proposed Emissions Standards," EPA No. EPA–450/R–94–024.

Docket. Docket No. A–92–43 contains supporting information used in developing the proposed standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 12 p.m. and 1 to 3 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rule making are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards and technical aspects of secondary lead smelting emissions and control, contact Mr. George Streit at (919) 541–2364, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information concerning the area source listing of secondary lead smelters, contact Ms. Dianne Byrne at (919) 541–5342, Pollutant Assessment Branch, Emission Standards Division (MD–13) at the above address.

SUPPLEMENTARY INFORMATION: The regulatory text of the proposed rule is not included in this **Federal Register** notice, but is available in Docket No. A–92–43 or by request from the Air Docket (see **ADDRESSES**). If necessary, a limited number of copies is available from the EPA contact persons designated earlier in this notice. This Notice with the proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

The information presented in this preamble is organized as follows:

I. Initial List of Categories of Major and Area Sources

Section 112 of the Act requires that the EPA promulgate regulations requiring the control of HAP emissions from major and area sources. The control of HAP's is achieved through promulgation of emission standards under sections 112(d) and (f) and work practice standards under section 112(h) for categories of sources that emit HAP's.

An initial list of categories of major and area sources of HAP's selected for regulation in accordance with section 112(c) of the Act was published in the **Federal Register** on July 16, 1992 (57 FR 31576). Secondary lead smelters is one of the 174 categories of sources listed. The category consists of smelters that recycle lead-bearing scrap materials, primarily lead-acid batteries, into lead metal. The listing was based on the Administrator's determination that secondary lead smelters may reasonably be anticipated to emit several of the 189 listed HAP's in quantities sufficient to designate them as major sources. Information subsequently collected by the EPA as part of this rulemaking confirms that two-thirds of operating secondary lead smelters have the potential to emit greater than 9.1 megagrams per year (Mg/yr) [10 tons per year (tpy)] of a single HAP or greater than 22.7 Mg/yr (25 tpy) of a combination of HAP's and, therefore, are major sources.

Section 112(c)(3) directs the Administrator to list each category of area sources that the Administrator finds presents a threat of adverse effects to human health or the environment warranting regulation. The EPA performed an assessment of the remaining one-third of the secondary lead smelters not qualifying as major sources to determine whether the listing of these area sources for regulation under section 112(c)(3) was justified. Based on a detailed assessment of emissions, population exposure, and known and suspected health effects, the Administrator proposes finding that the

threat of adverse effects to human health from area sources in the secondary lead smelter category is sufficient to support regulation. Smelters designated as area sources would, under the proposed regulation, be subject to the same standards as smelters qualifying as major sources. The rationale for this area source listing is presented in more detail in section II D of this preamble.

The secondary lead smelters category was originally in the group of categories for which final regulations are scheduled for promulgation by November 15, 1994. Final regulations are now scheduled for promulgation by May 31, 1995 (58 FR 63952–63953) in accordance with a consent decree entered in *Sierra Club* v. *Browner*, Case Number 93–0124 (and related cases) (D.D.C. 1993).

II. Background

A. Regulatory History

The EPA promulgated new source performance standards (NSPS) for secondary lead smelters on March 8, 1974 (40 CFR part 60, subpart L). The NSPS limit emissions of particulate matter (PM) from blast and reverberatory furnaces (including rotary furnaces) to a concentration of 50 milligrams per dry standard cubic meter (mg/dscm) [0.022 grains per dry standard cubic foot (gr/dscf)] and emissions from refining kettles (pot furnaces) to 10 percent opacity. Secondary lead smelters are also subject to state regulations enacted to prevent violations of the National Ambient Air Quality Standards (NAAQS) for lead. In addition, about one-half of smelters are subject to permit conditions developed under the Prevention of Significant Deterioration provisions of the Act.

Secondary lead smelters must also obtain hazardous waste storage permits pursuant to the Resource Conservation and Recovery Act (RCRA) to store spent lead-acid batteries before smelting them (40 CFR 266.80(b)). Air emissions from smelting activities, however, are not presently regulated under the hazardous waste rules (40 CFR 266.100(c)).

On July 16, 1992, the EPA published an initial list of categories of major and area sources selected for regulation in accordance with section 112(c) of the Act (57 FR 31476). Secondary lead smelters were among the listed categories. On December 3, 1993, the EPA published a schedule for the promulgation of standards for the sources selected for regulation under section 112(c). According to this schedule, regulations for secondary lead smelters must be promulgated no later than May 31, 1995 (58 FR 63941). Today, the EPA is issuing a notice of proposed rulemaking for secondary lead smelters and is soliciting comments on the proposed rule.

Air emissions from secondary lead smelters may also potentially be subject to regulation under the rules implementing RCRA. This is because the principal feed material to these devices, scrap lead-acid batteries, is a spent material being reclaimed, and hence is defined as a solid and (by virtue of the lead content) hazardous waste (40 CFR 261.2 (a)(2)(i), (c)(3), and *Ilco* v. *EPA*, 996 F. 2d 1126 (11th Cir. 1993)). In 1991, the EPA decided to defer RCRA standards for the air emissions from these devices, in large part because the forthcoming Clean Air Act MACT standards might make further RCRA controls unnecessary (56 FR 7142 (Feb. 21, 1991)) (40 CFR 266.100(c)). In proposing this rule, EPA believes that this rule also satisfies the goals and objectives of RCRA so that any further RCRA regulation of air emissions would be unnecessary. The EPA is specifically soliciting comments on this decision.

B. Description of Source Category

Secondary lead smelters are recycling facilities that use blast, rotary, reverberatory, and/or electric furnaces to recover lead metal from lead-bearing scrap materials, primarily lead-acid batteries. The secondary lead smelters source category does not include remelters and refiners or primary lead smelters.

There are 23 secondary lead smelters in the United States, although only 16 of them were operating as of December 1993. Smelters often close temporarily when the price of lead is low. A current trend in the industry is toward fewer but larger smelters, although overall industry capacity has been relatively constant.

Lead-acid batteries represent about 90 percent of the lead-bearing raw materials at a typical secondary lead smelter. The majority of these batteries are automotive-type batteries and the remainder are industrial and uninterruptible power supply batteries. The other 10 percent of lead-bearing materials are battery plant scrap, defective batteries, drosses from refining operations, and other scrap such as lead pipes and roof flashing.

About 98 percent of all lead-acid batteries are recycled at secondary lead smelters. The remaining 2 percent are either stored indefinitely in residential basements and garages, disposed of as municipal solid waste, or dumped illegally. Secondary lead smelters, however, represent the only acceptable disposal option for used batteries, and these smelters also recover or treat the plastic case material and sulfuric acid from automotive-type batteries.

The secondary lead smelting process consists of: (1) Breaking lead-acid batteries and separating the lead-bearing materials from the other materials, including the plastic case material and acid electrolyte, (2) melting lead metal and reducing lead compounds to lead metal in the smelting furnace, and (3) refining and alloying the lead to customer specifications.

Battery breaking is accomplished using hammermills to crush whole batteries. Saws are used at some blast furnace smelters to cut open batteries so that the lead grids from inside the battery can be removed intact as whole units. The empty cases are then sent to a hammermill for crushing. Following battery breaking, a sink/float separator is used to separate the lead-bearing materials from the polypropylene plastic from the battery cases, which is sold for recycling.

The lead-bearing components are then sent directly to a materials storage and handling area or are chemically treated to remove the sulfur in the lead paste attached to the battery grids. The desulfurization step is performed to reduce sulfur emissions from the smelting furnace and to improve furnace efficiency.

Lead-bearing materials are typically stored in bins or enclosures before being charged to the smelting furnaces. If the storage area is not totally enclosed, the storage piles and the roadways between them are usually kept wet to prevent the formation of dust that may cause fugitive emissions. Materials are handled within the smelter by front-end loaders, enclosed screw conveyors, and belt- or pan-type conveyors.

Broken battery components are charged to the smelting furnaces along with lead-bearing slag, dross, flue dust recycled from the air pollution control devices, fluxing agents (including iron, silica sand, and limestone or soda ash), and coke. Fluxing agents are added to blast and rotary furnaces to promote the conversion of lead compounds to lead metal. Coke is added to blast furnaces as a fuel and to rotary and reverberatory furnaces as a fluxing agent. A dryer may be used prior to charging a reverberatory furnace to remove moisture from the charge materials. A dryer is typically a large, rotating chamber heated to about 200 °C (400 °F) by a gas-fired burner. The exhaust from the dryer is drawn directly into the reverberatory furnace.

Smelting is performed in reverberatory, blast, rotary, or electric smelting furnaces. Reverberatory and

blast furnaces are the most common types of smelting furnaces. Reverberatory furnaces are always operated in conjunction with a blast furnace or an electric furnace. Blast and rotary furnaces may be operated independently of other furnace types. All smelting furnaces operate at a temperature of about 980 to 1,200 °C (1,800 to 2,200 °F).

Blast furnaces are vertical shaft furnaces that use coke as a fuel source. The combustion zone of the furnace is at the bottom of the vertical shaft, where combustion air is injected through tuyeres. The combustion gases then pass through a thick column of charge material before being vented to a control device. Exhaust temperatures are relatively cool, typically about 420 to 480 °C (800 to 900 °F).

Rotary furnaces consist of a rotating, refractory-lined cylinder and are fired in the same way as reverberatory furnaces. Unlike other smelting furnaces, which are operated on a continuous basis, rotary furnaces are operated on a batch cycle consisting of charging, smelting, and tapping of lead and slag.

Blast and rotary furnaces produce hard and semi-soft lead, respectively, by adding soda ash (Na_2CO_3) or limestone ($CaCO_3$) to the charge materials as fluxing agents. These fluxing agents promote the reaction of lead sulfate ($PbSO_4$) and carbon (from coke) to reduce the $PbSO_4$ to elemental lead. The fluxing agents, however, also promote the reduction of oxides of alloying metals to their elemental forms. These metals are tapped from the furnace with the lead in the form of a hard or semi-soft lead alloy.

Reverberatory furnaces are rectangular, refractory-lined furnaces that use natural gas- or propane-fired jets to heat the walls and roof of the furnace and the charge materials. Reverberatory furnaces are used to produce soft (nearly pure) or semi-soft lead by reducing lead compounds to metallic form, but at the same time oxidizing the alloying elements so that they are removed in the slag. Therefore, soda ash and limestone fluxing agents are added to reverberatory furnaces in much smaller quantities than to blast or rotary furnaces.

Reverberatory furnace slag has a much higher lead content than blast or rotary furnace slag because of the lower reducing conditions of the furnace. This slag must be processed in a blast or electric furnace to recover the remaining lead fraction. For this reason, reverberatory furnaces are always operated in conjunction with a blast or electric furnace.

There is only one electric furnace in use in the U. S. secondary lead industry. It is collocated with a reverberatory furnace at one of three smelters owned by the same company. The electric furnace is only used to process reverberatory furnace slag from the furnace with which it is collocated and slag shipped in from the company's other two smelters. The charge materials in the furnace are heated by passing an electric current through them. The electric furnace produces a hard lead similar to that from a blast furnace.

Blast, rotary, and electric furnaces produce a final slag that cannot be recycled and that must be disposed of as a solid waste. This slag, however, may qualify as a hazardous waste and must be disposed of in an approved landfill.

The lead tapped from smelting furnaces is refined and alloyed in open-top refining kettles that are heated from underneath by a gas-fired burner. Impurities are removed from the molten lead as drosses that float on the surface of the lead. Drosses often have a high lead content and are therefore recycled to the smelting furnace. After refining, lead is pumped from the refining kettle into a machine for casting into ingots. These ingots are stored at the smelter before being shipped to a customer or transferred to a collocated battery manufacturing facility.

Flue dust collected from baghouses at secondary lead smelters is recycled to the smelting furnaces for recovery of the lead content. At smelters that operate blast furnaces, an agglomerating furnace is used to heat and melt the flue dust so that it can be cast into molds before being recycled to the furnace. This is done to facilitate handling of the dust and to prevent the dust from clogging the blast furnace charge column.

C. Emissions and Factors Affecting Emissions

Hazardous air pollutants are emitted from secondary lead smelters as: (1) Process emissions contained in the primary exhaust of smelting furnaces, (2) process fugitive emissions associated with charging and tapping of smelting furnaces and lead refining kettles, and (3) fugitive dust emissions from wind or mechanically induced entrainment of dust from stockpiles and plant yards and roadways.

1. Process Emissions

Smelting furnaces are sources of all three classes of HAP's: metal, organic, and acid gas [chlorine (Cl_2) and hydrochloric acid (Hcl)]. The mix and relative quantities of potential emissions are highly dependent on furnace type and use. Metal HAP emissions from process sources are produced through the volatilization of the metals contained in the feed materials by the elevated smelting temperatures or by the entrainment of metal-containing PM in the furnace exhaust. All smelting furnace types emit substantial quantities of metal compounds, ranging from 40 to 100 Mg/yr (uncontrolled). About 70 percent of metal HAP emissions are lead compounds, with lesser amounts of antimony, arsenic, and other metal compounds. Controlled emissions, however, are typically less than 1 Mg/yr.

Organic HAP emissions from smelting furnaces result from incomplete combustion of organic-containing materials (coke, plastic separators, and hard rubber battery case material) in the furnace charge, as well as coke and other fuels used for combustion. The emissions potential for organic HAP's is highly variable. Blast furnaces typically emit larger amounts of organic HAP's than other furnace types. A typical uncontrolled blast furnace can emit over 100 Mg/yr of a mixture of about 30 organic HAP's. The most predominant HAP's are benzene, carbon disulfide, 1-3-butadiene, methyl chloride, and styrene. Also found in blast furnace emissions are trace amounts of dioxins/furans. Emissions of 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD), which is a HAP, are about 0.07 grams per year from a typical blast furnace. Emissions of total dioxins/furans, expressed as 2,3,7,8-TCDD toxic equivalents are about 0.3 grams per year.

Reverberatory and rotary furnaces have comparatively low organic HAP emissions. Uncontrolled emissions from a typical furnace are less than 4 Mg/yr of a mixture of about 25 or 30 organic HAP's. The most predominant are benzene, 1-3-butadiene, formaldehyde, and styrene. Reverberatory and rotary furnaces are operated at much higher flue gas temperatures [about 980 to 1,200 °C (1,800 to 2,200 °F)] and turbulence and achieve more complete combustion than blast furnaces. As a result, reverberatory and rotary furnaces tend to have much lower organic HAP emissions. Emissions of dioxins/furans from these furnaces are near or below detection limits.

The one electric furnace now in operation processes only slag (which contains little, if any, organic material) and uses no coke or other fossil fuel. Therefore, organic HAP emissions are presumed to be very low. This presumption is confirmed by CO emissions of only 1.1 kilograms per hour (kg/hr) [2.5 pounds per hour (lb/

hr)] and a CO concentration of 26 parts per million by volume (ppmv), according to the results of a test conducted by the smelter operator (Docket A–92–43, Item No. II–B–8).

For reverberatory/blast furnace configurations, a substantially lower level of organic HAP emissions is possible than for blast furnaces alone. Commingling (blending) the blast furnace exhaust (temperature about 500 °C) and the much hotter reverberatory furnace exhaust (about 1,000 °C) contributes significantly to the destruction of the organic HAP compounds in the blast furnace exhaust. Organic HAP emissions from such a commingled configuration are also about 4 Mg/yr.

All smelting furnaces that process broken batteries are potential sources of Hcl and Cl_2 emissions. Many used lead-acid batteries contain polyvinyl chloride (PVC) plastic separators between the battery grids, although the use of PVC plastic as a separator material has been discontinued by most battery manufacturers. These separators are typically not removed from the lead-bearing parts of the battery during the battery breaking and separation process. When the PVC plastic is burned in the smelting furnace, the chlorides are released as HCl, Cl_2, and chlorinated hydrocarbons.

In blast furnaces and rotary furnaces, soda ash or limestone are used as fluxing agents to increase the reduction of lead compounds to elemental lead. These fluxing agents also combine with the chlorine in the charge materials to form sodium chloride (NaCl) and calcium chloride ($CaCl_2$) salts, which are removed with the slag. As a result, these furnaces have low HCl and Cl_2 emissions, typically less than 1 Mg/yr total.

In reverberatory furnaces, however, much less fluxing agent is added to the charge material than in blast or rotary furnaces in order to produce a soft lead product. Less of the chlorine is removed in the slag and, therefore, reverberatory furnaces have higher HCl and Cl_2 emissions than blast or rotary furnaces, about 100 Mg/yr of HCl and 4 Mg/yr of Cl_2.

The one electric furnace in use is not a source of HCl or Cl_2 emissions because it processes only slag from a reverberatory furnace to which fluxing agents are added. Any chlorine present in the slag should be in the form of $CaCl_2$ or NaCl and cannot be emitted as HCl or Cl_2.

2. Process Fugitive Emissions

Process fugitive emissions result from furnace charging, lead and slag tapping, lead refining and casting, dust agglomerating, and battery breaking. Process fugitive emissions contain metal HAP's and, in some cases, organic HAP's. Total uncontrolled metal HAP emissions from all process fugitive sources at a typical smelter range from 10 to 80 Mg/yr, depending on smelter capacity. Metal HAP emissions are independent of furnace configuration. Controlled metal HAP process fugitive emissions are typically less than 1 Mg/yr.

Depending on charging method, hood design, and ventilation rate, organic HAP's may be found in the process fugitive emission stream from blast furnace charging. An improper balance between the ventilation rate of the hood over the furnace charging chute and the primary exhaust gas off-take can result in process emissions being drawn into the process fugitive control system. The escaping organic HAP emissions may be as high as 50 Mg/yr, based on measurements made at one facility at which this problem was detected. Organic HAP emissions from a properly balanced system should be less than 0.5 Mg/yr.

3. Fugitive Dust Emissions

Fugitive dust emissions result from the entrainment of dust due to material handling, vehicle traffic, and wind erosion from storage piles. Fugitive dust emissions contain only metal HAP's. The quantity of fugitive dust emissions is dependent on the size of the facility and the fugitive dust controls and practices in place. These emissions cannot be measured and can only be roughly estimated using emission factors and facility-specific data. Estimates of fugitive dust emissions from all smelters range from 1 to 19 Mg/yr.

D. Adverse Health Effects Finding for Area Sources

As stated previously, the EPA today is proposing to add secondary lead smelters that are area sources to the list of source categories that will be subject to emission standards. In order to list categories of area sources, the EPA must find a threat of adverse health or environmental effects warranting regulation under section 112.

Section 112(a) contains no accompanying definition of adverse health effect. The area source provisions of section 112(k) directing regulation of area sources in urban areas, however, are closely linked to section 112(c) and state that health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction, and other acute and chronic effects [section 112(k)(2)]. The term "adverse environmental effect" is defined in section 112(a) as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

In the finding for secondary lead area sources, quantitative assessments of risk are an important consideration in assessing significant threats of adverse health effects. Quantitative risk assessment, in this context, means the estimation of a mathematical probability of an individual or population being subject to some adverse health effect, such as cancer. The EPA has historically developed assessments of potential cancer risks, both to maximally exposed individuals and populations, as part of its regulatory actions under the previous version of section 112. Population risks are expressed in terms of the total number of cancer cases (i.e., cancer incidence) that could be expected to occur in a given time within a prescribed area, considering the exposure of the population within the area to modeled ambient concentrations of toxic air pollutants. In this finding, nationwide cancer incidence is expressed in cases per year. In contrast, a maximum individual "lifetime" risk is expressed as the risk of contracting cancer associated with the highest individual's exposure to the modeled, maximum, long-term concentration of the listed HAP's for an assumed life-span of 70 years. Typically, both these cancer risk estimates are based on upper-bound estimates of cancer potency and exposure. The EPA also considers, where possible, the probability of non-cancer effects.

The finding proposed in today's notice is based only on health effects from inhalation exposures. The EPA did not consider other adverse environmental effects. Future findings for other source categories may be based on environmental effects as well as human health effects as the appropriate information becomes available.

Section 112(c) does not offer a "bright line" test for the EPA to use in making an area source finding. Instead, considering the language cited above, the EPA believes it has discretion to consider a range of health effect endpoints and exposure criteria in making a finding of a threat of adverse effects. In the finding, the EPA considers factors such as the number of

sources in a category, the quantity of emissions, the toxicity of the HAP's, the potential for individual and population exposures and risks, the geographical distribution of the sources, and the reasonableness of control measures. Thus, both qualitative and quantitative factors are considered in making a finding.

The EPA recognizes uncertainties in current estimates of risk based on modeled concentrations and the use of several upper-bound risk assumptions. The EPA acknowledges that current cancer risk estimates do not reflect the true risk, but often represent a conservative risk level that may be an upper bound that is unlikely to be exceeded. The EPA intends to improve its risk estimation procedures in accordance with internal guidance and through the risk assessment studies required under sections 112(f), 112(o), and 303 of title III of the Act.

Today's finding is based on six smelters that the EPA believes fit the definition of an area source plus one other that is borderline between major and area. The smelters are located in six states and approximately 17.6 million people reside within 50 kilometers (about 30 miles) of the seven facilities. These people are considered by the EPA to be exposed to HAP emissions from the smelters.

Secondary lead smelters emit a large number of pollutants. Of these, EPA has performed scientific assessments that provide estimates of the associated health risks of fourteen. Ten of the compounds have unit risk estimates (URE or cancer potency estimates), three (ethylbenzene, n-hexane, and toluene) have inhalation reference concentrations (RfC), and one has a NAAQS (lead). In this finding, elemental lead is being used as a surrogate for all lead compounds. The reason for this is discussed below.

The health effects caused by increased blood lead levels are the same, regardless of the lead compounds causing the exposure. However, there are considerable differences in the bioavailability between lead compounds. Unfortunately, there is little available literature on this subject (Docket No. A–92–43, Item Nos. II–I–18 and II–I–29). The literature that is available, however, does indicate that lead oxide, which accounts for a substantial portion of the lead compounds emitted from secondary lead smelters, is bioavailable. This indicates that using lead as a surrogate for estimating health effects from the lead compounds from this source category should be appropriate.

Lead is also a B2 carcinogen. However, a cancer risk factor has not been developed for lead, so cancer rates associated with its exposure can not be estimated.

Four of the ten potential carcinogens with quantitative assessments are known human carcinogens and have URE's based on epidemiological data. These are arsenic, benzene, and some chromium and nickel compounds. The other potentially carcinogenic compounds have URE's based on animal studies and are classified as either probable or possible human carcinogens. These include acetaldehyde, 1,3-butadiene, cadmium, formaldehyde, naphthalene, and 2,3,7,8-TCDD.

A URE is HAP-specific and equals the risk of cancer per unit of lifetime pollutant exposure. It represents the probability of developing cancer in a hypothetical individual, continuously exposed throughout his/her life to 1 microgram per cubic meter ($\mu g/m^3$) of the potential carcinogen in the air. An RfC is also HAP-specific and is an estimate of the daily exposure to the human population, including sensitive subpopulations, that is likely to be without deleterious effects during a lifetime. The uncertainty of the estimate can span an order of magnitude or more.

The estimated annual cancer incidence for the seven sources modeled is low, approximately 0.1 incidence of cancer per year. However, the EPA estimates that the upper-bound maximum individual lifetime cancer risk associated with any one of the smelters ranges from 4 in 10,000 to 1 in 1,000. Furthermore, about 500 persons living in proximity to these smelters are estimated to be subject to lifetime individual risks possibly in excess of 1 in 10,000; over 40,000 are possibly subject to lifetime individual risks above 1 in 100,000; and about 560,000 are possibly subject to individual lifetime risks above 1 in 1 million. The risks calculated are due to a mixture of pollutants, with arsenic and 1,3-butadiene posing the highest risks.

In addition to cancer risk, the EPA has examined the public health risks associated with elevated blood lead levels. Little controversy exists that high blood lead levels are associated with adverse health effects, but there is also substantial concern regarding health effects associated with lower blood lead levels as well: (1) Alterations in the heme synthetic pathway may affect multiple organ system and physiological functions, (2) children's IQ's may be lowered, (3) impaired auditory function in children may affect language acquisition and learning, and (4) animal experiments and human data have shown that lead accumulates and is retained in the brain and other soft tissues and can be remobilized from bone stores, resulting in a continuing risk of lead toxicity even if exposure to lead is stopped.

Children may be particularly at risk as atmospheric lead deposits on soils, crops, and street and playground surfaces. Soil lead, which serves as a continuous source of outdoor and indoor (household) dusts as well as a direct exposure route for young children, is relatively insoluble and immobile and can continue to accumulate indefinitely.

Approximately 250 people are expected to be exposed to lead concentrations that are above the current lead NAAQS of 1.5 $\mu g/m^3$, calendar quarter average. Because the level of the lead NAAQS has not been revised since it was established in 1978, the EPA also determined potential exposure levels below the NAAQS. At 1.0 $\mu g/m^3$, the number of people potentially exposed is about 300, rising to 1500 at 0.5 $\mu g/m^3$.

As stated above, the EPA did not evaluate environmental risks or health risks associated with non-inhalation exposures because of a lack of site-specific data and, in some cases, effects data. There is some potential for increased risks due to exposure from metal compounds and dioxins through routes of exposure such as ingestion of contaminated soil, ingestion of food and water, and dermal contact. In addition, the health effects from non-inhalation routes of exposure are not well known for many air pollutants, and data on environmental effects are even more scarce.

The EPA is proposing to regulate secondary lead smelters as area sources, subject to consideration of public comment, because emissions associated with these sources may present a threat of adverse health effects. The upper-bound, maximum lifetime individual risks resulting from exposure to arsenic and 1,3-butadiene are of particular concern. The EPA, therefore, requests comments on the proposal to regulate these sources as area sources and the appropriate criteria to be used in making these decisions. In particular, the EPA requests comment on whether the number of sources, the quantity of emissions, the toxicity of the HAP's, the potential for individual and population exposures and risks, the geographical distribution of the sources, and the reasonableness of control measures justify a decision to regulate area sources within this category.

The EPA notes that the exposures, the cancer incidence, and the maximum individual risk associated with these area sources are all below levels that have prompted the Administrator to designate other categories of area sources for regulation. However, the relatively low costs associated with regulation and the small number of area sources in this category appear to warrant such regulation. The EPA requests comment on whether regulation of these areas sources is warranted.

III. NESHAP Decision Process

A. Source of Authority for NESHAP Development

Section 112 specifically directs the EPA to develop a list of all categories of all major and such area sources as appropriate emitting one or more of the 189 HAP's listed in section 112(b) (section 112(c)). Section 112 of the Act replaces the previous system of pollutant-by-pollutant health-based regulation that proved ineffective at controlling the high volumes and concentrations of HAP's in air emissions. The provision directs that this deficiency be redressed by imposing technology-based controls on sources emitting HAP's, and that these technology-based standards may later be reduced further to address residual risk that may remain even after imposition of technology-based controls. A major source is any source that emits or has the potential to emit 10 tons of any one HAP or 25 tons of any combination of HAP's. The EPA published an initial list of source categories on July 16, 1992 (57 FR 31,586), and may amend the list at any time. (The EPA is proposing to add secondary lead smelters to the list of area sources as part of this rulemaking, for example.)

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112, as amended. The statute requires the standard to reflect the maximum degree of reduction of HAP emissions that is achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements.

Emission reductions may be accomplished through application of measures, processes, methods, systems, or techniques, including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications, (2) enclosing systems or processes to eliminate emissions, (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point, (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or (5) a combination of the above (section 112(d)(2)).

To develop a NESHAP, the EPA collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emissions tests at well-controlled facilities, and information on the costs and other energy and environmental impacts of emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, for example, physically measuring emissions from a source may be impossible, or at least impractical, because of technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or a combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

If sources in the source category are major sources, then a MACT standard is required for those major sources. The regulation of the area sources in a source category is discretionary. If there is a finding of a threat of adverse effects on human health or the environment, then the source category can be added to the list of area sources to be regulated. Based on the area source finding described in section II.D of this preamble, the EPA proposes to regulate secondary lead smelters as area sources.

C. Determining the MACT Floor

After the EPA has identified the specific source categories or subcategories of major sources to regulate under section 112, it must set MACT standards for each category or subcategory. Section 112 limits the EPA's discretion by establishing a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source, as determined by the Administrator (section 112(d)(3)).

The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources) for categories and subcategories with 30 or more sources, or the best-performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)). There are fewer than 30 secondary lead smelters, so the standards for existing sources will be based on the best-performing five sources.

In developing the proposal, the EPA has interpreted the term "average" to be equivalent to "median" and the MACT floor has been selected to represent the median of the five best-controlled sources. The median of the five best-controlled sources was selected as the MACT floor on the basis of control technology because insufficient emissions data were available for determining an average emission limitation. An emission source testing program was then conducted in order to determine an appropriate limitation based on the MACT floor technology.

After the floor has been determined for a new or existing source in a source category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory.

Section 112(d)(2) specifies that the EPA shall establish standards that require the maximum degree of reduction in emissions of hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable * * *

In establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (section 112(d)(1)). For example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emissions standard for each class, provided both standards are at least as stringent as the MACT floor for that class of sources.

In addition, the Act provides the Administrator further flexibility to regulate area sources. Area sources can be regulated by MACT. However, section 112(d)(5) allows the Administrator to promulgate standards for area sources that provide for the use

of "generally available control technologies (GACT) or management practices." Area source standards promulgated under this authority (GACT standards) would not be subject to the MACT floors described above. Moreover, for source categories subject to standards promulgated under section 112(d)(5), the EPA is not required to conduct a residual risk analysis under section 112(f).

At the end of the data gathering and analysis, the EPA must decide whether it is more appropriate to follow the MACT or the GACT approach for regulating an area source category. (As stated previously, MACT is required for major sources.) If all or some portion of the sources emit less than 9.1 Mg/yr (10 tpy) of any one HAP or less than 22.7 Mg/yr (25 tpy) of total HAP's, then it may be appropriate to define subcategories within the source category and apply a combination MACT/GACT approach: MACT for major sources and GACT for area sources in a source category. In the case of this proposed rulemaking for secondary lead smelters, the EPA has decided to regulate both major and area sources by applying MACT. The EPA knows of no technological or economic reasons why secondary lead smelters that are area sources cannot achieve the same level of control as those that are major sources.

The next step in establishing MACT standards is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be selected. Information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to select the regulatory alternative that best reflects the appropriate MACT level.

The selected alternative may be more stringent than the MACT floor, but the control level selected must be technically achievable. In selecting a regulatory alternative that represents MACT, the EPA considers the achievable emission reductions of HAP's (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emissions reduction without unreasonable economic or other impacts (section 112(d)(2)). The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate regulatory decisions may be made for new and existing sources.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT decision typically includes sections on applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation during the public comment period. Based on an evaluation of these comments, the EPA reaches a final decision and promulgates the standard.

IV. Summary of the Proposed Standards

A. Sources To Be Regulated

Standards are being proposed to limit HAP emissions from: (1) Process sources, (2) process fugitive sources, and (3) fugitive dust sources at secondary lead smelters.

Process source emissions are discharged as the main exhaust of a smelting furnace through a chimney, flue, or ductwork. For the purpose of establishing numerical limits for process source emissions, smelting furnaces have been grouped into the following source types: (1) Collocated reverberatory and blast furnaces (reverberatory/blast), (2) reverberatory or rotary furnaces not collocated with a blast furnace, (3) blast furnaces not collocated with a reverberatory furnace, and (4) electric furnaces.

Process fugitive emission sources that would be regulated are smelting furnace charging, smelting furnace lead and slag tapping, flue dust agglomerating furnace operation, and refining kettles.

Fugitive dust emission sources that would be regulated are plant yards and roadways subject to wind and vehicle traffic, materials handling and storage areas, battery breaking areas, and smelting and refining areas.

B. Proposed Emission Limits for Process Sources

Emission limits are being proposed for lead compounds, total hydrocarbons (THC), and HCl and Cl_2 emissions and opacity from reverberatory, blast, reverberatory/blast furnace combination, rotary, and electric furnaces. Limits are being proposed for lead compounds and THC as surrogates for metal HAP's and organic HAP's, respectively.

Lead compound emissions from all smelting furnace configurations (both new and existing) would be limited to a concentration of 2.0 mg/dscm (0.00087 gr/dscf). Total hydrocarbon emissions from both new and existing reverberatory/blast furnace configurations would be limited to 20 ppmv [expressed as propane at 4 percent carbon dioxide (CO_2) to correct for dilution]. Total hydrocarbon emissions from existing blast furnaces would be limited to 360 ppmv (as propane) at 4 percent CO_2. Total hydrocarbon emissions from new blast furnaces would be limited to 70 ppmv (as propane) at 4 percent CO_2. There is no proposed standard for THC emissions from reverberatory, rotary, or electric furnaces.

Total HCl and Cl_2 emissions from both new and existing reverberatory/blast, blast, reverberatory, and rotary smelting furnace configurations would be limited to 15 mg/dscm (0.0065 gr/dscf) at 4 percent CO_2 to correct for dilution. There is no proposed standard for HCl or Cl_2 emissions from new and existing electric smelting furnaces.

The proposed numerical emission limits for process sources are summarized in table 1.

TABLE 1.—SUMMARY OF PROPOSED STANDARDS FOR PROCESS SOURCES

Furnace configuration	Lead compounds (mg/dscm)	THC[a,b] (ppmv)	Total HCl and Cl_2[a] (mg/dscm)
Reverberatory/blast	2	20	15
Blast:			
Existing	2	360	15
New	2	70	15
Reverberatory and rotary	2	None	15
Electric	2	None	None

[a] THC and HCl/Cl_2 emissions limits are at 4 percent CO_2 to correct for dilution.

[b] Concentrations (ppmv) for THC are as propane.

C. Proposed Standards for Process Fugitive Sources

The proposed standards for process fugitive sources are in the form of equipment and operating standards. The standards apply to both new and existing sources. All secondary lead smelters would be required to control process fugitive emission sources with capture hoods equivalent in design and performance to those specified in the Occupational Safety and Health Administration's "Cooperative Assessment Program Manual for the Secondary Lead Industry" (Docket No. A–92–43, Item No. II–I–16).

The standards would require the following process fugitive sources to be partially enclosed with a hood and ventilated: smelting furnace and dryer charging hoppers and chutes, lead and slag tapping operations, refining kettles, dryer transition pieces, and flue dust agglomerating furnaces. All hoods, except those on refining kettles, would be required to be designed and operated to achieve a face velocity of at least 110 meters per minute (m/min) [350 feet per minute (fpm)] at all openings. Refining kettle hoods would be required to be designed and operated to achieve a face velocity of at least 75 m/min (250 fpm) and a volumetric flow rate of at least 60 actual cubic meters per minute per square meter [200 actual cubic feet per minute per square foot (acfm/ft ^{2})] of kettle surface area. All hoods would be required to be ventilated to a control device with an outlet lead compound concentration not to exceed 2.0 mg/dscm (0.00087 gr/dscf).

D. Proposed Standards for Fugitive Dust Sources

The proposed standards for fugitive dust sources are in the form of work practice and operating standards. Again, the standards apply to both new and existing fugitive dust sources. Each secondary lead smelter would be required to develop a Standard Operating Procedures (SOP) manual that details procedures to limit fugitive dust emissions. Each smelter's SOP manual would be reviewed and subject to approval by the Administrator.

The SOP manual would describe how each smelter would implement the types of work practices and operating standards which EPA has determined represent MACT controls for fugitive dust emissions. These controls are specified in the proposed regulation and include cleaning of paved areas through vacuuming or power-washing, use of water or chemical dust suppression in materials storage and handling areas, use of partial or total enclosures to prevent wind erosion of storage piles, and use of measures to prevent crossdrafts from upsetting process fugitive control hoods. The SOP manual would also indicate the frequencies with which pavement cleaning and dust suppression are to be performed, and which areas are partially and totally enclosed and which are paved. The MACT controls specified in the proposed regulation would serve as the criteria by which the Administrator would decide whether or not to approve a smelter's SOP.

E. Compliance Dates

Compliance with the standards would be achieved within 24 months of promulgation for existing secondary lead smelters, and upon startup for new and reconstructed smelters.

F. Compliance Test Methods

Testing of lead compound emissions from process and process fugitive emission control devices would be conducted according to EPA reference method 12 (40 CFR part 60, appendix A). Testing of THC emissions from process sources for reverberatory/blast and blast furnace configurations would be conducted according to EPA reference method 25A (40 CFR part 60, appendix A), and the results reported as a concentration in ppmv, as propane, corrected to 4 percent CO_2 for dilution. Testing of HCl and Cl_2 emissions would be conducted according to EPA reference method 26A (59 FR 19306–19323), and the results reported as HCl equivalents, in mg/dscm, corrected to 4 percent CO_2 for dilution. An average of three runs would be used to determine compliance for lead compounds, THC, and total HCl and Cl_2.

Sampling locations for all compliance tests would be determined by EPA reference method 1. Stack gas velocity and volumetric flow rate would be determined by EPA reference method 2. Gas analysis would be conducted according to EPA reference method 3 for CO_2, oxygen, excess air, and molecular weight on a dry basis. The Single Point Integrated Sampling and Analytical Procedure of EPA reference method 3B would be used to measure the CO_2 content of the stack gas during the THC and HCl/Cl_2 compliance tests for correcting to 4 percent CO_2.

G. Enhanced Monitoring Requirements

Continuous opacity monitors (COM's) would be used on all process control stacks to monitor compliance with the lead compound emission limit. Opacity (based on a 6-minute average) greater than the maximum opacity recorded during the initial lead compliance test (plus 2 percent opacity to allow for normal instrument drift) would be a violation of the standard. Process fugitive and building ventilation baghouse performance would be monitored through inspections of the baghouses. Pressure drop and water flow rate would be monitored for PM scrubbers used to control process fugitive sources.

Compliance with the THC standard would require either continuous monitoring of incineration or afterburner temperature or continuous THC monitoring for reverberatory/blast and blast furnace configurations. The temperature would be maintained above a minimum established during the initial THC compliance test. Operating at a lower temperature (based on a 3-hour average) would constitute a violation of the emissions standard. Alternatively, a facility could monitor THC concentration directly with a THC continuous emissions monitor (CEM) if desired.

Compliance with the HCl/Cl_2 standard would require monitoring of either: (1) The addition of soda ash and limestone to furnace charge materials, (2) scrubber parameters (media pH and injection rate), (3) sulfur dioxide (SO_2) concentration, or (4) HCl concentration. The quantity of soda ash and limestone, the scrubber parameters, or the SO_2 concentration would be maintained within allowable ranges established during the initial HCl/Cl_2 compliance test. Failure to maintain these variables within the allowable ranges would constitute a violation of the standard. An operator wishing to establish new allowable ranges would have to demonstrate that compliance with the HCl/Cl_2 standard is still achieved. Alternatively, the operator could monitor HCl concentration using an HCl CEM.

All COM's would be required to comply with Performance Specification 1 in appendix B of 40 CFR part 60. If an owner or operator chose to monitor SO_2, the SO_2 CEM would be required to comply with Performance Specification 2 in appendix B of 40 CFR part 60. All CEM's would be required to comply with the Quality Assurance Procedures found in appendix F of 40 CFR part 60.

H. Notification Requirements

The owner or operator of a secondary lead smelter would be required to submit the notifications described in the General Provisions to part 63, (40 CFR part 63, subpart A). These would include the initial notification, notifications of performance tests and continuous monitoring system (including COM and CEM) performance evaluations, and the notification of compliance status. In addition, each owner or operator would be required to submit the SOP manual and a notification to the Administrator requesting review and approval of the smelter's fugitive dust control SOP manual.

I. Recordkeeping and Reporting Requirements

The owner or operator of a secondary lead smelter would be required to retain for 5 years records of: (1) The results of

initial and subsequent compliance tests, (2) the recorded values for the parameters that must be monitored to demonstrate continuous compliance, and (3) records demonstrating implementation of the fugitive dust controls contained in the smelter's SOP manual.

The owner or operator would be required to submit the quarterly excess emissions and continuous monitoring performance reports, including the results of annual and other compliance tests, as prescribed in the General Provisions.

V. Summary of Environmental, Energy, and Economic Impacts

A. Facilities Affected by This NESHAP

The proposed standards would apply to all secondary lead smelters in the United States, regardless of whether they are classified as a major source or an area source under section 112(c). The EPA estimates that 18 smelters would have to upgrade controls to reduce emissions. All 23 existing smelters would be required to perform monitoring and meet the requirements for recordkeeping and reporting. It is not anticipated that any new smelters will be built over the next 5 years because of the depressed price of lead and the excess capacity in the industry.

B. Air Quality Impacts

Under the proposed standards, organic HAP emissions would be reduced by approximately 1,200 Mg/yr (1,300 tpy). This represents an approximately 70-percent reduction from estimated baseline emissions. Metal HAP emissions would be reduced by 53 Mg/yr (58 tpy) through the reduction of process fugitive emissions [29 Mg/yr (32 tpy)] and fugitive dust emissions [24 Mg/yr (26 tpy)]. This represents a 20-percent reduction from baseline metal HAP emissions. There would be no reductions in metal HAP emissions from process sources. Hydrochloric acid and Cl_2 emissions would be reduced 720 Mg/yr (790 tpy). This represents a 98-percent reduction from baseline emissions.

In addition to HAP reductions, criteria pollutant emissions would also be reduced. Emissions of SO_2 would be reduced by 7,400 Mg/yr (8,100 tpy) if wet scrubbers were installed to control HCl/Cl_2 emissions. Emissions of CO would be reduced by approximately 83,000 Mg/yr (91,000 tpy) and THC emissions (including 1,200 Mg/yr of organic HAP's) would be reduced by approximately 6,400 Mg/yr (7,000 tpy). Controlling metal HAP emissions would also reduce PM emissions (including 53 Mg/yr of metal HAP's) by 140 Mg/yr (150 tpy).

C. Water Quality Impacts

Direct water quality impacts from the proposed standards will vary depending on which control option smelters choose in order to comply with the proposed HCl/Cl_2 emission limits. There would be no wastewater impact if all smelters chose to eliminate HCl/Cl_2 emissions through the addition of fluxing agents to the furnace feed material and the removal of chlorides through slagging, which is the least-cost option.

If wet scrubbers are installed to control HCl/Cl_2 emissions, about 27 million gallons of wastewater from scrubber blowdown would be generated. This wastewater would require neutralization and settling before being discharged to a publicly owned treatment works. Evaporation of water from these scrubbers would be about 430 million gallons per year. The evaporated water would require no treatment. Because EPA does not believe smelters would adopt wet scrubbers as a means of compliance, it is not soliciting comment as to whether the existing effluent limitation guidelines for the secondary lead industry should be amended to account for this source of wastewater.

Use of water for wet suppression and pavement cleaning to control fugitive dust emissions could increase the amount of water runoff that must be treated on site. This incremental increase in runoff would represent less than 1 percent of the volume of water currently treated at secondary lead smelters.

Several of the facilities which would be affected by this rule are located in States adjacent to the Great Lakes. Because these facilities would reduce their emissions of metals and organic HAP's, the indirect water quality impacts of this rule are expected to be positive, albeit difficult to quantify.

D. Solid Waste Impacts

The addition of fluxing agents to smelting furnaces to eliminate HCl/Cl_2 emissions through slagging would result in a slight increase in the amount of slag that must be disposed of as solid waste. This increase would represent only about 5 percent of the slag currently generated by each of the six smelters that would be impacted.

If a smelter chose to install a scrubber to control HCl and Cl_2, a solid waste stream that would require disposal could be generated if the smelter also elected to control SO_2 emissions. Scrubbers installed to control only HCl and Cl_2 do not produce solid waste. If two smelters that do not currently perform paste desulfurization installed scrubbers to control SO_2 emissions in addition to HCl/Cl_2 emissions, these scrubbers would generate as much as 21,000 Mg/yr of solid waste as scrubber sludge.

Because secondary lead smelters typically process hazardous waste that exhibits the toxicity characteristics for lead (40 CFR 261.24), all of the residue generated from these facilities would have to satisfy the standards for treatment prescribed in 40 CFR part 268 for D008 (lead-bearing hazardous waste) before any residue can be land-disposed. (*Chemical Waste Management v. EPA*, 976 F. 2d 2 (D.C. Cir. 1992).

Flue dust and sludge generated at secondary lead smelters are listed as hazardous waste KO69 under 40 CFR 261.32, Hazardous Wastes from Specific Sources. Flue dust collected by baghouses is recycled on site to the smelting furnace at all smelters and is not disposed of as a solid waste. Furthermore, the EPA has issued a limited administrative stay so that the KO69 listing does not apply to sludges generated from acid gas scrubber systems located at secondary lead smelters (56 FR 19951, May 1, 1991).

E. Energy Impacts

No significant increases in electricity consumption are expected as a result of the proposed standards. Natural gas consumption is expected to increase at six of the smelters with blast furnace configurations as a result of installing afterburners or increasing afterburner temperatures. The total increase in natural gas consumption at these smelters is expected to be about 3.7 million cubic meters (130 million cubic feet) per year.

F. Cost Impacts

The estimated nationwide capital and annualized costs of the proposed standards would be $2,700,000 and $2,600,000, respectively. These costs were estimated for all 23 smelters, including those that are currently shut down, and include costs for monitoring, recordkeeping, and reporting.

The estimated capital costs of reducing organic HAP emissions under the proposed standards would be $1,100,000. Estimated annualized costs would be $620,000. Ten smelters would be impacted. For the blast-furnace-only configuration, costs incurred would be for the installation and operation of new afterburners at four smelters and increased natural gas consumption at two smelters. For the collocated reverberatory/blast furnace

configuration, costs incurred would be for the retrofit of additional ductwork to achieve gas stream blending at four smelters.

The estimated capital and annualized costs of reducing metal HAP emissions would be $240,000 and $110,000, respectively. These costs would be distributed over an estimated 14 smelters. The capital costs would be for 1 smelter to upgrade its process fugitive emission controls, and for that smelter and 13 others to upgrade their fugitive dust emission controls. Upgrades would be in the form of improved housekeeping, including the purchase of vacuum sweepers by four smelters. Because all smelters currently operate at the level of the proposed standard for metal HAP's, no anticipated reductions or costs are associated with the control of metal HAP's from process sources.

No capital costs to reduce HCl/Cl_2 emissions would be incurred under the proposed standards if all smelters chose to control HCl/Cl_2 emissions through fluxing. The estimated annualized cost would be $160,000, distributed over six smelters, for the purchase of additional fluxing agents. If a smelter chose to install a scrubber to control HCl/Cl_2 emissions, the approximate capital cost would be $1,700,000 and the annualized cost would be $850,000 for a reverberatory furnace with a production capacity of 50,000 Mg/yr.

Enhanced monitoring and recordkeeping and reporting costs would be incurred by all 23 smelters. These costs are estimated to be $73,000 per smelter per year and the total national cost is estimated to be $1,700,000 per year. The only capital costs would be for COM's, for which the total national cost is estimated to be $1,400,000. The recordkeeping and monitoring cost estimate includes the costs for the emission tests needed to demonstrate compliance. Only the tests for lead emissions from process fugitive sources and building ventilation systems are annual tests, so testing costs would be lower after the initial compliance demonstration

G. Economic Impacts

The Economic Impact Analysis evaluated: (1) The ability of facilities to absorb annual control costs and obtain financing for capital control costs, and (2) the market response to the regulation—specifically, impacts on industry-wide output, employment, and revenue. The analysis was performed on all 23 facilities in the industry, including facilities that have shut down operations indefinitely but have not closed permanently.

Because lead is an internationally traded commodity whose price is determined by international market factors, secondary lead producers have little influence on price. Therefore, the economic analysis assumed that no price increase would occur and control costs would have to be absorbed by affected facilities. Based on discussions with industry experts, EPA formulated guidelines for estimating when a facility would be significantly impacted. A facility would be significantly impacted if either: (1) Total annualized control costs result in more than a 1-percent increase over baseline cost of production, or (2) capital control costs exceed 5 percent of baseline total assets (company-wide) and post-regulation total liabilities exceed two-thirds of baseline total assets if the capital control costs are financed with debt.

The analysis indicates that up to 11 facilities would be significantly impacted, depending on the level of the standards and the amount of continuous monitoring required. Almost all of the significantly impacted facilities are owned by small businesses because of economies of scale and limited access to capital resources.

Implementation of emission controls equal to the MACT floor, the basis for the proposed rule, results in significant impacts to two facilities that are currently in operation. Three other facilities that are currently shut down would also be impacted significantly. If control levels are imposed at levels above the MACT floor, seven facilities are significantly impacted. Of the seven facilities, four sources are currently in operation and three are shut down. When continuous opacity monitoring is required in addition to the MACT floor, one additional source that is currently shut down is significantly impacted.

If the MACT floor is considered with continuous opacity and THC monitoring, nine facilities are significantly impacted. Of the nine facilities, three sources are currently in operation and six are shut down. If continuous monitoring for HCl is added, 11 facilities would be significantly impacted. Of the 11 facilities, four sources are currently in operation and seven are shut down.

Under any of the regulatory alternatives considered, industry employment and output is reduced by less than 1-percent. At current market conditions (December 1993), no closures are expected as a consequence of the regulation. If the price of lead decreases to levels observed over the past year, the possibility of closure increases for two currently operating major sources. Under any of the regulatory alternatives, all smelters currently shut down have additional incentive to not reopen.

VI. Rationale for Selecting the Proposed Standards

This section describes the rationale for the decisions made by the Administrator in selecting the proposed standards.

A. Selection of Pollutants and Source Category

Secondary lead smelters emit several of the 189 HAP's listed in section 112(b) of the Act. Organic HAP's emitted by secondary lead smelters include carbon disulfide, 1,3-butadiene, methyl chloride, benzene, styrene, toluene, formaldehyde, and naphthalene. Metal HAP's emitted include primarily compounds of lead, antimony, and arsenic, with lesser quantities of compounds of chromium, nickel, manganese, mercury, and cadmium. In addition, secondary lead smelters emit the HAP's HCl and Cl_2. Criteria pollutants emitted include lead, PM, SO_2, CO, and hydrocarbons.

Approximately two-thirds of the secondary lead smelters in the United States are major sources of HAP's, based on potential-to-emit estimates that take into account air pollution control measures currently in place at each smelter. Furthermore, as described in section II.D of this preamble, the Administrator has initially determined that secondary lead smelters that are area sources of HAP's present a threat of adverse effects to human health sufficient to support adding secondary lead smelters to the list of area source categories subject to regulation under section 112(c)(3) of the Act. Consequently, the standards being proposed would apply to all new and existing secondary lead smelters regardless of source (major or area) designation.

The emission, equipment, and work practice standards being proposed today would substantially limit emissions of metal HAP's, organic HAP's, HCl, and Cl_2 from secondary lead smelters. The standards being proposed to address metal and organic HAP emissions establish limits for surrogates rather than for individual compounds.

Establishing emission limits for each of the numerous metal and organic HAP compounds emitted from secondary lead smelters is considered impractical because measuring each compound would be too costly and would pose unreasonable compliance and monitoring costs and would achieve little, if any, emission reduction above the surrogate pollutant approach. On the other hand, strong correlations exist

between emissions of the selected surrogate pollutants and emissions of the pollutant classes they represent. In addition, the technologies identified for the control of HAP's have equivalent performance on the selected surrogates. Therefore, emissions standards requiring good control of the selected surrogates will also achieve good control of HAP's.

Candidate surrogates for the mix of metal HAP's present, including lead compounds, are PM and lead, both of which are criteria pollutants. The selected surrogate is lead. Compounds of lead are the most prevalent metal HAP contained in secondary lead smelter emissions. In addition, lead is concentrated, along with metal HAP's, in the smaller size fractions of PM, which are the most difficult to control. Therefore, controlling lead will also control metal HAP's. Available data on the performance of baghouses used to control particulate emissions at secondary lead smelters indicate a much stronger correlation of metal HAP's with lead emissions than with total PM (Docket No. A–92–43, Item Nos. II-A–1, II-A–2, II-A–3, II-I–1, and II-I–9). Therefore, lead is a better surrogate than PM. Lastly, there is a validated test method (EPA reference method 12) for the determination of inorganic lead emissions from stationary sources.

The surrogate pollutant chosen for organic HAP's is THC. There are much data to demonstrate that the destruction of THC through incineration is strongly correlated with the destruction of organic HAP compounds (Docket No. A–92–43, Item No. II-I–27, 56 FR 7155–56 (February 21, 1991)). In addition, THC is easily measured and can be monitored. Carbon monoxide, another indicator of destruction efficiency for organic compounds, was considered but dismissed. It does not correlate as well as THC with destruction of organic HAP compounds. No surrogates are needed for HCl and Cl_2 because they can be measured directly.

The proposed regulation does not establish explicit limits for dioxin/furan emissions from secondary lead smelters for several reasons. First, secondary lead smelters emit very small quantities of dioxin. Cumulative annual emissions for the entire industry are estimated to be only 1.6 grams of dioxin/furan, expressed in toxic equivalents (Docket No. A–92–43, Item No. II–B–35). Emission rates from the other two smelters (a reverberatory/blast smelter and a rotary smelter) were an order of magnitude lower (Docket No. A–92–43, Item Nos. II–A–1 and II–A–3). Second, the Agency believes that the emission controls necessary to achieve the emission limitations associated with this proposed standard would reduce dioxin/furan emissions, particularly from blast furnaces. Finally, any risks associated with dioxin will be addressed in the residual risk evaluation required within eight years of promulgation of the standard pursuant to section 112(f) of the Act.

The Agency currently is in the process of revising its assessment of the risks associated with the exposure to dioxin. The EPA requests comment whether additional action is necessary to reduce dioxin emissions from secondary lead smelters.

Facilities that solely melt scrap or refined lead for use in specific molded or fabricated products would not be covered by the proposed rule because they do not operate blast, reverberatory, rotary, or electric smelting furnaces and, therefore, have substantially different and lower emissions potential than do secondary lead smelters.

Lead-acid battery manufacturing operations that may be collocated with a secondary lead smelter and primary lead smelters that produce refined lead from ore concentrate would not be covered by the proposed rule because they are listed as separate categories in the list of major sources to be regulated by MACT standards (57 FR 31576) in separate rulemakings.

B. Selection of Affected Sources

The proposed standards apply to three types of emission sources at secondary lead smelters: (1) Process sources, (2) process fugitive sources, and (3) fugitive dust sources.

1. Process Sources

Affected process sources include all furnaces (blast, reverberatory, rotary, or electric) used for smelting lead-bearing scrap or slag. All smelting furnaces are equipped with chimneys, flues, or ductwork that convey exhaust gases from the furnace. These exhaust gases contain varying amounts of organic HAP's, metal HAP's, HCl, and Cl_2.

Blast furnaces and collocated reverberatory and blast furnaces have potentially large organic HAP emissions. Therefore, standards are being proposed to limit organic HAP emissions from these furnace configurations. Rotary furnaces, electric furnaces, and reverberatory furnaces not collocated with blast furnaces have relatively low potentials for organic HAP emissions and no standards are being proposed to limit organic HAP emissions from these furnace configurations. The MACT floor for these configurations does not include add-on controls and the EPA does not believe that there is any justification to be more stringent than the MACT floor because of the small amounts of organic HAP emissions associated with these sources.

Collocated reverberatory and blast furnaces are being regulated as a single source type because a greater level of control is achievable when reverberatory and blast furnaces are collocated than when they are not. Other furnace combinations have not been observed in this industry.

All smelting furnaces have high uncontrolled emissions of metal HAP's. Therefore, emission standards to limit lead emissions (as a surrogate for metal HAP's) that would apply to all smelting furnace types and configurations are being proposed.

All smelting furnaces that process lead-acid batteries are also potential sources of HCl and $C1_2$ emissions because of the presence of PVC plastic separators in the furnace feed. The amount of HCl and Cl_2 emitted will vary substantially depending on the quantity of PVC in the feed and whether fluxing agents are added to promote the elimination of chlorides through slagging. However, because all furnace types (except electric furnaces) are potential sources, emission standards are being proposed to limit HCl and Cl_2 emissions from all but electric smelting furnaces.

Electric furnaces are not sources of HCl or Cl_2 emissions because the chlorine present in the feed material is in the form of NaCl or CaC_2 and cannot be released during smelting. However, the proposed regulation defines electric smelting furnaces to include only those that process reverberatory furnace slag as the lead-bearing material charged to the furnace. No electric furnaces that process other lead-bearing materials are currently in use.

2. Process Fugitive Sources

The following process fugitive sources were selected for regulation: (1) Smelting furnace and dryer charging hoppers and chutes (the furnace and dryer openings into which materials are charged), (2) lead taps and molds, (3) slag taps and molds, (4) refining and alloying kettles, (5) dryer transition pieces, and (6) flue dust agglomerating furnace taps and molds. All process fugitive sources are potential emission points of metal HAP's. Blast furnace charging emissions may also contain organic HAP's if there is leakage of primary exhaust gases into the ventilation hood over the charging chute.

The EPA is not proposing standards for battery breaking equipment (e.g.,

rotary hammermills, saws, and shears) or lead casting machines. Many smelters do not have add-on controls for metal HAP's for these sources so that the MACT floor is no control. The EPA does not believe there is any justification for controls more stringent than the floor. Battery breakers are small sources of metal HAP emissions [about 18 kilograms (40 pounds) per year per battery breaker] compared to other sources, and they emit relatively large particles that settle out quickly from the air in the battery breaking area. The proposed NESHAP would require fugitive dust controls in the battery breaking area that would control potential emissions from these settled particles. Casting machines that are used to cast refined lead into ingots are also small sources of metal HAP emissions because the molten lead in the molds is below the fuming temperature of lead. Therefore, casting machines are not included in the proposed regulation.

3. Fugitive Dust Sources

Fugitive dust sources selected for regulation are the following: (1) The battery breaking area, (2) the materials storage and handling area (including, but not limited to, areas in which slag and flue dust are stored), (3) the smelting furnace area, (4) the refining and casting area, and (5) plant yards and roadways. Fugitive dust sources are potential emission sources of metal HAP's, but not organic HAP's or HCl and Cl_2. Therefore, the five listed sources will be covered by the proposed regulation.

C. Selection of Basis and Level for the Proposed Standards for New and Existing Sources

Section 112(d)(3)(B) of the Act requires that the EPA set standards no less stringent than "the average emission limitation achieved by the best performing 5 sources" for categories with fewer than 30 sources. Floor levels of control were determined for each of the affected source types under consideration for regulation. Source types are process sources, process fugitive sources, and fugitive dust sources. For process fugitive sources and fugitive dust sources, which are similar in character and emissions potential across all secondary lead smelters, the entire population of secondary lead smelters was considered in determining MACT floor levels of control. For process sources, specifically smelting furnaces, smelters were differentiated and divided into configurations based on the smelting furnace types used at individual smelters. This was done because smelting furnaces differ substantially, based on configuration, in both emissions potential (mix and amounts) and achievable control levels for organic HAP's. Section 112(d)(1) of the Act gives the Administrator the authority to distinguish among classes, types, and sizes of sources within a category when establishing standards.

Because the secondary lead smelter category comprises fewer than 30 sources, the floor level of control selected for existing sources is based on the median level of control achieved by the best-performing five sources. That is, the floor level of control reflects the control technology in use by the source positioned third (the median) among the best-performing five. The median was selected as the MACT floor, rather than the mean, because the MACT floor is based on the control technology used and the mean cannot be determined. The floor for new sources reflects the control technology in use by the best-controlled source in the category. Emission limits were then selected based on the performance continuously achievable by the proposed MACT technology.

1. Selection of MACT for Process Sources

Separate MACT floors were determined for the following smelting furnace configurations: (1) Collocated reverberatory and blast furnaces, (2) blast furnaces not collocated with a reverberatory furnace, (3) reverberatory or rotary furnaces not collocated with a blast furnace, and (4) electric furnaces. Only smelters with a similar furnace configuration were used to establish the MACT floor level of control for new and existing furnaces within each configuration. The four configurations were selected based on differences in potential emissions and control options among the configurations.

With one exception—the blast-furnace-only configuration—the MACT floor level of control was the only option considered because no options more stringent than the MACT floor are known. For the blast-furnace-only configuration, two options—the floor and one more stringent than the floor—were considered.

The emission reductions and cost impacts of the proposed MACT floor and more stringent options are presented in more detail in chapters 5 and 6 of the BID, respectively.

a. *Reverberatory/Blast Furnace Configuration.* Control measures currently in use to control furnace emissions at collocated reverberatory/blast furnace facilities are combinations of afterburners, gas stream blending, baghouses, wet scrubbers, and fluxing additions.

Afterburners used to control only blast furnace emissions are capable of achieving about 90-percent control of organic HAP's, THC, and CO. Gas stream blending consists of mixing blast furnace gases with hotter and larger volume reverberatory furnace gases in a chamber for incineration. Gas stream blending provides more cost-effective control of organic HAP's than do afterburners by utilizing the large volume of hot (greater than 1,000 °C) exhaust produced by the reverberatory furnace. Greater than 99-percent control of THC (the surrogate for organic HAP's) and 98-percent control of CO have been demonstrated (Docket No. A–92–43, Item No. II–A–3).

Baghouses are used to control PM and lead. Properly operated and maintained, baghouses are capable of achieving greater than 99-percent control of PM and about 98-percent control of lead and other metal HAP compounds (Docket No. A–92–43, Items II–A–1, II–A–2, II–A–3). Wet scrubbers, primarily in place to control SO_2, are capable of providing 99-percent control of HCl/C_2 (Docket No. A–92–43, Item No. II–A–3). The addition of soda ash or limestone fluxing agents to the furnace feed to enhance the removal of chlorides through slagging can achieve HCl/Cl_2 control equivalent to that of wet scrubbing (Docket No. A–92–43, Items II–A–1, II–A–2).

Nine smelters operate reverberatory/blast configurations. The best-controlled source and best-performing five sources all blend gas streams to control organic HAP emissions, use baghouses to control metal HAP emissions, and either scrub or flux to control HCl/Cl_2 emissions. Consequently, the combination of these controls constitutes MACT floors for both new sources and existing sources.

Because there are no control options available for consideration more stringent than the MACT floor controls for new or existing sources, the technological basis selected for the proposed standards for collocated reverberatory/blast furnaces is gas stream blending to control organic HAP's, a baghouse to control metal HAP's, and a scrubber or flux addition to control HCl/Cl_2.

Under this selection of MACT for existing sources, six smelters would have to upgrade their air pollution controls to some degree to meet the proposed MACT. Physical upgrades would include the retrofit of additional ductwork at five smelters to blend the blast and reverberatory furnace gas

stream to achieve incineration of organic HAP's in the blast furnace emissions. Other upgrades required at four smelters include the addition of fluxing agents to the reverberatory furnace feed for HCl/Cl_2 control.

Total estimated capital costs for upgrades at the smelters requiring additional ductwork would be about $330,000. The costs for purchasing additional fluxing agents were included as annual costs rather than capital costs. Total annualized costs for all six impacted smelters would be about $120,000—$40,000 for capital recovery and about $80,000 for the purchase of fluxing agents (soda ash or limestone) at four smelters that do not have SO_2 scrubbers.

Installing the proposed MACT floor controls at smelters with reverberatory/blast furnaces would reduce organic HAP emissions by 640 Mg/yr (700 tpy) and HCl/Cl_2 emissions by 360 Mg/yr (400 tpy). Emissions of THC and CO would also be reduced by about 2,500 Mg/yr (2,800 tpy) and 47,000 Mg/yr (52,000 tpy), respectively. All of these smelters currently have baghouses, so there would be no reduction in metal HAP emissions from process sources and no associated cost impacts.

b. *Blast Furnace Configuration.* Control measures currently in use to control furnace emissions at blast furnace-only facilities include afterburners, baghouses, wet scrubbers, and fluxing. Although installed primarily for the combustion of CO, afterburners also provide varying degrees of control for organic HAP's. The most important variable in afterburner performance, that is, the ability to combust and destroy organics, is temperature, although residence time and turbulence are also important. Temperature, however, is the most important variable, with higher levels of destruction achieved at higher temperatures.

The operating temperature of the best-performing afterburner in this furnace configuration is 870 °C (1,600 °F) (Docket No. A–92–43, Item No. II–D–4), which represents an estimated 98-percent organic HAP control (Docket No. A–92–43, Item II–B–31). The average temperature of the five best-performing afterburners operating at the highest temperatures is 700 °C (1,300 °F), which represents an estimated 84-percent organic HAP control. Baghouses, wet scrubbers, and fluxing provide the same levels of control for metal HAP's (98 percent) and HCl/Cl_2 (99 percent) for blast furnaces as for collocated reverberatory/blast furnaces.

The blast furnace-only configuration encompasses 13 blast furnaces at 8 smelters. The best-controlled blast furnace is controlled by an afterburner at 870 °C (1,600 °F) to control organic HAP's and a baghouse to control metal HAP's, and performs fluxing with soda ash or limestone or operates an SO_2 scrubber to control HCl/Cl_2 emissions. The combination of these controls constitutes the proposed MACT for new sources.

Seven blast furnaces are controlled by an afterburner to control organic HAP's and a baghouse to control metal HAP's, and perform fluxing or use a scrubber to control HCl/Cl_2. The average temperature of the five afterburners operated at the highest temperatures is 700 °C (1,300 °F). The proposed MACT floor for existing sources is, therefore, an afterburner operated at 700 °C (1,300 °F), a baghouse, and fluxing.

To comply with a standard based on the MACT floor for existing sources, five smelters would have to upgrade their air pollution controls. Physical upgrades would include the installation of afterburners at three smelters. Other upgrades required at four smelters would be increased afterburner temperature, which would require an increase in natural gas consumption. Total estimated capital costs for upgrades at the smelters requiring new afterburners would be about $810,000. Total annualized costs would be $590,000—$120,000 for capital recovery and $470,000 for increased fuel costs and other operating expenses to operate all afterburners at 700 °C (1,300 °F).

Installing the proposed MACT floor controls at all existing blast furnace facilities would reduce organic HAP emissions by 580 Mg/yr (640 tpy). All blast furnace facilities currently have baghouses and perform fluxing, so there would be no reductions in metal HAP or HCl/Cl_2 emissions and no associated cost impacts. Emissions of THC and CO would also be reduced by about 2,700 Mg/yr (3,000 tpy) and 32,000 Mg/yr (35,000 tpy), respectively.

There is one control option more stringent than the controls in the floor for existing sources. That option is to raise the afterburner temperature from 700 to 870 °C (1,300 to 1,600 °F)—effectively adopting the same controls for existing sources as the new source MACT. The EPA evaluated the incremental impacts of selecting an afterburner at 870 °C (1,600 °F) as the technological basis for controlling existing sources. Physical upgrades would include the installation of new afterburners at seven smelters, and other upgrades would include increased natural gas consumption at all but one smelter.

Total capital and annualized costs for upgrades at blast furnace smelters would nearly triple under the more stringent option. Estimated total capital costs would increase by $1,700,000 to $2,300,000 (at 870 °C) relative to the floor level of control, and annualized costs would increase by $1,100,000 to $1,700,000. The increased costs would lead to an increase in adverse economic impacts. Under the more stringent option, 7 blast furnace smelters would be significantly impacted, compared to 5 smelters under the MACT floor option. The two additional smelters that are significantly impacted are operating smelters.

Under the more stringent option, organic HAP emissions at blast furnace smelters would decrease an additional 110 Mg/yr (120 tpy), compared to an emissions reduction of 580 Mg/yr (640 tpy) under a standard based on the floor. Emissions of THC and CO would decrease by an additional 500 Mg/yr (550 tpy) and 21,000 Mg/yr (23,000 tpy), respectively, compared to initial reductions of 2,700 Mg/yr and 32,000 Mg/yr under a standard based on the floor. The incremental cost-effectiveness of organic HAP reductions would be $10,000/Mg ($9,100/ton) under the more stringent option.

In light of the cost and economic impacts and the HAP reductions achievable, the EPA has concluded (subject to comment) that adoption of this more stringent (above the MACT floor) option as the basis for standards for existing blast furnace smelters is unreasonable. Therefore, the technological basis for the proposed standards for existing blast furnaces is an afterburner at 700 °C (1,300 °F), a baghouse, and fluxing or a scrubber.

The EPA is aware, however, that this proposal permits organic HAP emissions at the eight facilities with blast furnace-only configurations to remain significantly higher than the organic HAP emissions resulting from other configurations. Further, the EPA recognizes that additional reductions are technically feasible at these locations if the afterburner temperatures are raised. The EPA requests comment on how consideration of the differential impacts and environmental justice should be incorporated in the final MACT determination. The EPA specifically requests comment on the decision to establish proposed standards at the MACT floor for the blast furnace-only smelting configuration.

c. *Rotary and Reverberatory Furnace Configurations.* Control measures currently in use to control furnace emissions at rotary furnace and reverberatory furnace facilities are

baghouses, wet scrubbers, and the addition of fluxing agents. Baghouses and wet scrubbers provide the same levels of control for metal HAP's (98 percent) and HCl/Cl_2 (99 percent), respectively, as with other furnace configurations. Soda ash and limestone are added to all rotary furnaces and some reverberatory furnaces as fluxing agents, providing HCl/Cl_2 control equivalent to that of scrubbing.

The high exhaust temperature maintained in rotary and reverberatory furnaces (greater than 1,000 °C) ensures nearly complete destruction of any organic HAP's present. Consequently, no additional control for organic HAP's is necessary.

Six smelters operate either rotary or reverberatory furnace configurations. The best-controlled furnace and best-performing five furnaces use a baghouse to control metal HAP's and a scrubber or fluxing to control HCl/Cl_2. Consequently, the combination of these controls constitutes the MACT floors for both new source and existing source. Because there are no control options available for consideration more stringent than the controls in the floors for new or existing sources, the technological basis selected for the proposed standards for rotary and reverberatory furnaces is a baghouse for controlling metal HAP's and a scrubber or flux addition for controlling HCl/Cl_2.

Under this selection of MACT for new and existing sources, two smelters would have to upgrade their air pollution controls to some degree by increasing the amount of fluxing agents added to their furnaces. No capital costs would be incurred; total annualized costs would be $76,000 for the additional fluxing agents at the two smelters. Hydrochloric acid and Cl_2 emissions would be reduced by about 350 Mg/yr (390 tpy). There would be no reduction in metal HAP or organic HAP emissions and no associated cost impacts. All six smelters operating this configuration currently have baghouses for PM, lead, and other metals control. Add-on controls for organic HAP emissions are unnecessary because neither furnace type emits organic HAP's.

d. *Electric Furnace Configuration.* There is currently only one electric furnace in use in the secondary lead smelting source category. It is used to process slag generated at three reverberatory furnace-only smelters. The furnace is equipped with a baghouse to control PM and lead emissions. Neither organic HAP's nor HCl/Cl_2 are emitted from this furnace because it processes only slag that is relatively free of organic matter and available chlorine. Consequently, a baghouse constitutes the floor for both new source and existing source MACT for controlling metal HAP's. Because there are no available control options more stringent than a baghouse, the proposed MACT for new and existing sources is a baghouse. Because this furnace already has a baghouse, no upgrades in air pollution controls are needed and there would be no emission reductions or cost impacts associated with the proposed standard.

2. Selection of MACT for Process Fugitive Sources

Process fugitive sources are similar in emissions characteristics and control technology across all secondary lead smelters, regardless of smelting furnace configuration. Therefore, there was no need to distinguish among process furnace configurations when developing the standards for process fugitive sources. The entire population of secondary lead smelters was used in determining MACT floor levels of control for new and existing sources.

The four types of process fugitive sources being regulated are smelting furnace charging and tapping locations, flue dust agglomerating furnaces, refining kettles, and dryers. All of these are sources of metal HAP's and are typically controlled by hoods ventilated to baghouses.

The proposed equipment specifications for the design and operation of capture hooding and ventilation for process fugitive sources are adapted from the Occupational Safety and Health Administration's (OSHA's) "Cooperative Assessment Program Manual for the Secondary Lead Smelter Industry" (Docket No. A–92–43, Item No. II–I–16). The OSHA manual specifies that process fugitive sources should be controlled by an enclosure-type hood that is ventilated so that a minimum face velocity is achieved. Face velocity is the velocity at which air is drawn into a hood and, along with hood type, is a primary factor in hood capture efficiency. The minimum recommended face velocity varies by source type, but is generally about 110 m/min (350 fpm). These controls represent state-of-the-art ventilation practices to protect workers by promoting effective capture and ventilation of process fugitive emissions.

The OSHA manual was developed in 1983 through a cooperative effort by government, industry, and labor in response to the occupational health standard for lead (29 CFR 1910.1025), which requires that employers in the secondary lead smelting industry implement controls to reduce employee exposure to lead. The manual was prepared to assist employers and employees in identifying and implementing the best controls that were recognized as technologically feasible.

Based on observations at operating secondary lead smelters, the EPA believes that the capture and ventilation systems installed and operated at secondary lead smelters are designed and operated in accordance with the specifications contained in the OSHA cooperative assessment program manual. These controls consequently establish the MACT floor. Therefore, the EPA is proposing to incorporate these specifications into the proposed MACT for new and existing process fugitive sources.

a. *Smelting Furnace Charging and Tapping.* Smelting furnace charging and tapping are sources of metal HAP's. Blast furnace charging can also be a source of organic HAP's. With one exception, all furnace charging and lead tapping and slag tapping locations on 44 smelting furnaces are enclosed in a hood and captured emissions are ventilated to a baghouse for the control of metal HAP's. One blast furnace has no hooding or ventilation on the charging chute. Consequently, the MACT floor for existing sources is hooding and ventilation to a baghouse for the control of metal HAP's. There are no control options above the MACT floor, so the floor is the proposed MACT for both existing and new sources. The OSHA manual recommends an enclosure-type hood with a minimum face velocity of 110 m/min (350 fpm) for these emission points. The manual also recommends a similar hood for the transition piece on rotary furnaces.

The proposed MACT to control organic HAP emissions from blast furnace charging is a hood over the charging chute with a ventilation flow rate that is properly balanced against the primary exhaust flow rate from the furnace. The two flow rates are balanced to minimize the escape of primary exhausts and organic HAP's to the furnace charging hood.

b. *Agglomerating Furnaces.* Agglomerating furnaces are sources of metal HAP's. They are used at nine smelters and all are hooded and ventilated to a baghouse. Therefore, the MACT floor for existing sources is a hood with ventilation to a baghouse. There are no control options above the MACT floor, so the MACT floor is the basis for the proposed MACT for both new and existing sources. The OSHA manual recommends an enclosure-type

hood with a minimum face velocity of 110 m/min (350 fpm).

c. *Refining Kettles.* Refining kettles are sources of metal HAP's. There are about 170 refining kettles and they are hooded and ventilated to baghouses at all but three smelters; three smelters use wet scrubbers instead of baghouses. Baghouses typically offer greater control of metal HAP's than wet scrubbers. Therefore, the MACT floor for existing sources is a hood and ventilation to a baghouse. There are no control options above the MACT floor, so the MACT floor is the basis for the proposed MACT for both new and existing sources. The OSHA manual recommends enclosure-type hoods with minimum face velocities of 75 m/min (250 fpm) and flow rates of at least 60 m^3/min per m^2 (200 acfm/ft^2) of the surface area of the kettle's contents.

d. *Dryers.* Dryers are sources of metal HAP's. They are currently in use at six smelters to remove moisture from materials just prior to charging them to reverberatory smelting furnaces. Each dryer has a transition piece between the dryer cylinder and the furnace feed chute. These transition pieces on all dryers are hooded and ventilated to a baghouse. The MACT floor for both existing and new dryers is, therefore, hoods over the transition pieces with ventilation to a baghouse. There are no control options above the MACT floor, so the MACT floor is the basis for the proposed MACT for both new and existing sources.

The OSHA manual does not contain recommendations for dryers, but the transition piece on a dryer is analogous to the transition piece on a rotary smelting furnace, for which the manual recommends an enclosure-type hood with a face velocity of at least 110 m/. min (350 fpm). The proposed MACT includes these specifications.

3. Impacts of Proposed Standards for Process Fugitive Sources

There are no controls more stringent than those established by the MACT floor described above for process fugitive sources. Therefore, the EPA is proposing standards for process fugitive sources that correspond to the MACT floor.

One smelter would be required to upgrade its process fugitive controls by adding a hood over its blast furnace charging chute. The estimated capital and annualized costs to enclose and ventilate this one source would be $47,000 and $4,400, respectively. The estimated pollutant reduction would be 26 Mg/yr (29 tpy) of metal HAP's.

Another smelter would be required to balance existing ventilation air at the blast furnace charging chute to preclude the inadvertent collection of process gases that contain organic HAP's. The potential emission reductions at the one smelter at which organic HAP process emissions were detected in the charging hood exhaust air would be about 50 Mg/yr (55 tpy).

The EPA has no data on the performance of the wet scrubbers being used to control the refining kettle emissions at three smelters. The MACT floor for refining kettles is hooding and ventilation to a baghouse, and baghouses are generally more efficient than scrubbers in controlling metal HAP's. However, refining kettles are very similar to scrap melting operations at battery manufacturing facilities. Data from the latter that are controlled by wet scrubbers indicate that refining kettles controlled by wet scrubbers should be able to achieve a lead limit that is based on the performance of a baghouse (Docket No. A–92–43, Item No. II–A–8). Therefore, it should not be necessary to replace the existing wet scrubbers with baghouses and there should be no associated cost impacts.

4. Selection of MACT for Fugitive Dust Sources

Fugitive dust sources are similar in emissions characteristics and control technology for all smelters, regardless of smelting furnace configuration. Therefore, there was no need to distinguish among furnace configurations when developing the standards for fugitive dust sources. The entire population of 23 secondary lead smelters was used to determine the MACT floors for new and existing fugitive dust sources.

The four areas of fugitive dust sources being regulated are battery breaking areas, furnace and refining and casting areas, materials storage and handling areas, and plant roadways.

Controls for fugitive dust sources include: (1) Paving all areas subject to vehicle traffic to facilitate the removal of accumulated dust, (2) periodic cleaning of all paved areas to remove deposited dust and prevent its re-entrainment or transfer to other areas by vehicle traffic, (3) vehicle washes at exits from materials storage and handling areas to prevent carry-out of metal HAP-bearing residues and dust, (4) wetting or use of chemical surfactants, binding agents, or sealers on storage piles coupled with partial or total enclosures to limit wind erosion and the generation of dust associated with materials storage and handling, and (5) ventilating total enclosures, where used, to a baghouse or equivalent device to capture airborne dust.

Total enclosure of a fugitive dust source and ventilation of the enclosure to a control device may at first appear to be the most effective means of controlling fugitive dust emissions. However, the EPA has determined from observations of operating smelters and a technical analysis of fugitive dust control measures applicable to this source category that partial enclosures with appropriate wetting and pavement cleaning cost much less and are equally effective in controlling fugitive dust emissions when coupled with monitoring and recordkeeping to ensure these activities are performed (Docket No. A–92–43, Item No. II–B–28).

It should be noted that existing Clean Water Act effluent limitation guidelines already provide discharge allowances, based on technology-based controls, for pollutants in the wastewater generated from facility wash down and truck washing. This proposed regulation should not require any amendments to those standards. (See 40 CFR 421, subpart M).

a. *Battery Breaking Area.* At least nine smelters control fugitive dust emissions from the battery breaking area. Controls include partial or total enclosures, vacuum or powerwashing systems, and the wetting of storage piles. Therefore, these controls are the MACT floor for existing sources. Because there exists no more stringent controls that are demonstrated for the battery breaking area, these floor level controls are the proposed MACT for existing sources and are also the proposed MACT for new sources. An equivalent alternative technology is to totally enclose the area and ventilate the entire building or enclosure volume to a baghouse.

b. *Furnace and Lead Refining and Casting Areas.* At least 12 smelters either totally enclose the furnace and lead refining and casting areas and ventilate the enclosure to a baghouse, or partially enclose this area on at least three sides and vacuum or powerwash the pavement. The remaining smelters use some, but not all, of these techniques. Therefore, partial enclosure coupled with pavement cleaning (vacuuming or powerwashing) or total enclosure ventilated to a baghouse is the MACT floor for existing sources. Because no more stringent controls are available, these floor level controls are the proposed MACT for existing sources and are also the proposed MACT for new sources.

c. *Materials Storage and Handling Areas.* At least 12 smelters have paved the materials storage and handling areas, operate vehicle washes at exits from these areas, and either totally enclose the area and ventilate the

enclosure to a baghouse or partially enclose the storage piles and use wetting or other dust suppression techniques on the storage piles. The remaining smelters use some, but not all, of these techniques. Therefore, vehicle washes, paving, and either partial enclosure coupled with wet suppression or total enclosure and a baghouse is the MACT floor for existing sources. Because no more stringent controls are available, these floor level controls are the proposed MACT for existing sources and also the proposed MACT for new sources.

d. *Roadways.* At least 16 smelters have paved their roadways and periodically clean the pavement by vacuuming or powerwashing. Therefore, these controls are the MACT floor for existing sources. Because no more stringent controls are available, these floor level controls are the proposed MACT for existing sources and also the proposed MACT for new sources.

5. Impacts of Proposed Standards for Fugitive Dust Sources

The EPA is proposing that the MACT floors should serve as the basis of the proposed standards for fugitive dust sources because there are no available control technologies more stringent than the MACT floors. Each smelter would be required to develop an SOP manual that describes how it will use MACT controls to limit fugitive dust emissions and operate according to the manual at all times.

Thirteen smelters would be required to upgrade their fugitive dust controls and practices to meet the MACT level of control in the proposed standards. Four smelters would need to purchase mobile vacuum systems and allocate additional labor hours to operate them. Nine smelters that already operate vacuums would need to increase the operation of the vacuums to clean additional areas not currently vacuumed or begin implementing some form of dust suppression practices in the materials storage area.

The capital costs of adopting the proposed standards would be about $190,000 for the purchase of vacuums at four smelters. The total annual cost would be $110,000, which includes the annualized cost of the new vacuums, operating labor for additional vacuuming, and the cost of additional water (including treatment) for wet suppression. The estimated emission reductions would be 23 Mg/yr (25 tpy) of metal HAP's. The dust collected by the additional vacuum sweepers and other fugitive dust controls would be recycled back into the smelting furnace to recover the lead content. Therefore, there would be no significant costs incurred for the management of the captured fugitive dust.

D. Selection of the Format for the Proposed Standards

Several formats were considered to implement the control techniques selected as the basis for the proposed standards. These include emission standards in a variety of format options, as well as design, equipment, work practice, and operational standards. Section 112(d) of the Act requires the Administrator to prescribe emission standards for HAP control unless, in the Administrator's judgement, it is not feasible to prescribe or enforce emission standards.

Section 112(h) defines two conditions under which it is not feasible to prescribe or enforce emission standards:

(1) If the HAP cannot be emitted through a conveyance device designed and constructed to emit or capture the HAP, or

(2) if the application of measurement methodology to a particular class of sources is not practicable because of technological or economic limitations. If it is not feasible to prescribe or enforce emission standards, then the Administrator may instead promulgate equipment, work practice, design, or operational standards, or a combination thereof.

Format options for numerical emission standards or limits include mass concentration (mass per unit volume), volume concentration (volume per unit volume), mass emission rate (mass per unit time), process emission rate (mass per unit of production or other process parameter), and percent reduction.

1. Process Emission Sources

The EPA is proposing numerical emission standards, expressed as mass or volume concentrations, for lead, THC, and HCl/Cl_2 emissions from smelting furnaces. As noted in section II.D of this preamble, lead and THC have been selected as surrogates for metal HAP's and organic HAP's, respectively.

Baghouses constitute the technological basis for the MACT standards proposed to limit metal HAP emissions from smelting furnaces. Because of the physical mechanism by which baghouses operate, they characteristically achieve a constant outlet concentration independent of the inlet concentration or loading. Tempering air is introduced before the baghouse at some smelters to cool furnace process emissions and control baghouse temperature, but this dilution prior to the baghouse does not affect outlet concentrations or baghouse performance. Dilution with ambient air between the control device and an emission monitoring or testing point is prohibited under section 63.4 of the General Provisions.

Other format options considered included mass rate (kg/hr), a production-based emission rate (kg/Mg of furnace charge), and percent reduction. The EPA is not proposing the mass emission rate format (kg/hr) because it cannot account for differences in actual emission rates between different size smelting furnaces. The production-based emission rate format is not proposed because production rate is difficult to measure over short periods and the mass emission rate from a baghouse may not correlate well with production rate during an emissions test. The EPA is not proposing the percent reduction format because baghouses are constant outlet devices, causing removal efficiency to vary with inlet loading. In addition, this format would require simultaneous testing at inlet and outlet locations, which would subject smelters to unnecessary additional testing costs. Consequently, the EPA is proposing a concentration limit for lead reflecting performance of a properly operated baghouse.

The format the EPA is proposing for the THC emission standard is concentration expressed in ppmv as propane, corrected to a constant CO_2 concentration. The correction to a constant CO_2 concentration accounts for any dilution due to blending with process fugitive emission streams prior to discharge to the atmosphere. Alternative formats that were evaluated but not selected were mass emission rate, production-based emission rate, and percent reduction.

The format of the proposed HCl/Cl_2 standard is concentration expressed as mg/dscm and corrected to a constant CO_2 concentration to account for dilution from combined process fugitive streams. Format options examined but not selected for the HCl/Cl_2 emission standard include mass emission rate, production based emission rate, and percent reduction.

For both the THC and HCl/Cl_2 emission standards, the kg/hr mass emission format was not proposed because it does not account appropriately for size differences among smelting furnaces. The EPA is not proposing the production-based emission rate format because of the difficulty in establishing relationships between emissions and production or process parameters during the short

time period of an emissions test. The percent reduction format is not proposed because there is often no suitable inlet location for testing. In addition, even if a suitable test location were available, this format requires simultaneous inlet and outlet testing, which would subject smelters to unnecessary additional testing costs.

The measured THC and HCl/Cl_2 concentrations would be corrected to a constant CO_2 concentration of 4 percent to account for dilution from tempering air or from combined process fugitive emission sources. The measured THC or HCl/Cl_2 concentration would be multiplied by a correction factor determined by dividing 4 percent CO_2 by the CO_2 measured during the compliance test. If the measured CO_2 concentration is less than 0.4 percent, then a maximum correction factor of 10 would be used. A cap on the correction factor was selected because the relation between the correction factor and the measured CO_2 concentration is non-linear and the correction factor becomes unreasonably high at a CO_2 concentration below 0.4 percent. Furthermore, the proposed method for measuring CO_2 (EPA reference method 3B) is only accurate to within 0.2 percent CO_2.

A cap on the correction factor will not bias compliance calculations towards less stringent enforcement of the THC or HCl/Cl_2 emission standards. It is unlikely, because of the economic cost of moving such a large volume of air, that any smelter would attempt to dilute a process emission stream more than 10 times above the level needed for normal gas stream conditioning.

2. Process Fugitive Sources

The proposed standards for process fugitive emissions would require: (1) Proper capture of process fugitive emissions, and (2) control or destruction of the captured emissions. Equipment specifications (i.e., requirements for hoods with specified face velocities) are proposed to ensure that emissions from process fugitive sources are effectively captured and conveyed into a duct that can be directed to a control device.

Numerical emission limits are being proposed to judge the performance of the control device. A numerical emission limit (mg/dscm) for lead compounds, as a surrogate for metal HAP's, is proposed for the control device that collects the captured process fugitive emissions (e.g., the sanitary baghouse). A mass rate (kg/hr) THC emission limit, as a surrogate for organic HAP's, is being proposed for emissions from blast furnace charging. A concentration THC limit was considered but is inappropriate because of the variability among smelters in the quantity of ventilation air applied at furnace charging locations and the frequent mixing of furnace charging air with ventilation air from other process fugitive sources, such as furnace tapping locations and refining kettles.

The THC limit on blast furnace charging would apply only if the charging process fugitive emissions are discharged through a separate stack from the process emissions. The facility operator would not need to demonstrate compliance with the THC emission standard for process fugitive charging emissions if two conditions exist: (1) The ventilation air from the hood and the process exhaust gases are combined and discharged through a common stack, and (2) compliance with the THC emission limit for process sources is determined downstream from the point at which the charging ventilation air and process source exhaust are combined. In this case, compliance with the THC limit for process sources would be sufficient to confirm that process emissions are not escaping into the blast furnace charging hood and that all organic HAP emissions are being properly controlled.

3. Fugitive Dust Sources

Work practice standards are being proposed to control fugitive dust sources, as allowed under section 112(h) of the Act. Because of their nature, fugitive dust emissions can not be captured and subsequently discharged through a stack, vent, or other conveyance. Consequently, the use of conventional stack sampling methods are not practical or feasible. The proposed work practice standards would also require the development of a site-specific SOP manual that describes the steps that would be taken to limit fugitive dust emissions from all affected sources. The controls included in the SOP manual must be equivalent to those specified in the proposed regulation.

E. Selection of Emission Limits and Equipment and Work Practice Standards for New and Existing Sources

The proposed emission limits for lead, THC, and HCl/Cl_2 are based on emissions data collected by the EPA primarily through an emission source testing program conducted at several well-controlled secondary lead smelters. The purpose of the testing program was to evaluate the performance of candidate MACT systems and to establish appropriate and corresponding limits.

Prior to the EPA testing program, compliance test data and emissions data from previous EPA studies of the secondary lead smelting industry were collected and reviewed. These data were mostly for criteria pollutants (PM, lead, and SO_2) and included insufficient data for metal HAP's, organic HAP's, or HCl/Cl_2 to accurately estimate baseline emissions and to establish emission limits. Therefore, the EPA testing program was initiated to collect additional data on HAP emissions and on surrogates that are strongly correlated with HAP emissions.

The EPA testing was conducted at six facilities: a collocated reverberatory/blast furnace facility, a rotary furnace-only facility, a reverberatory furnace-only facility, and three blast furnace facilities. These facilities were selected for testing because they were representative of other facilities with similar furnace configurations and because each facility had controls for organic HAP's, metal HAP's, and HCl/Cl_2 that represented the MACT floor controls.

Complete results of the testing program and their analyses are summarized in chapter 3 and appendix A of the BID. The derivation of the proposed emission limits for process and process fugitive sources is described in more detail in Docket No A–92–43, Item No. II–B–32.

1. Process Sources

Emission limits for process sources were developed from EPA test data for lead and THC (surrogates for metal HAP's and organic HAP's, respectively) and for HCl/Cl_2.

a. *Lead Emission Limit.* The proposed lead emission limit was selected primarily on the basis of the results of EPA-sponsored tests of smelting furnaces controlled by well-maintained and well-operated baghouses. The EPA tested three baghouses used to control furnace exhausts from a blast furnace, a combined reverberatory/blast furnace, and a rotary furnace. The baghouse on the blast furnace also treated ventilation air from furnace charging and lead and slag tapping. Three sample runs using EPA reference method 12 were conducted at the outlet of each baghouse to quantify lead emissions.

The average lead concentration from each baghouse ranged from 0.60 to 0.70 mg/dscm (0.00026 to 0.00031 gr/dscf). The average lead concentration for all three baghouses tested (total of nine sample runs) was 0.66 mg/dscm (0.00029 gr/dscf). Individual runs ranged from 0.28 mg/dscm to 1.03 mg/dscm.

A statistical analysis of the variability in the process baghouse data was performed. The analysis inherently accounts for variability in emissions from well-operated and well-maintained baghouses as well as measurement variability. At a 95-percent confidence level, lead emissions measured during subsequent tests of the same baghouses could be as high as 1.3 mg/dscm (0.00057 gr/dscf) with no changes in baghouse operation or maintenance. This suggests that the proposed lead emission limit should be no lower than 1.3 mg/dscm.

Compliance test data collected from other operating smelters were also examined. These data, consisting of 23 individual compliance tests, show lead emissions from process baghouses ranging from 0.04 to 4.7 mg/dscm (0.00002 to 0.0021 gr/dscf) and suggest that the lead emission limit should be higher than 1.3 mg/dscm.

Most of the data are distributed continuously at concentrations less than or equal to 1.6 mg/dscm. The emissions of 1.6 mg/dscm were measured at a new smelter just after it began operating in 1992. Close examination of the data greater than 1.6 mg/dscm and available documentation provided the following comments. Lead emissions of 2.3 mg/dscm were measured in 1988 at a smelter that has since upgraded its air pollution control systems. The other emissions data greater than 2.3 mg/dscm were measured at smelters that are not currently operating. The operation and maintenance quality of the baghouses at these latter smelters cannot, therefore, be determined.

These compliance data indicate that the lead emission limit should be greater than 1.6 mg/dscm but less than 2.3 mg/dscm. Based on this information, the EPA selected an emission limit of 2.0 mg/dscm (0.00087 gr/dscf) as a reasonable value between 1.6 and 2.3 mg/dscm.

A complete and detailed presentation of the baghouse test data, both EPA-collected and industry-supplied, is included in chapter 3 and appendix A of the BID. The analysis performed in selecting the proposed lead emission limit is described in Docket No. A–92–43, Item No. II–B–32.

The compliance data available to the EPA show several smelters with lead emissions substantially lower than 2.0 mg/dscm. These data may lead to the conclusion that the MACT floor emission limit (based on the average emission limitation achieved by the best-performing five sources) should also be substantially lower than 2.0 mg/dscm. However, it should be kept in mind that these compliance data, like the EPA test data, were collected over a brief time period, i.e., three 1-hour runs. Therefore, these data represent only a "snapshot" of the performance of each source and do not necessarily represent an emission level that can be continuously achieved on a long-term basis by the MACT floor control technology.

There are variations in emissions over time that cannot be attributed to variation in any particular furnace or control device operating or maintenance parameter. This is demonstrated, for example, by the variation in the measurements observed over the three runs during a single emissions test. The EPA took this variation in emissions into account when developing the proposed emission limit of 2.0 mg/dscm by examining all of the data that are available for smelting furnaces controlled by well-operated and well-maintained baghouses. The proposed 2.0 mg/dscm emission limit represents the average of the five best-performing sources adjusted for variability and it is continuously achievable on a long-term basis by a smelter controlled by a well-operated and well-maintained baghouse.

b. *THC Emission Limits.* The EPA measured controlled THC concentrations at the following smelting furnace configurations with corresponding MACT controls: (1) A reverberatory/blast furnace combination controlled by gas stream blending with a combined exhaust temperature of 930 °C (1,700 °F); (2) a blast furnace controlled by an afterburner operating at 700 °C (1,300 °F); (3) a rotary furnace with no add-on organic HAP controls; and (4) a reverberatory furnace with no add-on organic HAP controls.

The THC concentration at each smelter was measured using EPA reference method 25A and expressed as an equivalent concentration of propane. The average CO_2 concentration was also measured as part of the gas stream analysis using EPA reference method 3B (40 CFR part 60, appendix A). The results of this testing program are presented in more detail in chapter 3 and appendix A of the BID. The methodology for the selection of the THC limits is described in more detail in Docket No. A–92–43, Item No. II–B–32.

The reverberatory/blast furnace configuration tested by the EPA was controlled by blending the blast and reverberatory furnace gases and then venting the combined stream to an afterburner. The average temperature of the combined stream at the afterburner inlet was 780 °C (1,430 °F) and the average afterburner outlet temperature was 940 °C (1,720 °F). The temperature range of the afterburner outlet was 900 °C to 980 °C (1,650 °F to 1,800 °F). The residence time of the afterburner was 2.5 seconds. In this configuration, the fuel input to the afterburner was minimal and most of the afterburner temperature increase was probably due to the fuel value of the organic compounds in the blast furnace exhaust.

At the reverberatory/blast furnace smelter, the controlled THC measurements were made over three 3-hour sampling runs. The average THC concentrations for the three runs were 3.0 ppmv, 5.1 ppmv, and 20 ppmv at 4 percent CO_2. The average concentration for all three runs was 9.4 ppmv at 4 percent CO_2. The variation observed in THC concentrations could not be correlated with any variation in the smelting furnaces or combustion conditions during the tests and, therefore, appears to be normal for a well-controlled reverberatory/blast furnace configuration. The THC emissions limit selected for collocated reverberatory/blast furnaces is 20 ppmv (as propane corrected to 4 percent CO_2), which is the highest THC concentration obtained during the individual 3-hour runs. The EPA selected the highest run as the proposed THC limit to account for normal variation in THC emissions.

The blast furnace tested by the EPA was controlled by an afterburner with an average operating temperature of 700 °C (1,300 °F), although during the tests the temperature varied between 680 and 730 °C (1,250 and 1,350 °F), with a few short-term spikes to 790 °C (1,450 °F). The retention time of the afterburner was 2.5 seconds.

At the blast furnace-only smelter, the controlled THC emissions were measured over two 3-hour runs. The average THC concentration in the first run was 300 ppmv (as propane, corrected to 4 percent CO_2) and the average THC concentration during the second run was 360 ppmv. The average afterburner temperature during both runs was 700 °C (1,300 °F). The 20-percent difference in THC concentration between the two runs could not be attributed to any other smelting furnace or afterburner operating parameter, so the difference is expected to represent normal variation in THC emissions from a well-controlled blast furnace. Based on these tests, the EPA is proposing a THC emissions limit for blast furnace facilities of 360 ppmv (as propane, corrected to 4 percent CO_2), which is the higher concentration from the two 3-hour runs. The EPA selected the higher concentration to account for the normal variability in THC emissions from a blast furnace controlled by an

afterburner operating at 700 °C (1,300 °F).

No data are available for the THC concentration from a blast furnace controlled by an afterburner operating at 870 °C (1,600 °F), the proposed MACT for new blast furnaces. However, previous EPA studies have demonstrated that afterburners operating at 870 °C and a minimum residence time of 0.75 seconds are capable of achieving a 98-percent destruction efficiency for vent streams with organic concentrations greater than 2,000 ppmv as carbon (about 700 ppmv as propane) (Docket No. A–92–43, Item No. II–B–31). Based on a typical uncontrolled level for THC of 3,500 ppmv as propane, the predicted THC concentration from a blast furnace controlled by an afterburner operating at 870 °C (1600 °F) is 70 ppmv, at 4 percent CO_2. Therefore, the EPA is proposing a THC limit for new blast furnace facilities of 70 ppmv (as propane, corrected to 4 percent CO_2).

The exhaust temperature from rotary and reverberatory furnaces are comparable to the afterburner outlet temperature of the reverberatory/blast furnace configuration (940 °C [1720 °F]), so there is nearly complete combustion of organic compounds within the furnace itself and no add-on organic HAP controls are needed. Rotary furnaces are operated in batches lasting from 15 to 24 hours in length. During charging, the furnace temperature is reduced and there are brief (1-hour) periods when the THC level may reach as high as 1,500 ppmv. The THC level drops quickly, however, to less than 10 ppmv when charging is completed and the furnace is brought to normal operating temperature. Reverberatory furnaces are operated at a constant temperature so there are no peaks in organic emissions associated with charging.

None of the rotary furnaces in use at secondary lead smelters have add-on controls for organics or CO. At the rotary furnace smelter tested by the EPA, the THC concentration at the furnace outlet was measured over six complete batch cycles. Each batch cycle lasted from 15 to 24 hours. The THC concentration averaged over the length of each batch cycle ranged from 35 to 170 ppmv as propane, corrected to 4 percent CO_2. The organic HAP emission rate from the rotary smelting furnace was only about 0.5 kg/hr (1 lb/hr), compared to about 3 and 9 kg/hr (7 and 20 lb/hr) of uncontrolled organic HAP emissions from the reverberatory/blast and blast furnaces tested by the EPA, respectively.

The proposed MACT for new and existing rotary furnaces is no add-on control for organic HAP's, which is consistent with the MACT floor for these furnace types. For this reason, and because of the low organic HAP emissions potential from rotary furnaces, no THC emissions limit is being proposed for rotary furnaces.

At the reverberatory furnace smelter tested by the EPA, the THC concentration was measured at the furnace outlet over one 5-hour run and three 1-hour runs. The average THC concentration, as propane, for each run ranged from 9 to 11 ppmv, at 4 percent CO_2. The average THC concentration was lower than for rotary furnaces because reverberatory furnaces are operated on a continuous basis and the furnace temperature is not lowered during charging. No add-on or process modification organic HAP controls are in use for this furnace type, and the proposed MACT for new and existing reverberatory furnaces is no add-on control. Therefore, no THC emissions limit is being proposed for reverberatory furnaces.

No THC or organic HAP emissions data are available for the electric smelting furnace. However, this furnace processes only slag that is essentially free of organic material, and, therefore, is not likely to be a source of organic HAP emissions. This presumption is confirmed by CO emissions (which are correlated with organic HAP emissions) that are similar to CO emissions from other furnace types that also have low organic HAP emissions (Docket No. A–92–43, Item II–I–22).

The EPA is not proposing organic HAP or THC standards for rotary, reverberatory, and electric smelting furnaces because of the low organic HAP emission potential and because the MACT floor for organic HAP controls is no control for these configurations. Moreover, efficient production of lead in these furnace types requires operating and exhaust temperatures that result in low organic HAP and THC emissions. Relatively low emissions, therefore, should be ensured even in the absence of an emissions standard or a monitoring requirement.

c. *HCl and Chlorine Emission Limits.* The EPA measured HCl and Cl_2 emissions at the following smelting furnace configurations with corresponding MACT controls: (1) A reverberatory/blast furnace configuration controlled by the addition of soda ash to the blast furnace and by a wet SO_2 scrubber on the combined blast and reverberatory furnace exhausts; (2) a blast furnace controlled by the addition of soda ash to the furnace and a wet SO_2 scrubber; and (3) a rotary furnace controlled by the addition of soda ash to the furnace and a wet SO_2 scrubber. The facilities were selected for testing because they were representative of other facilities with similar furnace configurations and because each smelter was fitted with a wet SO_2 scrubber. At the time the testing program was initiated, wet SO_2 scrubbers were the only HCl/Cl_2 controls being evaluated. The use of fluxing to control HCl/Cl_2 emissions was developed as a result of the EPA testing program.

Emissions of HCl and Cl_2 were measured ahead of and after the scrubber at each smelter in three 1-hour sample runs using EPA reference method 26A. The average CO_2 concentration was also measured as part of the gas stream analysis using EPA reference method 3B (40 CFR part 60 appendix A).

At the blast furnace and rotary furnace smelters, the total HCl/Cl_2 concentrations and emission rates measured ahead of the scrubber were less than 1 mg/dscm (0.0004 gr/dscf) and 0.05 kg/hr (0.1 lb/hr), respectively. At these low levels, no detectable incremental control was observed across the scrubber at either facility.

The reverberatory/blast furnace had a much higher total HCl/Cl_2 concentration and emission rate ahead of the scrubber than either the blast and rotary furnaces: 273 mg/dscm (0.119 gr/dscf) and 12.5 kg/hr (27.6 lb/hr), respectively. About 98 percent of these emissions were HCl and 2 percent were Cl_2. The scrubber was measured to be 99.8-percent effective in reducing total HCl/Cl_2 emissions, and the controlled emissions were less than 1 mg/dscm (0.0004 gr/dscf) and 0.05 kg/hr (0.1 lb/hr).

The EPA believes that the very low uncontrolled HCl emissions observed are due to the use of soda ash and limestone as fluxing agents in the rotary and blast furnaces. Both smelters reported that soda ash or limestone were added primarily to enhance the reduction of lead compounds to lead metal. An analysis performed by the EPA indicates that these fluxing agents will also bind chloride ions in the feed material as NaCl or $CaCl_2$ salts so that the chlorides are removed in the slag rather than being emitted as HCl or Cl_2. No fluxing agents were added to the reverberatory furnace in the reverberatory/blast configuration tested, and uncontrolled emissions of HCl recorded were substantially higher than those recorded at the blast and rotary furnaces tested with fluxing. However, the wet scrubber was effective in reducing the HCl/Cl_2 emissions from the

reverberatory/blast furnace to the same level as observed from the blast and rotary furnaces using fluxing agents.

All three of these furnace types charge the smelting furnace with battery scrap which contains PVC battery plate separators. These separators, when burned, are believed to be the source of the chlorides observed. These chlorides may be removed from the furnace in two ways, either in the form of HCl and Cl_2 in the exhaust gas or they may be bound in the slag and subsequently removed. At both the blast and rotary furnaces, soda ash or limestone are normally charged with the battery scrap. These compounds react with the available chlorides to form salts (NaCl or $CaCl_2$), which are stable at typical furnace temperatures. These salts are then removed from the furnace during slagging. At the reverberatory/blast furnace combination, neither soda ash nor limestone was charged to the furnace with the battery scrap. Subsequently the chlorides are eliminated from the furnace as HCl and Cl_2 emissions.

Tests were also conducted at a reverberatory furnace at which soda ash is charged to the furnace. These tests indicate that substantial reductions in HCl emissions are possible (greater than 90 percent) by adding soda ash to this type of furnace. Other facilities operating this type of furnace also add soda ash or limestone to the furnace feed, but the EPA has no emissions data on these furnaces. Because these other facilities normally charge these fluxing agents to the furnaces, it is believed that the addition of these fluxing agents will have no detrimental effect on the final lead product.

A related method called desulfurizing also appears effective in eliminating emissions of HCl/Cl_2. The chlorides are eliminated from the furnace in the slag using the same chemical mechanism previously described. In this process, the battery paste and flue dust are reacted with soda ash to remove the sulfur from the feedstock. In this process, unreacted soda ash remains with the resulting paste and is charged into the furnace. Data indicate that resulting HCl emissions are very low, less than 1.5 mg/dscm (Docket No. A–92–43, Item Nos. II-D–18 and II-D–21).

If a facility chooses not to add these fluxing agents to the furnace for process-related reasons, wet scrubbers are capable of achieving the same emission rates for HCl/Cl_2.

It is also important to note that the EPA believes the potential for HCl emissions from this source category will be diminishing over the next several years. As stated earlier, the source of chlorides in the furnace is the PVC separators. Most battery manufacturers are phasing out the use of PVC separators in favor of other materials (Docket No. A–92–43, Item No. II-I–11).

Based on the EPA test results and technical analysis, the EPA is proposing an HCl/Cl_2 limit of 15 mg/dscm, corrected to 4 percent CO_2, for all smelting furnace configurations except the electric smelting furnace. The EPA is proposing an HCl/Cl_2 limit of 15 mg/dscm rather than 1 mg/dscm, which was the emission concentration measured during testing, because EPA reference method 26A has a possible negative bias below an HCl concentration of 30 mg/dscm (59 FR 19306–19323). The margin between 1 mg/dscm and 15 mg/dscm was selected to account for this potential bias. The CO_2 correction factor is to account for dilution if the process emissions at a facility are combined with process fugitive emissions before the point at which compliance with the HCl/Cl_2 limit is determined.

No data are available for HCl or Cl_2 emissions from the electric smelting furnace. However, this furnace processes only reverberatory furnace slag in which chlorides are present in the form of NaCl or $CaCl_2$ and there is a very low potential for HCl and Cl_2 emissions. Therefore, the EPA is not proposing an HCl or Cl_2 limit for this configuration.

2. Process Fugitive Sources

Equipment specifications are being proposed for process fugitive emission capture systems. Emission limits for lead emissions as a surrogate for metal HAP's are being proposed for control devices that handle captured process fugitive emissions. Emission limits for THC emissions as a surrogate for organic HAP's are being proposed for control devices that handle the gas streams from blast furnace charging capture systems.

a. *Equipment Specifications.* The proposed equipment specifications for process fugitive emission capture systems were selected on the basis of observations at operating smelters and the recommendations contained in the OSHA Cooperative Assessment Program Manual for the Secondary Lead Smelter Industry. The proposed equipment specifications are described in more detail under the selection of MACT for process fugitive sources in section VI.C of this preamble.

Observations made during EPA visits to operating smelters indicated that nearly all process fugitive emission sources at all the smelters visited are controlled by enclosure-type hoods consistent with those recommended in the OSHA manual. All of these hoods were ventilated to baghouses or wet scrubbers. Face velocities measured with a hand-held anemometer at one smelter were greater than the minimum face velocities recommended in the OSHA Manual. (Docket No. A–92–43, Item No. II–B–34).

b. *Lead Emission Limit.* The proposed lead emission limit was selected on the basis of the results of EPA-sponsored tests of process fugitive sources controlled by well-maintained and well-operated baghouses.

The EPA determined baghouse performance for the control of process fugitive metal HAP emissions by measuring baghouse outlet lead concentrations using EPA reference method 12. The EPA tested six baghouses controlling process fugitive sources at three smelters. One baghouse controlled the refining kettles at a blast furnace smelter. Another baghouse controlled the refining kettles and furnace charging and tapping at a rotary furnace smelter. The remaining four baghouses controlled the process fugitive emissions and building ventilation sources at a reverberatory/blast furnace smelter. The average of three runs was used to characterize the performance of each baghouse.

The average lead concentration from each baghouse ranged from 0.33 to 1.82 mg/dscm (0.00015 to 0.00080 gr/dscf). The average lead concentration for all six baghouses tested was 0.83 mg/dscm (0.00036 gr/dscf). The baghouse with the highest lead emission rate appeared to be well operated and well maintained, although removal efficiency was substantially lower because the inlet grain loading was also lower than for the other process fugitive baghouses.

A statistical comparison of the average emission concentrations indicate that there is no significant difference in the controlled lead emissions from the process fugitive baghouses compared to the process baghouses at the 5 percent probability level. A statistical analysis of the normal variability in the process fugitive baghouse data (excluding the baghouse with the lowest efficiency) predicted at the 95-percent confidence level that lead emissions measured during subsequent tests of the same baghouses could be as high as 2.0 mg/dscm (0.00087 gr/dscf) with no changes in baghouse operation or maintenance. Compliance test data provided to the EPA by smelter operators show lead emissions from process fugitive baghouses ranging from 0.02 to 1.1 mg/dscm (0.00001 to 0.00048 gr/dscf), indicating that all smelters could achieve a lead emission level of 2.0 mg/

dscm. This emission level also accommodates the baghouse with the 1.82 mg/dscm outlet concentration measured by the EPA. Based on the outcome of the EPA testing program, the EPA has selected a proposed lead emissions limit of 2.0 mg/dscm (0.00087 gr/dscf) for process fugitive sources.

The EPA baghouse data are presented in chapter 3 and appendix A of the BID. The analysis performed in selecting the proposed lead emission limit is detailed in Docket No. A–92–43, Item No. II–B–32.

c. *THC Emission Limit.* The proposed THC emissions limit for process fugitive emissions from blast furnace charging was selected on the basis of the results of EPA-sponsored tests of the charging system at two blast furnaces. Each blast furnace charging chute was enclosed in a hood. On the first furnace, the chute was also fitted with a door that opened during charging. The flow rate of each hood was balanced against the flow rate of the primary furnace exhaust to minimize the escape of primary exhaust gases to the charging hood.

The THC emission rate was measured in the duct leading from the charging hood using EPA reference method 25A. Each test consisted of two 3-hour runs. The THC emission rates measured during each run of the first test were 0.026 kg/hr (0.058 lb/hr) and 0.035 kg/hr (0.077 lb/hr) (Docket No. A–92–43, Item No. II–A–5). The THC emission rates measured during each run of the second test were 0.11 kg/hr (0.24 lb/hr) and 0.20 kg/hr (0.44 kg/hr) (Docket No. A–92–43, Item II–A–6). The average THC emission rate for all four runs was 0.090 kg/hr (0.20 lb/hr). The THC emissions were substantially lower from the furnace fitted with the door, but it could not be confirmed that the difference was due to the door or simply normal variation in emissions from well-controlled charging ventilation systems. The THC emission rate from the higher of the two sources tested was less than 1 percent of the THC emissions from the blast furnace charging chute at which the potential emission problem was first detected.

Based on these test results, the EPA is proposing a THC emissions limit for blast furnace charging process fugitive emissions of 0.20 kg/hr (0.44 lb/hr), which was the highest THC value obtained during the test runs and was selected to account for normal variation in THC emissions. The EPA THC data from blast furnace charging are presented in chapter 3 and appendix A of the BID.

3. Fugitive Dust Sources

The proposed standard requires an SOP manual for the control of fugitive dust emissions and also establishes a lead emissions limit for building and enclosure ventilation systems.

a. *SOP Manual.* The EPA is proposing that each smelter develop an SOP manual that would describe the controls and work practices that would be implemented to control fugitive dust emissions. These control and work practices would be equivalent to those specified in the proposed regulation. The EPA selected the controls in the proposed regulation on the basis of observations made during visits to smelters that had already implemented fugitive dust controls equivalent to the proposed MACT and on the basis of a technical analysis of the effectiveness of different control options (Docket No. A–92–43, Item No. II–B–28).

The use of a site-specific SOP manual is being proposed, rather than a list of required work practices, because there are several equivalent control options available for fugitive dust. The flexibility of the SOP approach is needed because the best control option for a particular smelter would be determined by the physical layout of the smelter and the control measures that are already in place. These two factors vary greatly among smelters.

b. *Lead Emissions Limit.* The EPA is proposing a lead emissions limit of 2.0 mg/dscm (0.00087 gr/dscf) for ventilation systems for buildings that enclose fugitive dust sources, such as the materials storage and handling area or the furnace and refining and casting areas. This limit was selected on the basis of controlled lead emissions from the process fugitive baghouses (which also controlled some building ventilation emissions) measured during the EPA testing program and is the same limit that was selected for process and process fugitive sources.

F. Reconstruction Considerations

Section 112(a) of the Act defines a new source as a stationary source, the construction or reconstruction of which is commenced after the proposal date of a relevant regulation. An existing source is defined as any stationary source other than a new source.

Reconstructed sources are considered to be new sources. Reconstruction means the replacement of components of an existing source to such an extent that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source, and (2) it is technologically and economically feasible for the reconstructed source to meet all relevant promulgated standards for new sources.

Some changes can be made at secondary lead smelters that may be deemed reconstructions under section 63.5 of the General Provisions. However, the proposed standards for secondary lead smelters are the same for both existing and new sources except in the case of the THC emission limit for blast furnace-only configurations. As a result, the designation as a "reconstruction" has limited practical significance. If a change to an existing blast furnace is determined to constitute a reconstruction, then that furnace would be subject to the proposed THC limit for new blast furnaces, which is more stringent than the limit for existing blast furnaces. In order to meet the more stringent THC limit, a reconstructed blast furnace would probably need to install a new afterburner that could reach a temperature of 870 °C (1,600 °F), based on the proposed MACT for new blast furnaces.

G. Selection of Compliance Dates

The proposed regulation would require owners or operators of existing secondary lead smelters to achieve compliance with the proposed standards within 24 months of promulgation. This schedule would allow the affected sources the time necessary to modify existing processes and control equipment; design, fabricate, and install new control equipment as needed; develop and implement the SOP for equipment and work practice standards; and complete installation of all required continuous monitoring systems.

The proposed 2-year period for existing sources to achieve compliance with the proposed standard is based on the estimated time needed for a blast furnace facility to have a new afterburner designed, fabricated, installed, and tested. The installation of a new afterburner is the most significant upgrade anticipated under the proposed standard. The EPA believes that a 2-year period is realistic and practical to accomplish these required tasks. The proposed standard is also consistent with compliance deadlines allowed by section 112(i) of the Act, which allows existing sources up to 3 years to achieve compliance.

Owners or operators of new secondary lead smelters would be required to achieve compliance upon startup or promulgation of this NESHAP (whichever is later) and must perform compliance testing within 6 months of startup or promulgation, pursuant to

sections 63.6 and 63.7 of the General Provisions.

H. Selection of Emission Test Methods and Schedule

Testing requirements are being proposed for lead, THC, and HCl/Cl_2 from process, process fugitive, and fugitive dust sources.

1. Process Sources

Lead emissions from process emission control devices would be measured using EPA reference method 12, THC emissions would be measured using EPA reference method 25A, and HCl/Cl_2 emissions would be measured using EPA reference method 26A. For all of these tests, EPA reference method 1 would be used to determine the number and locations of sampling points, method 2 would be used to determine stack gas velocity and volumetric flow rate, method 3 would be used for flue gas analysis, and method 4 would be used to determine the volume percent moisture content in the stack gas. For the measurement of THC and HCl/Cl_2, the Single Point Integrated Sampling and Analytical Procedure of method 3B would be used to measure CO_2 in order to correct for excess air or dilution.

Each test would consist of three runs conducted under representative operating conditions. The average of the three runs would be used to determine compliance. The test methods selected above were used by the EPA to collect the data upon which the proposed emission limits are based.

The proposed standard would require initial tests of lead emissions from all sources and annual compliance tests for process fugitive sources and building ventilation systems. Annual tests of the latter two sources must be performed because compliance with the lead emission standard cannot be continuously monitored. The proposed standard would also require initial compliance tests for THC and HCl/Cl_2 and then monitoring to demonstrate continuous compliance. Following the initial THC compliance test, no annual compliance test would be required if the facility maintains or exceeds the minimum afterburner temperature established during the initial compliance test. Following the initial HCl compliance test, no annual compliance test would be required if the facility maintains the required level of fluxing, scrubber parameters, or SO_2 concentration established during the initial compliance test or operates and maintains an HCl monitor.

2. Process Fugitive Sources

An annual compliance test for lead using the same methods as for process sources would be required for process fugitive control devices. If a facility is subject to the THC emission limit for blast furnace charging, then an initial test would be required that would use the same THC measurement methods as for process sources.

Compliance with the face velocity and flow rate requirements for enclosure hoods over process fugitive emission sources would be determined by measuring the flow in the duct leading from the source and by measuring the area of the openings in the hood and the area of the refining kettle, if appropriate. Volumetric flow rate in the duct would be measured using EPA reference method 2. Hood face area or kettle surface area would be measured directly.

There are no EPA reference methods for directly measuring the face velocity of a hood. The use of a hand-held anemometer was evaluated, but this technique is not as accurate or as precise as calculating the face velocity from the measured volumetric flow rate and face area.

3. Fugitive Dust Sources

Compliance with the lead emission standard for building ventilation emission points would be determined using the same methods as for process sources. Compliance would be determined through an annual test of each emission point, except in the case of emissions from identical control devices that are discharged through separate stacks.

If a facility has two or more identical control devices for building ventilation, then each would be required to undergo an initial compliance test. Subsequent compliance tests, however, could be alternated or rotated among the identical control devices so that not all of them would be tested every year. However, at least one device would be tested each year and each device would be tested at least once every 5 years. This provision assumes that the maintenance of identical units would be similar as a result of the baghouse inspection and logging procedures in the monitoring requirements of the proposed standard. In addition, smelters would only be allowed to alternate compliance testing as long as they demonstrate compliance with the baghouse inspection and logging provisions of the proposed monitoring requirements. This provision is being proposed to reduce unnecessary testing costs. This provision would not apply to control devices receiving emissions from process or process fugitive sources.

I. Selection of Proposed Enhanced Monitoring Requirements

Section 114(a) of the Act, as amended under section 702(b) of title VII of the 1990 amendments, requires enhanced monitoring and the submission of periodic compliance certifications for all major stationary sources. Compliance certifications shall include information on the methods used for determining compliance status and statements as to whether compliance was determined on an intermittent or continuous basis.

The enhanced monitoring requirements proposed herein were determined by examining the hierarchy of monitoring options available for specific processes, pollutants, and control equipment. This hierarchy may range from monitoring continuously the emissions of a specific pollutant or pollutant class to the continuous monitoring of a related process or control device parameter. Each option was evaluated relative to its technical feasibility, cost, ease of implementation, and relevance to its underlying process emission limit or control device.

The proposed standards for secondary lead smelters contain monitoring requirements for process sources, process fugitive sources, and fugitive dust sources. The proposed standards require either pollutant monitoring directly through the use of a CEM, parameter monitoring that indicates proper operation and maintenance of a control device, or recordkeeping to ensure that specific work practices are being followed.

1. Process Sources

Monitoring requirements are being proposed to ensure control of metal HAP, organic HAP, and HCl/Cl_2 emissions from process sources.

a. *Metal HAP's.* The EPA is proposing that each process baghouse be monitored with a COM and that a site-specific opacity limit be established for each process emission point. The site-specific opacity limit for an affected baghouse would be equal to the maximum 6-minute opacity reading recorded by a COM during the initial compliance test for lead emissions, plus 2 percent opacity to allow for normal drift in the output from the COM. Exceedance of the site-specific opacity limit would constitute a violation of the standard for lead emissions.

The proposed MACT for the control of metal HAP's is a baghouse of the design now used in the industry that is operated and maintained optimally on a continuous basis. The facilities at which

baghouses were assessed in the EPA testing program had comprehensive, periodic inspection and maintenance programs to ensure proper operation of the baghouses. However, these inspection and maintenance programs are relatively costly to implement, and offer no explicit assurance that the emission limitations in the standards are being achieved on a continuous basis.

Emissions from a baghouse change with time as a result of incidental or periodic upsets (e.g., torn bags) and normal wear of baghouse components. Inspection and maintenance programs aid in protecting against slow, continual degradation of baghouse performance but do not ensure continuous optimal operation. Although inspection and maintenance may indicate a baghouse is functioning normally, there is no assurance that an established emission limitation is being achieved. Furthermore, these programs, if sufficiently comprehensive to ensure the baghouse is performing optimally on a continuous basis, are labor-intensive and, as noted, quite costly.

The EPA estimates that with a good inspection and maintenance program a baghouse may still emit, on average, an emission stream with an opacity of 5 or 10 percent. Several theoretical and experimental studies have been performed to quantify the relationship between the PM concentration in an emissions stream and the opacity of the stream. From such a relationship developed at a secondary brass/lead smelter, it is estimated that gases in a stack with a 1.5 meter diameter exhibiting an opacity of 10 percent could contain as much as 80 mg/dscm PM. Given that the PM discharged from process baghouses at secondary lead smelters typically contains about 25 percent lead, the lead concentration of the baghouse discharge corresponding to 10 percent opacity would be 20 mg/dscm. This is 10 times the pollutant concentration of the proposed standard (Docket No. A–92–43, Item No. II–A–35).

In contrast, the use of COM's offer a timely, sensitive and direct indication of increased emissions. They give an immediate indication of an occurrence, which provides for timely action that will minimize the duration and, therefore, the emissions, of an upset. They can also address the long-term gradual deterioration of performance of a baghouse.

In addition, COM's are cost-effective. A typical, generally available monitor with auxiliaries costs about $37,300 to install and about $16,500 to operate annually. Proper usage of a COM can ensure that the gases emitted from a baghouse exhibit less than 2 percent opacity on average over a year (Docket No. A–92–43, Item No. II–B–34. The approximate cost-effectiveness of reducing the average opacity from 10 percent to 2 percent through the use of a COM is $2,100 per ton of lead or $525 per ton of PM.

The EPA invites comments on the reasonableness of incorporating this strategy for COM into the final standard promulgated for this source category.

b. *Organic HAP's.* The EPA is proposing two monitoring options that smelter operators may pursue. Continuous monitoring systems are available for THC, but the operating and maintenance costs of existing systems may be prohibitive for many sources in this category. Alternatively, operators may continuously monitor afterburner or exhaust stream temperature, which correlates strongly with THC emissions, after conducting an initial performance test to demonstrate compliance with the THC standard.

Under the second option, THC and temperature would have to be measured simultaneously for three runs lasting 1 hour each during the initial THC compliance test. The average THC concentration and temperature would be determined for the total sampling period. Compliance with the THC standard would be determined on the basis of the average THC concentration. The minimum allowable afterburner or exhaust temperature would be determined on the basis of the average temperature during the total sampling period. To remain in compliance, the owner or operator could not allow the average temperature for any 3-hour period to fall more than 28 °C (50 °F) below the average measured during the initial THC compliance test. Allowing the average temperature to fall below this level would constitute a violation of the emissions standard.

The proposed allowable temperature range of 28 °C (50 °F) for the afterburner or combined reverberatory/blast exhaust streams is based on temperature data collected during the organic HAP and THC testing performed by the EPA. During the test of the blast furnace, the 3-hour average temperature of the afterburner varied over a range of 32 °C (59 °F). During the test of the reverberatory/blast furnace configuration, the 3-hour average temperature of the combined exhaust stream varied over a range of 29 °C (52 °F). The proposed 28 °C (50 °F) allowable temperature range is consistent with the range allowed in the monitoring requirements for sources controlled by afterburners in other Federal standards (40 CFR part 60, subparts EE, MM, SS, TT, WW, BBB, DDD, FFF, III, NNN, QQQ, SSS, and VVV).

Another THC compliance test would be required if the operator desires to establish a lower afterburner temperature. Owners or operators also have the option of monitoring THC using a CEM instead of temperature.

c. *HCl and Chlorine.* Continuous emission monitors are available for HCl, but they have not been used in this industry. Furthermore, the estimated capital and annual costs of these CEM's for the entire industry would be $2,900,000 and $1,400,000, respectively. The cost of requiring an HCl CEM would double the capital and annual cost impacts of the proposed standards and would increase the number of facilities that are significantly impacted. Other, less costly monitoring options are available, so the EPA has determined that an HCl CEM should not be required and several alternative monitoring options are being included in the proposed standard. However, these alternatives allow the use of an HCl CEM to fulfill the monitoring requirements for HCl/Cl_2, if an operator chooses to use one.

Where SO_2 scrubbers are used, continuous emission monitoring for SO_2 can be used as an indicator of scrubber performance. Alternatively, scrubber parameters, including sorbent injection rate and pH, can also be monitored as indicators of scrubber performance. Where fluxing with soda ash or limestone is used to preclude HCl/Cl_2 emissions, monitoring the use of these fluxing agents can ensure that sufficient quantities are being added to control emissions.

The EPA is therefore proposing four alternative monitoring options for control of HCl/Cl_2: (1) manual monitoring of the addition of soda ash and limestone, (2) instrument monitoring of scrubber parameters, (3) CEM for SO_2, or (4) CEM for HCl. Each of these alternatives is described below.

Option 1. Owners or operators could monitor the amounts of soda ash and limestone added to the smelting furnace and the total amount of charge material added during the 8-hour shift in which the initial HCl/Cl_2 compliance test was performed. This ratio of soda ash and limestone to total charge material would establish a minimum ratio that would be maintained thereafter. A new HCl/Cl_2 compliance test would be required if the operator wanted to alter the amount or type of fluxing agent to be used in the future. Continued compliance would be determined on the basis of the ratio of soda ash and limestone to total charge

material added to the furnace during each 8-hour shift thereafter. Failure to maintain the same ratio would constitute a violation of the HCl/Cl_2 standard.

Option 2. The owner or operator of a facility that has a scrubber to control HCl and Cl_2 could record the scrubber liquid injection rate and pH every 15 minutes during the initial HCl/Cl_2 compliance test, which consists of three 1-hour runs. The average of these recorded values for pH and media injection rate would be used to establish minimum operating parameters for the scrubber that must be maintained thereafter. Failure to maintain the minimum scrubber media injection rate or minimum inlet pH would constitute a violation of the HCl/Cl_2 standard.

The media injection rate would be recorded every 15 minutes after the HCl compliance test and could be no less than 70 percent of the average injection rate demonstrated during the initial HCl compliance test. No data were collected during the EPA tests on the variability of SO_2 scrubber media injection rates. The proposed 30-percent allowable drop in media injection rate is adopted from the range allowed in the monitoring requirements in other Federal standards (40 CFR part 60, subparts LL, OOO, and PPP) for sources controlled by wet scrubbers.

The standards in subparts LL, OOO, and PPP are for control of PM sources, not acid gases. Therefore, the EPA is also considering allowing no drop in liquid injection rate, but has not included that requirement in the proposed regulation. The EPA solicits comment on the appropriateness of allowing a 30-percent drop in liquid injection rate.

The scrubber media inlet pH would also be recorded every 15 minutes and the 3-hour average could be no more than 1.0 pH points below the average inlet pH demonstrated during the initial HCl/Cl_2 compliance test. The allowable pH range of 1.0 for the scrubber media inlet pH is based on data collected during the HCl/Cl_2 testing performed by the EPA. During the EPA test of the blast furnace, the 3-hour average pH of the sorbent at the SO_2 scrubber inlet varied from 7.7 to 8.3, a range of 0.6. At the reverberatory/blast furnace tested, the pH of the sorbent at the SO_2 scrubber outlet showed a similar pH range. An allowable pH range of 1.0, rather than 0.6, is being proposed because HCl and Cl_2 are absorbed more easily than SO_2, and control of HCl and Cl_2 would not vary significantly over a scrubber sorbent pH range of 1.0.

Option 3. The owner or operator of a facility that operates an SO_2 scrubber could record the SO_2 concentration every 15 minutes during the initial HCl/Cl_2 compliance test. The average of these recorded values for SO_2 concentration would be used to establish a 3-hour average maximum SO_2 concentration that could not be exceeded thereafter. The SO_2 concentration would be recorded every 15 minutes and the average for any 3-hour period could be no more than 200 ppmv above the average SO_2 concentration measured during the initial HCl/Cl_2 compliance test. A 3-hour average SO_2 concentration exceeding the maximum SO_2 concentration would constitute a violation of the HCl/Cl_2 standard.

The allowable SO_2 range is based on data collected during the HCl/Cl_2 testing performed by the EPA. During the test of the reverberatory/blast furnace configuration, the 3-hour average SO_2 concentration, as recorded by the facility's SO_2 CEM, ranged from 37 ppmv to 195 ppmv. During the test of the blast furnace, the 3-hour average SO_2 concentration ranged from 0 ppmv to 50 ppmv. An allowable range of 200 ppmv above the average SO_2 concentration measured during the initial HCl/Cl_2 compliance test is being proposed to reflect the range of SO_2 concentrations measured and the fact that HCl and Cl_2 are absorbed more easily than SO_2.

Option 4. The owner or operator could also install, operate, and maintain an HCl CMS and demonstrate compliance with an initial HCl/Cl_2 compliance test and by meeting all of the requirements for CMS's found in the General Provisions. The CO_2 concentration needed to correct for dilution would be determined during the initial HCl/Cl_2 compliance test and would not need to be continuously monitored. To remain in compliance, the HCl concentration measured by the CMS and corrected to 4 percent CO_2 must remain below an HCl limit of 15 mg/dscm.

The HCl limit of 15 mg/dscm for enhanced monitoring was based on the results of the EPA-sponsored HCl/Cl_2 testing. These tests indicated that about 98 percent of the chlorine was emitted as HCl.

2. Process Fugitive Sources

The proposed MACT for control of metal HAP emissions from process fugitive sources is an enclosure-type hood ventilated to a baghouse. When these hoods are in place and the smelter has demonstrated compliance with the proposed face velocity and flow rate requirements, no further monitoring of capture efficiency would be necessary. Similarly, the proposed MACT for control of organic HAP emissions from blast furnace charging is proper balance between the blast furnace charging and primary exhaust ventilation systems. No monitoring of blast furnace charging would be necessary after compliance has been demonstrated with the THC limit for blast furnace charging.

As noted previously, no CMS's are available for lead. In addition, a COM cannot be used to monitor process fugitive baghouse performance because the opacity of uncontrolled process fugitive emissions is too low to indicate a control device failure. Therefore, the proposed standard would require daily, weekly, and monthly inspection of process fugitive baghouses and would require monitoring the pressure drop and water flow rate of PM scrubbers. Scrubbers are used instead of baghouses at some smelters to control process fugitive sources.

The majority of smelters already perform regular inspections of baghouses and monitor scrubber operating parameters as part of normal baghouse and scrubber operation and maintenance. These monitoring requirements would ensure that the control devices are being operated and maintained in a manner consistent with good air pollution control practices. These monitoring requirements are being proposed as separately enforceable standards. However, a violation of the proposed monitoring requirements could not be used to indicate a violation of the proposed lead emissions limit for process fugitive sources. Therefore, the proposed standard would also require an annual compliance test of lead emissions.

The proposed baghouse inspection program is the only monitoring option available for process fugitive sources controlled by baghouses at secondary lead smelters. This proposed requirement is not intended to serve as a model of monitoring requirements for other source categories of particulate or HAP emissions controlled by baghouses.

3. Fugitive Dust Sources

Monitoring of compliance with the work practice controls for fugitive dust sources specified in each smelter's SOP manual would be accomplished through recordkeeping requirements that would also be specified in the SOP.

A COM is not applicable to the building and enclosure ventilation emission points that are subject to the lead emissions limit. The proposed standard, therefore, would require a baghouse inspection program and an annual compliance test of lead emissions for the same reasons as those

described above for process fugitive baghouses.

J. Selection of Notification Requirements

Owners or operators of secondary lead smelters would be required to comply with all of the notification requirements under section 63.9 of the General Provisions. An owner or operator would be required to submit the initial notification, notifications of performance tests, notification of CMS performance evaluations, and the notification of compliance status. Information submitted in these notifications would confirm that the source is subject to the standards and establish the source's compliance status.

Each operator of a smelter would also be required to submit the fugitive dust control SOP manual to the Administrator or his or her authorized representative, along with a notification that the smelter is seeking review and approval of the manual. Operators of existing smelters would be required to submit the manual no later than 180 days before the compliance date for existing smelters. Operators of new smelters would be required to submit the manual no later than 180 days before startup of the new smelter but no sooner than the effective date of the proposed standard.

The notification of compliance status would list the results of any performance tests and opacity measurements, methods used for determining continuous compliance, descriptions of the air pollutant control equipment and methods applied at each affected emission point, and a statement as to whether the source is in compliance with all relevant standards and provisions of this subpart. The proposed regulation would waive the requirement that the smelter perform an analysis demonstrating whether the smelter is a major source or area source since the regulation would apply equally to all smelters. The compliance notification would also certify that the facility has completed an SOP manual for the control of fugitive dust emissions and that the SOP manual has been approved by the Administrator.

K. Selection of Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements of the General Provisions for 40 CFR part 63 would apply to secondary lead smelters unless specifically superseded in this part.

1. Recordkeeping

Consistent with the General Provisions of part 63 and with the operating permit rules in part 70, promulgated under title V of the Act, records required by this part would be retained for at least 5 years. Each affected source would be required to maintain records of the results of compliance tests for each of the proposed emission limits, including THC, lead, and HCl/Cl_2. These records are necessary to document the initial compliance determination with these standards. If a smelter is subject to the proposed emission standards for THC and must monitor afterburner or exhaust stream temperature to comply with the proposed enhanced monitoring requirements, then records of the afterburner or exhaust stream temperature would be maintained. These records could be in the form of strip charts or digital printouts, with the period between measurements not to exceed 15 minutes. A block average temperature would be recorded every 3 hours. These records would be used by an affected source to demonstrate continuous compliance with the THC standards.

The source would be required to maintain records explaining any periods when the monitored afterburner temperature dropped below the minimum established during the facility's initial THC compliance test. Maintenance records of the afterburner temperature monitor would also be required pursuant to section 63.10 of the General Provisions. All secondary lead smelters that currently operate afterburners already monitor and record afterburner temperature as part of normal afterburner operation and maintenance. Therefore, the incremental burden associated with these proposed recordkeeping requirements for temperature are considered minimal.

Each source would be required to maintain records of opacity, as measured by a COM and in terms of 6-minute averages. Records would also be maintained of any exceedances of the site-specific opacity limit and any corrective actions following those exceedances. Maintenance records of the opacity monitor probes would also be maintained, including records of periodic cleaning and replacements and calibration checks, pursuant to section 63.10 of the General Provisions. These records would be used to demonstrate continuous compliance with the opacity standard.

Each source would also be required to maintain records consistent with the enhanced monitoring approach chosen for controlling HCl/Cl_2 emissions to ensure that the source is in continuous compliance with the HCl/Cl_2 standard. If an owner or operator chooses to rely on fluxing as a control for HCl/Cl_2, records of the soda ash or limestone added to the smelting furnace and the total amount of material charged would have to be maintained. The amount of fluxing agent added and material charged would be recorded on a total-per-shift basis. Most smelters already maintain records of fluxing agents added to the furnace and material charged as a normal part of production and quality control. Consequently, the incremental burden associated with this recordkeeping requirement would be minimal.

If a source operates an acid gas scrubber and the owner or operator chooses to control HCl and Cl_2 with the scrubber rather than through fluxing, then the source would be required to either (1) maintain records of scrubber media injection rate and pH, or (2) maintain records of SO_2 concentrations measured continuously with a CMS. Most sources with scrubbers already maintain records of media injection rate and pH as part of normal scrubber operation, as well as CMS's for SO_2. If a source operates a CMS for HCl, it would maintain records of HCl concentration.

Records would also be maintained of fugitive dust control activities, as required by each smelter's SOP.

2. Reporting

Owners or operators of secondary lead smelters would be required to comply with all of the reporting requirements under section 63.10 of the General Provisions. They would be required to report the results of performance tests and CMS performance evaluations, and to submit quarterly excess emissions and CMS performance reports or summary reports.

These quarterly reports would include summaries (e.g., 3-hour averages) of the records required to demonstrate continuous compliance with the proposed standards. These reports would also contain summaries of the records that are required to demonstrate continuous compliance with the fugitive dust control measures described in the source's SOP manual, including an explanation of the periods when the procedures outlined in the SOP were not followed.

The Administrator believes that excess emissions and compliance parameter monitoring reports are a critical enforcement tool. Therefore, the proposed standard would require quarterly, rather than semi-annual reports. However, pursuant to section 63.10(e)(3)(ii) of the General Provisions, sources may request to reduce reporting frequency after they can demonstrate

continuous compliance for a one-year period.

L. Operating Permit Program

Under title V of the Act, all HAP-emitting sources would be required to obtain an operating permit. Oftentimes, the emission limits and the requirements for monitoring, reporting, and recordkeeping for a facility are scattered among numerous provisions of State Implementation Plans or Federal regulations. As discussed in the final rule for the operating permit program, published on July 21, 1992 (57 *FR* 32295), an operating permit under this new permit program will include all of the requirements that pertain to a single source in a single document.

After a State's permit program has been approved, each secondary lead smelter within that State must apply for and obtain an operating permit. If the State where the secondary lead smelter is located does not have an approved permitting program, the owner or operator must submit the application under the General Provisions of 40 CFR part 63. The addresses for the EPA Regional Offices and States are included in the General Provisions.

M. Whether to Also Regulate Air Emissions Under RCRA

As noted earlier, air emissions from secondary lead smelting furnaces are also potentially subject to regulation under RCRA because the battery and other lead-bearing secondary feed is often classified as a hazardous waste because of lead content. These emissions are presently exempt from regulation (40 CFR 266.100(c)), but the EPA is considering whether RCRA controls are necessary as part of this rulemaking. The EPA has agreed to reexamine the appropriateness of the exemption as part of a settlement agreement in *Horsehead Resources Inc. v. Browner*, No. 92–1221. The settlement agreement provides that the EPA may issue revised regulatory standards under the Act alone, under RCRA, or under both statutes.

The EPA is proposing to continue exempting air emissions from secondary lead smelting furnaces from RCRA essentially because the EPA believes these emissions will be comprehensively and adequately regulated under the section 112 rules proposed here, plus the subsequent residual risk determination. Although the RCRA standard for regulation ["as may be necessary to protect human health and the environment", RCRA section 3004 (a)] differs from the initial technology-based regime of section 112 of the Act, the EPA does not believe that further RCRA regulation of air emissions is necessary. The reasons are that: (1) The proposed MACT optimizes control of the principal HAP contributed by the hazardous waste (i.e. lead-bearing feed, as opposed to fossil fuels) processed by the source by imposing the best pollution control technology for the principal HAP—lead compounds—emitted from these sources; (2) all secondary lead smelters (both major and area sources) would be controlled by the proposed standards; (3) the proposed standards control not only stack emissions, but facility-wide fugitive emissions; (4) organic HAP's are controlled as well, and emissions of chlorinated organic HAP's (such as PCDD's and PCDF's) are minimal; and (5) HCl and Cl_2 emissions are controlled as well. To the extent any significant residual risk remains after MACT standards are implemented, the risk will be addressed through the section 112(f) residual risk process. Consequently, the EPA believes that RCRA regulation of air emissions from these sources should not be required.

In this regard, it is important to remember that RCRA section 1006 requires the Agency to "integrate all provisions of [RCRA] for purposes of administration and enforcement and * * * avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act * * * .". The EPA believes that imposition of RCRA air emission standards for these sources could result in the types of unnecessary duplication that section 1006 is intended to prevent. Accordingly, the Agency is proposing to retain the current regulatory exemption from RCRA regulation for air emissions from secondary lead smelters.

There is also a second potential area of overlap between RCRA standards and the proposed MACT standards. This is with respect to strategy units that are presently regulated under RCRA. The EPA believes that the controls for fugitive dust emissions proposed in this rule (proposed §§ 63.545 (c)(2) and (c)(5) in particular) are consistent with, and complement, the existing RCRA standards. The RCRA standards are directed largely at preventing releases of waste to land and groundwater, and so would be complemented by the proposed rules, which are directed to preventing exposure via an air exposure pathway. In addition, the provisions of the RCRA rules preventing air emissions are consistent with the standards proposed today. For example, § 264.1101(c)(1)(iv) prevents fugitive dust emissions from containment buildings by prohibiting visible emissions and achieves the same emission control objective of the fugitive dust control standards being proposed today. The Agency solicits comment, however, to ensure that none of the requirements for RCRA storage units are incompatible with the standards proposed today.

N. Solicitation of Comments

The EPA welcomes comments on all aspects of the proposed standards and specifically solicits comments on the following: (1) The determination by the EPA that area sources in the category present a threat of adverse effects to human health and therefore should be regulated; (2) the use of fluxing agents to eliminate HCl and Cl_2 emissions from smelting furnaces, including the technical feasibility of this approach, any adverse impacts on smelting operations, and its effectiveness in reducing HCl/Cl_2 emissions; (3) the feasibility and impacts of establishing a THC limit for existing blast furnaces based on an afterburner temperature above that identified as the MACT floor (700 °C); and (4) the proposed enhanced monitoring requirements, including the proposed strategy of establishing a site-specific opacity limit concurrent with the initial lead compliance test. Comments on these aspects of the standards will be most useful if they contain specific information and data pertinent to an evaluation of the magnitude and severity of the impact(s) and suggested alternative courses of action that would avoid the impact(s).

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards for secondary lead smelters, in accordance with section 307(d)(5) of the Act. Persons wishing to make an oral presentation at a public hearing should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–92–43. A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed rule. The principal purposes of the docket are to: (1) Allow interested parties to readily identify and locate documents so they can intelligently and effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review, except for interagency review materials [section 307(d)(7)(a) of the CAA].

C. Executive Order 12866

Under Executive Order 12866 (58 *FR* 5173, October 4, 1993), the EPA must determine whether a 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 lead to a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation 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.

The proposed regulation presented in this notice was submitted to the OMB for review. Any written EPA response to those comments are included in the docket listed at the beginning of today's notice under ADDRESSES. The docket is available for public inspection at EPA's Air Docket Section, which is listed in the ADDRESSES section of this preamble.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document was prepared by the EPA (ICR No. 1686.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street SW. (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information (including emission testing) is estimated to average 1,200 hours per smelter for reporting in the first year in which compliance is demonstrated and 550 hours per year for subsequent years, and to require 210 hours annually per smelter for recordkeeping. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business entities. If a preliminary analysis indicates that a proposed regulation would have any economic impact on any small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a significant portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closure of small entities. Based on discussions with technical support experts, the EPA formulated alternative criteria for the determination of significant impacts in the secondary lead industry. The guidelines were discussed in the economic impacts section of this preamble.

The results of an economic assessment indicated that the proposed rule will have an economic impact on small business entities. However, adverse economic impacts have been minimized to the greatest extent possible in this rule making, and those that remain are unavoidable. All of the small entities that are currently operating and that are impacted are major sources of HAP's for which the EPA is required to propose MACT standards. Consequently, the economic impacts can not be minimized by proposing less stringent standards based on GACT. The standards being proposed in this rule making are based on MACT floor controls, and in no instance did the EPA choose to propose standards based on controls more stringent than the floor. The EPA was also able to identify alternatives to add-on controls (e.g., process modifications and work practices) in the MACT floors that offered equivalent levels of control.

The EPA has minimized the impacts associated with monitoring by adopting a surrogate pollutant approach and by allowing for alternative monitoring strategies when available. Finally, the EPA has minimized the impacts associated with recordkeeping and reporting by proposing only the minimum requirements needed to document continuous compliance with the proposed emission limits.

F. Pollution Prevention Considerations

Pollution prevention/source reduction is the use of process modifications or alternative processing technologies to reduce air pollutant emissions from the source, rather than through the use of add-on controls. Several pollution prevention and source reduction options were considered for application to the secondary lead smelter industry in this rulemaking. These options are described in more detail in chapter 3 of the BID.

1. Emission Prevention Through Electrowinning

Electrowinning is a process to recover lead metal by dissolving lead compounds in acid and then depositing lead metal on a cathode in an electrolytic cell. Electrowinning is being developed as an alternative to the use of smelting furnaces to reduce lead compounds to lead metal. Electrowinning would reduce potential emissions of metal HAP's, organic HAP's, and HCl/Cl_2. This process is still experimental and has not been demonstrated on a commercial basis anywhere in the world. However, the proposed standards would not prevent a smelter from pursuing this technology. The proposed standards for process sources are in the form of emission limits and operators may use any technology that can achieve the emission limit. There are no design,

equipment, or work practice requirements that would discourage or prohibit the use of this technology.

2. Organic HAP and HCl/Chlorine Emission Prevention Through Plastic Removal

Plastic battery separators are sources of organic HAP and HCl/Cl_2 emissions from smelting furnaces. Technology is available to remove these materials from the furnace feed material and this may decrease organic HAP and HCl/Cl_2 emissions. However, no data are available to confirm such a decrease and the recycling options for the recovered material are limited. Material that is not recycled would need to be disposed of as hazardous waste if it is contaminated with lead. However, the proposed standards would not prevent a smelter from pursuing this option.

3. HCl and Chlorine Emission Prevention Through Fluxing

Soda ash or limestone can be added to a smelting furnace to prevent emissions of HCl and Cl_2. The use of fluxing agents would avoid the need for a wet scrubber and the solid waste and wastewater impacts associated with a wet scrubber. This practice is currently in use in the secondary lead industry and is incorporated in the proposed regulation.

4. HCl and Chlorine Emission Prevention Through Dechlorination of Flue Dust

Chlorine is found in the flue dust of secondary lead smelters in the form of lead chloride. Recycling the flue dust to the smelting furnace causes the chlorine to build up in the furnace and baghouse system until it is released as HCl or Cl_2, unless it is removed in the slag. The same technology that can be used to perform paste desulfurization can be used to remove chlorine from the flue dust by diverting the flue dust to the paste desulfurization system before recycling it to the furnace. This strategy is being used by at least one secondary lead smelter and it appears to be as effective as fluxing in the control of HCl and Cl_2 emissions. The proposed standards would not prevent smelters from pursuing this option.

G. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comments on all aspects of the proposed regulation, including health, economic, and technological issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

VIII. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Secondary lead smelters.

Dated: May 27, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–13667 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB

Endangered and Threatened Wildlife and Plants, Public Hearing on Endangered Status for Four Plants and Threatened Status on One Plant From the Central Sierran Foothills of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), announces a public hearing on the proposed endangered status for *Calystegia stebbinsii* (Stebbins' morning-glory), *Ceanothus roderickii* (Pine Hill ceanothus), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill flannelbush), and *Galium californicum* ssp. *sierrae* (El Dorado bedstraw) and threatened status for *Senecio layneae* (Layne's butterweed). During the public hearing the Service will allow all interested parties to present oral testimony on the proposed rule. Written comments on the proposal will be accepted until July 19, 1994.

DATES: The public hearing will be held from 6 to 8 pm. on Thursday, June 30, 1994, in Sacramento, California. The Service will accept written comments on the proposed rule until July 19, 1994. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Radisson Hotel, 500 Leisure Lane, Sacramento, California. Written comments and materials concerning this proposal should be sent to the Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp at the above address (telephone 916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum ssp. *decumbens, Galium californicum* ssp. *sierrae* and *Senecio layneae* are perennial plants that are found primarily on gabbroic soils and occur either in western El Dorado, Nevada, or Tuolumne Counties in northern California. Commercial and private development, inadequate regulatory mechanisms, off-road vehicle use, change in fire frequency, grading, road construction and maintenance, irrigation, herbicide spraying, invasive alien vegetation, susceptibility to catastrophic events, excessive grazing, dumping, and mining variously threaten these plants. A proposal to list these five plants was published in the **Federal Register** on April 20, 1994 (59 FR 18774).

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. In response to the proposed rule, Daniel Macon, Director of Industry Affairs, California Cattlemen's Association, and William Hazeltine, Environmental Consultant, Oroville, California, requested a public hearing in letters dated May 2, 1994 and April 4, 1994 (sic) respectively. As a result the Service has scheduled a public hearing on Thursday, June 30, 1994, from 6 to 8 pm at the Radisson Hotel, 500 Leisure Lane, in Sacramento, California. Parties wishing to make statements for the record should bring a

copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period closes on July 19, 1994. Written comments should be submitted to the Service (see **ADDRESSES**).

Author

The primary author of this notice is Kirsten Tarp (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

Dated: June 3, 1994.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–14023 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–65–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 931078–93278; I.D. 011394A]

Atlantic Swordfish Fishery

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NMFS is reopening, from June 6, 1994, through June 24, 1994, the comment period on the proposed rule to implement, on an experimental basis, a voluntary, pilot program that would allow retention of undersized swordfish in excess of the trip allowance for donation, through charitable organizations, to needy individuals.

DATES: Comments on the proposed rule will be accepted from June 6, 1994, through June 24, 1994.

ADDRESSES: Comments on the petition should be directed to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910 (Attention: Richard Stone—F/CM4). Please indicate whether your comments are in regard to the proposed rule or on information-collection requirements.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301/713–2347.

SUPPLEMENTARY INFORMATION: A proposed rule, requesting public comment over a 30-day period, was published in the **Federal Register** on December 23, 1993, at 58 FR 68109. NMFS subsequently extended the comment period on the proposed rule through February 9, 1994 (59 FR 3328, January 21, 1994; 59 FR 4265, January 31, 1994). In response to a request from the public, the comment period on the proposed rule is again reopened from June 6, 1994, through June 24, 1994.

Dated: June 3, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14028 Filed 6–6–94; 11:54 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 110
Thursday, June 9, 1994

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

Forms Under Review by Office of Management and Budget

June 3, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250. (202) 690–2118.

Revision

- Foreign Agricultural Service
  7 CFR part 1494—Regulations Covering CCC's Dairy Export Incentive Program.
  Recordkeeping; On occasion.
  Businesses or other for-profit; Small businesses or organizations; 6,003 responses; 2,735 hours.
  L.T. McElvain (202) 720–6211.
- Foreign Agricultural Service
  7 CFR part 1494—Regulations Covering CCC's Export Enhancement Program.
  Recordkeeping; On occasion.
  Businesses or other for-profit; 23,724 responses; 10,825 hours.
  L.T. McElvain (202) 720–6211.
- Agricultural Marketing Service
  Grapefruit & Oranges Grown in the Lower Rio Grande Valley in Texas, Marketing Order No. 906.
  FV–81; FV–82; FV–83.
  Farms; Businesses or other for-profit; Small businesses or organizations; 583 responses; 112 hours.
  Charles L. Rush (202) 690–3670.

Extension

- Agricultural Marketing Service
  Nectarines Grown in California; Marketing Order No. 916.
  FV–84 and FV–85.
  Recordkeeping; On occasions.
  Farms; Businesses or other for-profit; Small businesses or organizations; 1,148 responses; 1,085 hours.
  Mark J. Kreggor (202) 720–1755.
- Federal Crop Insurance Corporation
  Request to Exclude Hail and Fire Coverage From Insurance Policy.
  FCI–78.
  On occasion.
  Individuals or households; Farms; 54,535,000 responses; 13,634 hours.
  Bonnie L. Hart (202) 254–8393.

Reinstatement

- Cooperative State Research Service
  Higher Education Teaching and Research Grants Programs.
  CSRS–711; CSRS–712; CSRS–713; CSRS–708; CSRS–710; CSRS–662; and CSRS–663.
  Annually.
  Non-profit institutions; 2,200 responses; 15,000 hours.
  Dr. Wm. Jay Jackman (202) 401–1790.

Donald E. Hulcher,

Deputy Department Clearance Officer.

[FR Doc. 94–13967 Filed 6–8–94; 8:45 am]

BILLING CODE 3410–01–M

BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM

Meeting Announcement

The Bipartisan Commission on Entitlement and Tax Reform gave notice in the **Federal Register** on Friday, May 27, 1994, (59 FR 27529) of a meeting of its Members on Monday, June 13, 1994, from 1 p.m. to 4 p.m. The meeting will be held in room 210 of the Cannon House Office Building in Washington, D.C.

The meeting of the Commission shall be open to the public. The proposed agenda includes discussion on the long-term budget picture.

Records shall be kept of all Commission proceedings and shall be available for public inspection in room 825 of the Hart Senate Office Building, 120 Constitution Avenue, NE., Washington, DC 20510.

J. Robert Kerrey,

Chairman.

John C. Danforth,

Vice Chairman.

[FR Doc. 94–14009 Filed 6–8–94; 8:45 am]

BILLING CODE 4151–04–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Wednesday, June 29, 1994, at the Embassy Suites Hotel, Boardroom, 200 Stoneridge Drive in Columbia Drive in Columbia, South Carolina 29210. The purpose of the meeting is to: (1) To discuss the status of the Commission and SACs; (2) to discuss civil rights progress and/or problems in the State; and (3) to review and discuss the draft report on "Racial Tensions in South Carolina".

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 94–14049 Filed 6–8–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 9 p.m. on Monday, June 27, 1994, and reconvene at 9 a.m. until 3 p.m. on Tuesday, June 28, 1994, at the City Council Public Hearing Room, City Hall, East 11th Street in Chattanooga, Tennessee 37402. The purpose of the meeting on June 27 is to: (1) Discuss civil rights issues; (2) review the status of the Commission and the SACs; (3) discuss a draft report on "Racial Tensions in Tennessee"; (4) discuss project plans; (5) hear from the general public on the issue of enforcement of Title VI in the Chattanooga area. The meeting will resume on June 28 for an invitational briefing on enforcement of Title VI.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 1994

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 94–14048 Filed 6–8–94; 8:45 am]

BILLING CODE 6335–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

June 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

Pursuant to section 204 of the Agricultural Act of 1956, as amended, the Government of the United States is extending the current limit on Category 443 for an additional one-year period beginning on June 7, 1994 and extending through June 6, 1995 at a level of 80,800 numbers.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 31509, published on June 3, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 7, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 443, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on June 7, 1994 and extending through June 6, 1995, in excess of 80,800 numbers.

Imports charged to Category 443 for the period June 7, 1993 through June 6, 1994, shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–14074 Filed 6–8–94; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Conversion Factors for Non-Category Textile Items

Dated: June 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Nat Cohen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

When the Uruguay Round agreement on textiles and clothing enters into force, trade under the following classifications of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) will be required to be counted in square meter equivalents. The conversion factors below will be used to convert trade from the primary unit of quantity reported in the HTSUSA to square meter equivalents. The remaining classifications subject to the terms of the agreement for textiles and clothing under the Uruguay Round are grouped into textile categories and take the conversion factor applicable to categories to which they belong.

Conversion factors for the great majority of the classifications below were derived by using the conversion factor of a similar product that is assigned to a textile category. For instance, the conversion factor for silk sweaters is the same as the conversion factor for the silk blend sweater category and the man-made fiber sweater category. Conversion factors were derived in this way for classifications

representing over 98% of the trade entered in the classifications below.

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS

HTS	SMEF
3005901000	0.94/$
3005905000	0.94/$
5004000000	8.50
5005000010	8.50
5006000010	8.50
5006001000	8.50
5007103020	1.00
5007103040	1.00
5007103090	1.00
5007200010	1.00
5007200020	1.00
5007200040	1.00
5007200090	1.00
5007903020	1.00
5007903040	1.00
5007903090	1.00
5110000000	3.70
5113000000	1.00
5208312000	1.00
5208321000	1.00
5208412000	1.00
5208421000	1.00
5208512000	1.00
5208521000	1.00
5209313000	1.00
5209413000	1.00
5209513000	1.00
5307100000	8.50
5307200000	8.50
5310100020	1.00
5310100040	1.00
5310100060	1.00
5310900000	1.00
5311006000	14.00
5402103020	20.10
5402203020	20.10
5402410010	20.10
5402410020	20.10
5402410030	20.10
5402420000	20.10
5402430020	20.10
5402490010	20.10
5402490050	20.10
5403103020	20.10
5403310020	20.10
5403330020	20.10
5403390020	20.10
5404101000	20.10
5404102020	20.10
5404102040	20.10
5404102090	20.10
5404900000	20.10
5405003000	20.10
5405006000	20.10
5407301000	1.00
5501100000	7.60
5501200000	7.60
5501300000	7.60
5501900000	7.60
5502000000	6.30
5503100000	7.60
5503200000	7.60
5503300000	7.60
5503400000	7.60
5503900000	7.60
5504100000	6.30
5504900000	6.30
5505100020	7.60

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
5505100040	7.60
5505100060	7.60
5505200000	6.30
5506100000	7.60
5506200000	7.60
5506300000	7.60
5506900000	7.60
5507000000	6.30
5601290010	14.40
5601300000	8.50
5603001090	1.00
5604900000	6.50
5605000010	6.50
5607100000	6.50
5607210000	6.50
5607290000	6.50
5607301000	6.50
5607302000	6.50
5607411000	6.50
5607491000	6.50
5607901000	6.50
5608110010	13.60
5608901000	13.60
5608902010	13.60
5608903000	13.60
5609001000	8.50
5609002000	11.10
5609003000	14.40
5609004000	3.70
5701101300	1.00
5701901010	1.00
5701901090	1.00
5701902010	1.00
5701902090	1.00
5702101000	1.00
5702109090	1.00
5702201000	1.00
5702202000	1.00
5702391000	1.00
5702392090	1.00
5702491500	1.00
5702492000	1.00
5702592000	1.00
5702912000	1.00
5702992000	1.00
5703900000	1.00
5705001000	1.00
5705002090	1.00
5801902010	1.00
5802200010	1.00
5802300010	1.00
5803904010	1.00
5804100010	11.10
5804290010	11.10
5804300010	11.10
5805001000	1.00
5805002000	1.00
5805004090	1.00
5806103010	11.10
5806393010	11.10
5806400000	13.60
5807101090	11.10
5807102010	8.50
5807102020	14.40
5807102090	11.10
5807901090	11.10
5807902010	8.50
5807902020	14.40
5807902090	11.10
5808102090	11.10

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
5808103090	11.10
5808900090	11.10
5810920040	14.40
5810990090	11.10
5811004000	1.00
5903101000	1.00
5903101500	1.00
5903102010	1.00
5903102090	1.00
5903103000	1.00
5903201000	1.00
5903201500	1.00
5903202000	1.00
5903203090	1.00
5903901000	1.00
5903901500	1.00
5903902000	1.00
5903903090	1.00
5904100000	1.00
5904910000	1.00
5904920000	1.00
5905001000	1.00
5906100000	13.60
5906911000	1.00
5906912000	1.00
5906913000	1.00
5906991000	1.00
5906992000	1.00
5906993000	1.00
5908000000	8.50
5909001000	8.50
5909002000	14.40
5910001010	4.78
5910001020	32.00
5910001030	32.00
5910001060	9.50
5910001070	9.50
5910001090	13.60
5910009000	14.40
5911101000	13.60
5911102000	13.60
5911201000	1.00
5911202000	1.00
5911310010	13.60
5911310020	13.60
5911310090	13.60
5911320010	13.60
5911320020	13.60
5911320090	13.60
5911400000	13.60
5911900000	13.60
6001990010	1.00
6002990010	11.10
6101900040	34.50
6102900020	34.50
6103194060	3.76
6103292028	34.50
6103292034	30.30
6103292040	14.90
6103292052	15.00
6103292064	30.80
6103292080	14.40
6103392040	30.30
6103493016	14.90
6103493039	14.40
6104192070	3.76
6104292016	34.50
6104292028	14.90
6104292040	14.90
6104292052	12.50

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
6104292062	30.80
6104292080	14.40
6104392040	34.50
6104490040	37.90
6104592040	14.90
6104693016	14.40
6104693028	14.90
6105903040	15.00
6106902040	12.50
6107190010	13.40
6107294010	43.50
6107994010	42.60
6108190020	13.40
6108220010	13.40
6108290010	13.40
6108392010	43.50
6108994010	42.60
6109902010	15.00
6109902020	12.50
6110900016	30.80
6110900032	30.80
6110900056	14.40
6110900058	14.40
6110900060	15.00
6110900082	12.50
6111906010	14.40
6112192010	34.50
6112192040	12.50
6112192070	14.90
6113000005	34.50
6113000010	34.50
6113000012	14.90
6114900005	12.50
6114900015	14.40
6114900025	14.40
6114900035	14.40
6114900060	14.40
6115190030	14.40
6115200020	3.80
6115992010	3.80
6116100500	2.90
6116100800	2.90
6116101000	2.90
6116101510	2.90
6116101810	2.90
6116102510	2.90
6116103540	2.90
6116103515	2.90
6116104540	2.90
6116105000	2.90
6116105001	2.90
6116106040	2.90
6116107040	2.90
6116109040	2.90
6116920500	2.90
6116920800	2.90
6116921000	2.90
6116930500	2.90
6116930800	2.90
6116931000	2.90
6116992000	2.90
6116993000	2.90
6116993500	2.90
6116998040	2.90
6116999040	2.90
6117104000	14.40
6117200040	6.60
6117800040	14.40
6117900016	30.80
6117900028	12.50

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
6117900038	34.50
6117900048	14.90
6117900058	14.40
6201190040	34.50
6201990040	34.50
6202190040	34.50
6202990040	34.50
6203194060	3.76
6203293010	34.50
6203293026	30.30
6203293030	14.90
6203293050	20.10
6203293070	14.40
6203394040	30.30
6203421000	14.90
6203431000	14.90
6203493010	14.40
6203493035	14.90
6203493050	14.90
6204193070	3.76
6204294016	34.50
6204294028	14.90
6204294040	14.90
6204294052	12.10
6204294064	14.40
6204394040	34.50
6204490040	37.90
6204594040	14.90
6204621000	14.90
6204631000	14.90
6204693040	14.90
6204693060	14.40
6205902040	20.10
6206100040	12.10
6207190020	13.40
6207290020	43.50
6207996010	42.60
6207996030	13.40
6208194010	13.40
6208290020	43.50
6208920025	13.40
6208996010	42.60
6208996030	13.40
6209904010	14.40
6210102000	14.40
6210104010	14.40
6210201010	34.50
6210202010	34.50
6210301010	34.50
6210302010	34.50
6210401010	34.50
6210402010	34.50
6210501010	34.50
6210502010	34.50
6211112030	14.40
6211123010	14.40
6211201025	34.50
6211201050	34.50
6211320003	8.50
6211330003	14.40
6211390010	14.40
6211420003	8.50
6211430003	14.40
6211490010	14.40
6212101030	4.00
6212102030	4.00
6212900050	14.40
6213101000	1.40
6214101000	14.40
6215100040	6.60

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
6216000500	2.90
6216000800	2.90
6216001000	2.90
6216001210	2.90
6216001510	2.90
6216001810	2.90
6216002010	2.90
6216002300	2.90
6216002301	2.90
6216002540	2.90
6216002740	2.90
6216002840	2.90
6216002900	2.90
6216002901	2.90
6216003005	0.40/S
6216003040	2.90
6216003140	2.90
6216003240	2.90
6216003300	2.90
6216003400	2.90
6216003500	2.90
6216004300	2.90
6216004400	2.90
6216004600	2.90
6216004700	2.90
6216004701	2.90
6216004805	2.90
6217100040	14.40
6217900015	12.10
6217900040	34.50
6217900065	14.90
6217900090	14.40
6301900020	11.10
6302290010	11.10
6302390020	11.10
6302991000	11.10
6304193030	11.10
6304910060	11.10
6304991000	1.00
6304992500	11.10
6304994000	3.70
6304996030	11.10
6305100000	11.10
6306210000	8.50
6306221000	14.40
6306229010	14.40
6306290000	14.40
6306310000	14.40
6306390000	8.50
6306410000	8.50
6306490000	14.40
6306910000	8.50
6306990000	14.40
6307102030	8.50
6307200000	14.40
6307906000	14.40
6307906010	14.40
6307906090	14.40
6307907010	14.40
6307907020	8.50
6307907500	8.50
6307908500	14.40
6307909025	1.60
6307909035	1.60
6307909050	11.50
6307909525	1.60
6307909535	1.60
6307909550	11.50
6307909590	11.50
6309000010	11.50

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
6309000020	11.50
6406991580	8.50/kg
6501003000	4.40
6501006000	4.40
6502002000	18.70
6502004000	18.70
6502005030	18.70
6502006060	18.70
6502009060	4.70
6503003000	5.80
6503006000	5.80
6504003000	7.50
6504006000	7.50
6504009045	3.70/kg
6504009075	3.70/kg
6505908015	14.40/kg
6505909030	12.50/kg
6601100000	17.90
6601910000	7.80
6601990000	11.20
8708210000	2.72
8804000000	20.00/$1000
9113904000	1.17/$1000
9404909025	11.10/kg
9404909040	0.89/S
9502910000	10.00/$1000
9612109020	14.40/kg

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–14075 Filed 6–8–94; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Meeting of the Department of Defense (DoD) Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Commission on Roles and Missions of the Armed Forces will hold a closed meeting on Tuesday, June 21, 1994, from 1 p.m. until 6 p.m. at suite 1200F, 1100 Wilson Blvd., Arlington, Virginia.

The Commission meeting will consist of classified briefings and discussions of the future threat environment as well as classified operational mission taskings to unified and specified commanders for warplanning purposes. In accordance with section 552b(c)(1) of Title 5 U.S.C. disclosure of such classified information would be contrary to the interests of national defense; therefore this meeting will be closed to the public.

For further information contact CDR Gregg Hartung, Director for Public Affairs, (703) 696–4230/50.

Dated: June 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14047 Filed 6–8–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Supportability Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 6–8 July 1994 at Hill AFB, Utah and The RAND Corporation, Santa Monica, CA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft and to draft a panel report.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–14052 Filed 6–8–94; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Disposal and Reuse of Excess Property at Naval Air Station Memphis, Millington, TN

Pursuant to the National Environmental Policy Act, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the disposal and reuse of excess property at Naval Air Station (NAS) Memphis, Millington, Tennessee.

In accordance with recommendations of the 1993 Base Closure and Realignment Commission, the Navy plans to realign NAS Memphis. As part of the realignment, air operations conducted at NAS Memphis will be either disestablished or transferred to other naval facilities. The proposed action involves the disposal of the majority of the land, buildings, and infrastructure associated with the air operations at NAS Memphis including runways, taxi ways, hangers, etc. Approximately 1500 acres will be declared excess.

The Navy intends to analyze the environmental effects of the disposal of the excess NAS Memphis property based on the reasonably foreseeable reuse of the property, taking into account uses identified by the Millington Base Reuse Committee determined during the scoping process. It is anticipated that reuse of NAS Memphis will include, but not be limited to, aviation uses, education or institutional uses, commercial and light industry, office space, wildlife preserve, recreational uses, or a combination of those uses. The EIS will evaluate alternative reuse concepts of the property, including the "no action" alternative, which would be retention of the property by the Navy in caretaker status. However, due to provisions found in the Base Realignment and Closure Act, selection of the "no action" alternative would be considered impractical for the Navy to implement.

Major environmental issues that will be addressed in the EIS include, but are not limited to, air quality, water quality, wetlands, endangered species, cultural resources, and socio-economic impacts of the reasonably foreseeable reuse of the property.

The Navy is initiating this scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on June 28, 1994, beginning at 7 p.m., at the Baker Community Center, 7942 Church Street, Millington, Tennessee. This meeting will be advertised in Millington area newspapers.

A brief presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the

commentor believes the EIS should address.

Written statements and/or questions regarding the scoping process should be mailed no later than July 31, 1994, to: Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, SC 29419–9010 (Attn: Mr. Laurens Pitts, Code 203), telephone (803) 743–0893.

Dated: June 6, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–14081 Filed 6–8–94; 8:45 am]

BILLING CODE 3810–AE–P

Intent To Prepare a Supplemental Draft Environmental Impact Statement for the Proposed Homeporting and Pre-Acceptance Trials of Seawolf Class Submarines on the East Coast of the United States

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the proposed homeporting and Pre-Acceptance Trials of SEAWOLF Class submarines.

On May 10, 1991, the Navy distributed for public review a Draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency for the proposed dredging of the Thames River in support of the operational evaluation requirements (Pre-Acceptance Trials) of SEAWOLF submarines. Program changes necessitated a delay in the EIS preparation, and a Final Environmental Impact Statement was never issued.

The Navy has recently changed the proposed action addressed in this DEIS to now include the homeporting requirements of SEAWOLF class submarines. The Navy will prepare a Supplemental Draft Environmental Impact Statement (SDEIS) addressing Homeporting and Pre-Acceptance Trial requirements of SEAWOLF class submarines. The Naval Submarine Base New London (SUBASE NLON) has been identified as the Preferred Alternative to be addressed in the SDEIS and the Naval Station Norfolk VA (NAVSTA NORVA) and the Naval Submarine Base Kings Bay GA (NSB KB) will be evaluated as alternatives to SUBASE NLON.

Electric Boat Division of the General Dynamics Corporation located in Groton, Connecticut, is constructing the first SEAWOLF submarine. Following delivery to the Navy, this submarine (as well as those that follow) must undergo extensive operational and engineering evaluations referred to as Pre-Acceptance Trials. These evaluations are conducted by Submarine Development Squadron TWELVE located at SUBASE NLON. The SDEIS will evaluate these Pre-Acceptance Trial and Homeporting requirements for SUBASE NLON. However, since these Pre-Acceptance Trial requirements must be conducted near the SEAWOLF contractor's plant, Pier 7 at the Naval Undersea Warfare Center (NUWC) New London, Connecticut, will be evaluated as the location for SEAWOLF Pre-Acceptance Trials should either NAVSTA NORVA or NSB KB be selected as the homeport for SEAWOLF class submarines. If SEAWOLFs are homeported at SUBASE NLON, Pre-Acceptance Trials will be conducted from SUBASE NLON.

Implementation of the proposed action would affect the natural and man-made environments. The principal environmental consequence would result from dredging of the Thames River to a depth of 41 feet mean low water to provide safe passage to the SUBASE NLON for SEAWOLF submarines. Approximately 2.7 million cubic yards of river sediment would be dredged for proposed disposal at the New London Disposal Site located in Long Island Sound.

Dredging would also be necessary at NAVSTA NORVA and NSB KB with quantities ranging from approximately 225,000 cubic yards to 500,000 cubic yards respectively. At these locations, disposal of dredged material would be at upland disposal sites.

If Pre-Acceptance Trials are to be conducted at NUWC NLON, dredging at Pier 7 would be required. Approximately 1.3 million cubic yards would be removed from around the pier and the Thames River channel from NUWC to Long Island Sound. Disposal would be at the New London Disposal Site.

The SDEIS will provide a detailed analysis of dredging requirements, including sediment characterizations and disposal options, for each alternative. Other Homeporting and/or Pre-Acceptance Trials requirements for each alternative will also be addressed in the SDEIS.

Due to the size of the crew to be assigned to each SEAWOLF submarine and the small number of submarines, socioeconomic impacts at any alternative locations will be addressed, but are not expected to be significant.

In July 1994, the Navy will initiate a public scoping process for the purposes of determining the scope of issues to be addressed and for identifying the significant issues relative to the Proposed Action. The Navy will conduct scoping hearings, to be announced at a later date, at all alternative locations. Specific information concerning date, place and time for each of these scoping hearings will be published in local area newspapers.

Questions concerning this announcement should be directed to: Mr. R.K. Ostermueller, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Lester, Pennsylvania 19113, Attn: Code 202, telephone 610–595–0759.

Dated: June 6, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–14082 Filed 6–8–94; 8:45 am]

BILLING CODE 3810–AE–P

Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Notice was published Thursday May 12, 1994, at 59 FR 24693, that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, was to have met on May 25-26, 1994, in Herrman Hall (Bldg 220) at the School. That Meeting has been rescheduled and will be held on July 20-21, 1994. All other information in the previous notice remains in effect. In accordance with 5 U.S.C. section 552b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: CDR Wayne A. Wagner, USN (Code 007), Naval Postgraduate School, Monterey, CA, 93943-5001, Telephone (408) 656-2512

May 25, 1994.

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–14053 Filed 6–8–93; 8:45 am]

BILLING CODE 3810–AE–F

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet June 22, 1994, from 9:00 a.m. to 3:30 p.m., at the

Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LCDR D. B. Rich, Pentagon, Room 4D534, Washington, DC 20350, Telephone Number: (703) 693-7248.

Dated: June 3, 1994.

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–13968 Filed 6–8–94; 8:45 am]

BILLING CODE 3810–AE–F

Planning and Steering Advisory Committee; Closed Meeting

Pursuant [illegible] provisions of the Federal Advisory Committee Act (5 U.S.C. App. [illegible] notice is hereby given that the P[illegible] and Steering Advisory Committ[illegible] meet June 22, 1994, from 9 [illegible] 30 p.m. at the Center for Nav[illegible] 4401 Ford Avenue, Alexan[illegible] This session will be clos[illegible].

The [illegible] is to discus[illegible] SSBN secur[illegible] consist of cla[illegible] specif[illegible] Executive Order [illegible] interest of n[illegible] classi[illegible] Executive Order [illegible] of the Navy [illegible] that all sessio[illegible] closed to the [illegible] matte[illegible] 5, Unite[illegible]

For [illegible] concerning this m[illegible] Rich, Penta[illegible] Washington, DC 20350 [illegible] 693-7248

Dated [illegible]

Lewis [illegible]

LCDR, J[illegible] Register Liaison Officer

[FR Do[illegible] am]

BILLING C[illegible]

Patent Licenses; Non-Exclusive, or Partially Exclusive: Fiber Optic Detectors, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; Fiber Optic Detectors, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Fiber Optic Detectors, Inc. a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patents No. 4,981,338 entitled "Optical Fiber Refractometer" issued January 1, 1991 and 4,988,863 entitled "Optical Fiber Refractometer Launching Light At A Non-Zero Launch Angle" issued January 29, 1991.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower [illegible] 800 North Quincy Street, Arlingt[illegible] Virginia 22217–5660, telephone (70[illegible]01.

Dated: June [illegible]

Lewis T. Book[illegible]

LCDR, JAGC, [illegible] Register Liaison Officer.

[FR Doc. 94–1[illegible] -94; 8:45 am]

BILLING CODE 38[illegible]

DEPARTME[illegible]

[CFDA No.: 8[illegible]

Cooperative [illegible] Program (Manufacturi[illegible]

AGENCY: Depar[illegible]

ACTION: Correc[illegible]

SUMMARY: On [illegible] Department o[illegible] the Federal R[illegible] applications [illegible] Demonstratio[illegible] Technologie[illegible] last column [illegible] transmittal [illegible] intergovern[illegible] omitted. The deadlin[illegible] applications [illegible] The deadline for [illegible] review is Septembe[illegible]

FOR FURTHE[illegible] CONTACT: Jackie L. Fr[illegible] Department of

Education, 400 Maryland Avenue, SW., (room 4512–MES), Washington, DC 20202–7242. Telephone: (202) 205–9071. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 2420a.

Dated: June 2, 1994.

Augusta S. Kappner,

Assistant Secretary,-Office of Vocational and Adult Education.

[FR Doc. 94–14025 Filed 6–8–94; 8:45 am]

BILLING CODE 4000–01–P

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND T[illegible]: June 27, 1994 from 9 a.m. to 5 p.[illegible] (closed), on June 28, 1994 from 9 a.m [illegible] (closed;) and from 12 p[illegible] (open).

ADDRESS[illegible] Capitol, 550 C Street, S[illegible] 20024.

FOR FURT[illegible] CONTACT: Charles K[illegible] Fund for the Improve[illegible] Postsecondary Educatio[illegible] SW., Washing[illegible] Telephone: (202) 70[illegible]

SUPPLE[illegible]: The Nationa[illegible] Fund for the Improv[illegible] Educat[illegible] establis[illegible] of the Higher [illegible] as amend[illegible] The [illegible] Assistant [illegible] Education [illegible] approval or disappr[illegible] to the Fund.

On Jun[illegible] to 5 p.m. the [illegible] session [illegible] for the open po[illegible] include a review [illegible] Program

priorities and an update on FIPSE targeted competitions.

On June 27, 1994 from 9 a.m. to 5 p.m., and June 28, 1994 from 9 a.m. to 12 p.m., the meeting will be closed to the public for the purpose of reviewing and recommending grant applications submitted to the Comprehensive Program. This portion of the meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C.A. Appendix 2) and under exemptions (4) and (6) of the Government in the Sunshine Act (Pub. L. 94–409, 5 U.S.C. 552b(c) (4) and (6). The review and discussions of the applications and the qualifications of proposed staff to work on these grants are likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, or to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the Fund for the Improvement of Postsecondary Education, room 3100, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202 from the hours of 8 a.m. to 4:30 p.m.

Dated: May 25, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–14050 Filed 6–8–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG94–66–000, et al.]

Compania De Electricidad De Puerto Plata, S.A., et al.; Electric Rate and Corporate Regulation Filings

May 31, 1994.

Take notice that the following filings have been made with the Commission:

1. Compania De Electricidad De Puerto Plata, S.A.

[Docket No. EG94–66–000]

Take notice that Compania De Electricidad De Puerto Plata, S.A. ("CEPP") filed an application on May 18, 1994 for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CEPP is a Dominican Republic company formed to own two diesel electric generating facilities located in Puerto Plata, Dominican Republic.

Comment date: June 17, 1994, 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. Electricidad De Cortes S. De R.L.

[Docket No. EG94–67–000]

Take notice that on May 20, 1994, Electricidad De Cortes S. De R.L. ("ELCOSA") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

ELCOSA is a Honduras company formed to own an electric generating facility. The Facility will be a 60 MW electric generating facility and will consist of six 10 MW medium speed diesel electric generators and will include equipment necessary to deliver electric energy generated by the Facility to Empresa Nacional de Electrica, a Honduran utility, and certain Honduran industrial facilities.

ELCOSA will be engaged directly, or indirectly through one or more affiliates and exclusively in the business of owning or operating, and selling electric energy at wholesale, with the exception that ELCOSA will make retail sales of electricity to industrial companies located in Honduras.

Comment date: June 13, 1994, 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 this application.

3. Kansas City Power & Light Co.

[Docket No. ES94–19–001]

Take notice that on May 20, 1994, KCPL filed an amendment to expand the purposes for which authority to issue such short-term debt instruments was granted by adding the following to paragraph (h) of the application: and (5) to purchase the securities of subsidiary companies of the Applicant, the proceeds of which would be used for the working capital and other general corporate purposes of such subsidiary companies.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Dixie Valley, L.P.

[Docket No. QF93–148–000]

On May 27, 1994 Dixie Valley, L.P. tendered for filing a supplement to its filing in this docket. The supplement pertains to information relating to the ownership of the facility and technical aspects of the qualifying facility. No determination has been made that these submittals constitute a complete filing.

Comment date: June 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 94–13972 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC94–16–000, et al.]

Robbins Resource Recovery Co., et al.; Electric Rate and Corporate Regulation Filings

June 1, 1994.

Take notice that the following filings have been made with the Commission:

1. Robbins Resource Recovery Co. and Robbins Resource Recovery Partners, L.P.

[Docket Nos. EC94–16–000; ES94–29–000]

Take notice that on May 20, 1994, Robbins Resource Recovery Company (RRRC) and Robbins Resource Recovery Partners, L.P. (RRRP) filed a joint application seeking an order pursuant to

sections 203 and 204 of the Federal Power Act authorizing RRRC to assign and transfer all of its interest in a power sale agreement with Commonwealth Edison Company (RRRC Rate Schedule FERC No. 1) to RRRP. The application also seeks an order granting RRRP blanket preapproval of all issuances of securities and assumptions of liabilities under section 204 of the Act for the purpose of developing, owning, and operating a resource recovery facility in Cook County, Illinois.

Comment date: June 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. City of Redding, California v. Pacific Gas and Electric Co.

[Docket No. EL94–67–000]

Take notice that on May 16, 1994, the City of Redding California (Redding) tendered for filing a document entitled Complaint, Motion for Summary Disposition, Motion for Expedited Consideration and Request for Waiver of Regulations. Redding states that Pacific Gas and Electric Company (PG&E) is the company against which its complaint is directed. In its complaint Redding requests that the Commission: (1) Find that PG&E has violated the Federal Power Act and the Commission's regulations in failing to notify the Commission of the termination of Rate Schedule R–1, effective June 1, 1994; (2) grant relief sought in the complaint acknowledging termination of Rate Schedule R–1, effective June 1, 1994; (3) grant Redding's Motion for Summary Disposition; and grant Redding's Motion for Expedited Consideration.

Comment date: July 1, 1994, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint are also due on July 1, 1994.

3. Ohio Power Co.

[Docket No. ER94–1256–000]

Take notice that Ohio Power Company (OPCo), on May 13, 1994, tendered for filing with the Commission a Municipal Resale Service Agreement dated April 4, 1994, between OPCo and the Village of Greenwich, Ohio (Village). The Village is a wholesale customer of OPCo pursuant to Service Agreement No. 003 under OPCo's Municipal Resale Electric Tariff MRS, FERC rate schedule OPCo No. 001.

The Village has requested OPCo to provide it with a second delivery point for the delivery of wholesale power and energy under OPCo's Tariff MRS. OPCo requests an effective date of May 31, 1994, for the tendered agreements.

OPCo states that copies of its filing were served upon the Village of Greenwich, Ohio, and the Public Utilities Commission of Ohio.

Comment date: June 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 94–13973 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–267–000]

Arkla Energy Resources Co.; Intent To Prepare an Environmental Assessment for the Proposed Line F Replacement Project and Request for Comments on Environmental Issues

June 3, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the Line F Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

Summary of the Proposed Project

Arkla Energy Resources Company (AER) wants Commission authorization to replace and rearrange an existing mainline pipeline, abandon gas storage and supply pipelines, and make mainline enhancements to its pipeline system in Arkansas, Louisiana, and Texas.[2] These actions would improve the safety, reliability, and efficiency of AER's pipeline system. Specifically, AER wants authorization for the following:

- Abandon about 87 miles of 20-inch-diameter pipeline on Line F in Caddo, Bossier, Webster, Claiborne, Lincoln, Union, and Ouachita Parishes, Louisiana and replace it with about 91 miles of 20-inch-diameter pipeline in eight segments ranging from 0.8 mile to 36.4 miles in length.
- Reroute a portion of Line F included in the above 91 miles of replacement pipe. About 5 miles of pipe would be replaced with about 5.5 miles of pipe to reroute and connect Line F directly to the Ruston Compressor Station in Lincoln Parish, Louisiana.
- Abandon Line 1–F, a 0.8-mile-long 20-inch-diameter storage line no longer needed after reroute of Line F.
- Abandon Line FT–5, a 0.9-mile-long 10-inch-diameter gas supply line, no longer needed after the reroute of Line F.
- Reclassify about 8.2 miles of Line F as a low pressure gas supply line and operate it as part of Line F–1–F in Caddo Parish, Louisiana.
- Abandon about 0.4 mile of Line S in Harrison County, Texas.
- Abandon 66 delivery taps installed to deliver gas to rural customers served by Arkansas Louisiana Gas Company.
- Construct about 2.2 miles of 20-inch-diameter pipeline (Line ACT–4) in Hot Springs County, Arkansas.
- Install two 2,250-horsepower slow speed reciprocal compressor units at the existing Ruston Compressor Station.
- Uprate the maximum allowable operating pressure on AER's Line S from 880 pounds per square inch (psi) to 930 psi.

Some portions of the pipeline to be abandoned would be removed, others would be left in place. The general location of the project facilities is shown in appendix 1.[3]

Land Requirements for Construction

The majority of the proposed pipeline would be built adjacent and parallel to existing rights-of-way. AER intends to use a 60-foot-wide construction right-of-way. About 15 feet of the planned 60-foot width would use existing right-of-way. Consequently, about 45 feet of new

[1] Arkla Energy Resources Company's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] In Docket No. CP94–541–000 filed on May 11, 1994, AER officially changed its name to NorAm Gas Transmission Company.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol 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.

clearing would be required in most areas. Following construction, about 20 feet of the construction right-of-way would be allowed to revert to its former land use.

Additional working space would be required adjacent to the planned construction right-of-way at road and stream crossings.

The EA 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 EA 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 EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by AER. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- Line F would cross 85 waterbodies, 6 of which are greater than 100 feet wide. These six waterbodies greater than 100 feet in width would be crossed by directional drilling.
- Line F would cross 39 wetlands, 9 of which are greater than 500 feet wide at the crossing location. Line ACT–4 would cross one wetland.
- Line F would disturb approximately 21 acres of forested wetland which may require active restoration and compensation.
- Eight residences are near Line F's right-of-way.
- Line F would cross two waterbodies classified as Louisiana Scenic Rivers. These waterbodies are both greater than 100 feet in width and are part of the six waterbodies mentioned above that would be directionally drilled.
- Line F would cross about 2.3 miles of the D'Arbonne National Wildlife Refuge in Union Parish, Louisiana.
- Noise from the proposed Ruston Mainline Compressor Station may be above the acceptable limits.

Public Participation

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), 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:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP94–267–000;
- Send a *copy* of your letter to: Ms. Lauren O'Donnell, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE. room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before July 6, 1994.

If you wish to receive a copy of the EA, you should request one from Ms. O'Donnell at the above address.

Becoming an Intervenor

In addition to involvement in the EA 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 and filings by other intervenors. 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) attached as appendix 2.

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 § 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 scoping comments considered.

Additional information about the proposed project is available from Ms. Lauren O'Donnell, EA Project Manager, at (202) 208–0325.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13976 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–561–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

May 27, 1994

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corp.

[Docket No. CP94–561–000]

Take notice that on May 20, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–561–000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate facilities to relocate an existing point of delivery to Corning Natural Gas Corporation (Corning) and to abandon approximately 1 mile of 4-inch and 6-inch lateral pipeline located in Steuben County, New York under Columbia's blanket certificate issued in Docket No. CP83–76–000, 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.

Columbia proposes to relocate the Coopers Plains Measuring Station (Coopers Plains) serving Corning located at the terminus of Lines A–1 and A–3 in Steuben County, New York by constructing and operating a new delivery point for Corning on Line A–5 in Steuben County, New York approximately 1.63 miles east of the interconnection of Lines A–1 and A–5. Additionally, Columbia proposes to abandon, in place and partially by removal, 2,787 feet of 4-inch pipeline and 1,235 feet of 6-inch pipeline of Line A–1, and 1,235 feet of 6-inch pipeline of Line A–3. Columbia states that Lines A–1 and A–3 are in need of replacement due to deteriorating condition. Columbia states that the relocation and replacement of the measuring station and the retirement of the pipelines, agreed to by Corning, is the least costly replacement alternative and avoids the environmental impact of a river crossing by either Columbia or Corning. Columbia indicates that the relocation of Coopers Plains involves the relocation of flow control and tie in facilities owned and operated by Corning. Columbia states that it would pay Corning a contribution in aid of construction of up to $37,000 to enable Corning complete the relocation of these facilities. Columbia states that the estimated cost of the abandonment of its facilities is $60,000.

Comment date: July 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gulf Transmission Co.

[Docket No. CP94–562–000]

Take notice that on May 20, 1994, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP94–562–000 an abbreviated application pursuant to section 7(b) of the Natural Gas Act, as amended, and §§ 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission to abandon a firm transportation service for Northern Natural Gas Company, a division of Enron Corp. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that it proposes to abandon a transportation service originally authorized by Commission order issued May 6, 1977, in Docket No. CP77–8–000. Columbia Gulf indicates that under the arrangement with Northern, Columbia Gulf would receive gas from various points offshore, Louisiana into its existing offshore facilities and transport the gas to Columbia Gulf's facilities in Egan, Louisiana. Columbia Gulf further indicates that Northern pays a monthly demand charge for the service performed by Columbia Gulf. Columbia Gulf states that it has tendered to Northern, and Northern has executed, a service agreement effective February 1, 1994, providing that the remaining Part 157 service will be provided under Part 284. Columbia Gulf indicates that no facilities are to be abandoned.

Comment date: June 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Questar Pipeline Co.

[Docket No. CP94–563–000]

Take notice that on May 23, 1994, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP94–563–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation services contained in its FERC Gas Tariff, Original Volume No. 3 for: (1) Columbia Gas Transmission Corporation (Columbia), under Questar's Rate Schedule X–23, which was authorized in Docket Nos. CP80–7 *et al*, and, (2) Northwest Pipeline Corporation (Northwest), under Questar's Rate Schedule X–19, which was authorized in Docket Nos. CP78–538–000 and CP78–434–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Questar says that Columbia, Northwest, and Questar have all mutually agreed to cancel the transportation services certificated as Rate Schedules X–23 and X–19. Questar further indicates that it does not propose to abandon any facilities in conjunction with the requested abandonment.

Comment date: June 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corp.

[Docket No. CP94–564–000]

Take notice that on May 23, 1994, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–564–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to modify an existing receipt point in order to use it additionally for deliveries, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to reverse its existing check valve at Louisiana Intrastate Gas Corporation's (LIG) meter station located on Texas Eastern's Line No. 14 in St. Landry Parish, Louisiana. It is stated that this modification would enable the meter station to be used for deliveries of to LIG as well as receipt. The cost of the proposed modification is estimated at $150. It is asserted that the modification would have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern states that the proposed modification can be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Comment date: July 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Pacific Gas Transmission Co.

[Docket No. CP94–566–000]

Take notice that on May 24, 1994, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105–1570, filed in Docket No. CP94–566–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a new tap and meter set near Rathdrum, Idaho, for delivery of gas to Washington Water Power Company (WWP) and upgrade the existing Rathdrum Meter Station in Rathdrum, Idaho under PGT's blanket certificate issued in Docket No. CP82–530–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

PGT proposes to construct a new tap and meter station adjacent to PGT's existing meter station near Rathdrum, Idaho to serve WWP. PGT states that it entered into an interruptible (backhaul) transportation service agreement with WWP on December 15, 1993, to provide 25 MMBtu per day to PGT's existing delivery point at Rathdrum and 48,000 MMBtu per day to PGT's proposed Rathdrum Turbine Generating Meter Station. PGT also states that the generator would be used for peaking service (approximately 10 days per year). PGT and WWP anticipate that the scheduled date for delivery of gas from this new point would be September 1, 1994.

PGT also proposes to increase the flow capacity of its existing meter station near Rathdrum which serves WWP. PGT states that the current meter

capacity is 1.7 MMcf per day; however, recent deliveries have been as high as 2 MMcf per day. PGT proposes to increase the meter capacity to 5.5 MMcf per day. PGT also states that the proposed changes will not impact PGT's peak day and annual deliveries to other customers and is not an increase in WWP's contract demands.

Comment date: July 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. 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 § 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. 94–13974 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. GP94–10–000]

Railroad Commission of Texas, Tight Formation Determinations—Texas-112, 113, 114, 115, Vicksburg Formation (M, R, S, & T Sands), FERC Nos. JD93–04541T, JD93–04589T, JD93–04590T, & JD93–04591T; Preliminary Finding

June 2, 1994.

The Railroad Commission of Texas (Texas) separately determined that the M, R, S, and T sands of the Lower Vicksburg Formation ("M sand," "R sand," "S sand," and "T sand") underlying parts of the McAllen Ranch Field in Hidalgo County, Texas, qualify as tight formations under section 107(c)(5) of the Natural Gas Policy Act of 1978.

For the reasons discussed below, the Commission issues this Notice of Preliminary Finding that the determinations are not supported by substantial evidence.

Background

1. Texas' Determinations

On February 16, 1993, the Commission received Texas' notices separately determining that the Vicksburg M, R, S, and T sands underlying parts of the McAllen Ranch Field in Hidalgo County, Texas, qualify as tight formations. Shell Western E & P Inc. (Shell) is the applicant before Texas. Texas' determinations are amendments of an earlier notice of determination (Texas-15 Addition 3, JD92–02505T) still pending before the Commission after the 45-day period was tolled by two staff letters.[1]

The recommended areas for the M, R, S, and T Sands consist of 3,010 acres, 1,440 acres, 11,700 acres, and 7,320 acres, respectively, with parts of the four areas overlapping one another.

Texas concluded that the sands meet the Commission's permeability guideline based on pressure build up (PBU) tests from five M Sand wells, three R Sand wells, 27 S Sand wells, and eight T Sand wells.[2]

Texas concluded that the same wells show that the sands meet the Commission's gas flow rate guidelines based on calculations using standard flow equations requiring, among other things, the permeability values calculated from the wells' PBU tests.

2. Staff's Tolling Letter and Texas' Response

By letter dated April 2, 1993, staff tolled the 45-day review period because, in pertinent part, the record did not include the PBU tests upon which all four determinations are based, nor was there documentation showing that the PBU tests represented initial reservoir permeabilities (i.e., prior to sustained production).

In response to staff's letter, Shell requested an informal conference with staff, which was held at the Commission's offices on May 4, 1993. At that meeting, staff requested Shell to provide the relevant PBU tests, documentation showing that the data wells were actually completed in the PBU-tested zones, and geophysical well logs showing how net pay thickness values were derived.

In its reply received October 28, 1993, Texas reaffirmed its determinations and provided, in pertinent part, additional documentation from Shell, including PBU tests and portions of daily drillers' reports for 43 data wells, as well as a narrative discussion of how net pay thickness values were derived.

3. Staff's Second Tolling Letter and Texas' Response

By letter dated December 10, 1993, staff again tolled the 45-day review period because, in pertinent part, Texas' October 28, 1993 response showed that several permeability values were derived from PBU tests run from 7 months to 12 years after the tested intervals were perforated. Therefore, Texas was requested to explain why it believed such permeabilities represented original reservoir conditions, prior to sustained production. In addition, staff requested documentation showing when the tested wells were initially hydraulically fractured in order to clarify whether the permeabilities and flow rates reported

[1] TX–15 Addition 3 includes the same four sands as well as several other Lower Vicksburg sands.

[2] The M sand actually includes the M, N, and O sands. Shell refers to them as the M sand because it is the shallowest sand in a Texas-designated field consisting of the M, N, and O sands.

on PBU tests represented pre-stimulated conditions.

In its reply received April 18, 1994, Texas reaffirmed its determinations and concurred with additional data provided by Shell, including well logs for the data wells, a table showing perforation and fracturing dates for the data wells, and narrative discussions addressing the proper definition of "*in situ*."

Discussion

To qualify a formation as a tight formation, § 271.703(c)(2)(i)(A) of the regulations requires the jurisdictional agency to determine that the expected in situ gas permeability throughout the pay section is 0.1 millidarcy (md) or less.[3] Our review shows that the PBU tests upon which Texas based its permeability finding for each sand include tests that were run from seven months to twelve years after the wells were completed and sustained production commenced.[4] Moreover, the records show that permeability in well drainage areas declines with production of natural gas. Therefore, for the following reasons, we preliminarily find that the permeability data in the records do not demonstrate that the sands meet the Commission's permeability guideline.

In previous tight formation proceedings, we held that the characteristics of a formation before the onset of sustained production from that formation must be evaluated to determine whether that formation meets the tight formation guidelines.[5] We have also held that current-day gas permeability and flow rate characteristics which are the result of years of sustained production do not demonstrate that a formation is a tight formation.[6] In accordance with these findings, the Commission preliminarily found in the Texas-81, Texas-156, and Texas-158 tight formation proceedings that the subject formations did not qualify as tight formations because current-day test values were the result of sustained production and/or water injection and did not represent original reservoir conditions.[7] Accordingly, we find that the PBU tests run from seven months to twelve years after the commencement of sustained production in wells do not sufficiently represent initial conditions found throughout the four sands.

Shell asserts that staff has incorrectly defined the term "*in situ*" permeability, and that the term simply means "in place" permeability that exists at the time that wells are drilled. Shell further asserts that the initial permeabilities of the sands prior to sustained production are immaterial to the delineation of the *in situ* permeabilities. In light of the Commission's previous findings, as discussed earlier, we find that Shell's assertions are without merit, especially because the records show that permeabilities derived from tests run long after production has commenced do not represent the permeabilities existing at the time the wells were drilled.

To qualify a formation as a tight formation, 271.703(c)(2)(i)(B) requires the jurisdictional agency to show that the expected pre-stimulation stabilized natural gas flow rate, against atmospheric pressure, for wells completed for production in the formation is not expected to exceed the depth-dependent maximum flow rated specified in the table in that section.[8] Our review of the parent Texas-15 Addition 3 record shows that wells completed in the four sands typically reach stabilized flow approximately 100 days after initial production commences. Moreover, the flow rates upon which Texas' determinations are based were calculated with equations that include the permeability values derived from the PBU tests described earlier. Lower permeability values result in lower flow rate values. Therefore, we find that the flow rate values calculated in those wells where the PBU tests were run from seven months to twelve years after production commenced do not represent the initial, pre-stimulation flow rates prior to sustained production.

In addition, our review shows that many of the M, R, and S sands data wells were either never fractured or were not fractured until several months to years after the wells were perforated.[9] Numerous pre-fracturing PBU tests in such wells show flow rates occurring after the 100-day stabilization dates that substantially exceed the stabilized flow rates upon which Texas' determinations are based. Therefore, we find that the record does not contain substantial evidence in support of the reported stabilized flow rates in such wells. We also believe that Texas should examine the actual, metered flow rates at or near the 100th production day in such wells, since measured flow rates are usually more accurate than calculated flow rates.

Under 275.202(a) of the regulations, the Commission may make a preliminary finding, before any determination becomes final, that the determination is not supported by substantial evidence in the record. Based on the foregoing facts, the Commission hereby makes a preliminary finding that Texas' determinations are not supported by substantial evidence in the records upon which they were made. Texas or the applicant may, within 30 days from the date of this preliminary finding, submit written comments and request an informal conference with the Commission pursuant to section 275.202(f) of the regulations. A final Commission order will be issued within 120 days after the issuance of this preliminary finding.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13977 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[3] 18 CFR 271.703(c)(2)(i)(A) (1993).

[4] Although the M, S, and T sands also include PBU tests run shortly after well completion, our review of the records and the parent Texas-15 Addition 3 record shows that wells testing below 0.1 md following sustained production can substantially exceed 0.1 md at initial conditions.

[5] See 63 FERC 61,067 (1993) at 61,291. The Commission subsequently affirmed the determination after the applicant submitted data showing that original reservoir conditions also met the Commission's guidelines: 64 FERC 61,225 (1993).

[6] 57 FERC 61,129 (1991).

[7] See 64 FERC ¶ 61,004 (1993), 67 FERC ¶ 61,011 (1994), and 67 FERC ¶ 61,073 (1994). Final orders were not issued in Texas-81 and Texas-156 because the applicants withdrew the applications. Texas-158 is still pending before the Commission.

[8] 18 CFR 271.703(c)(2)(i)(B) (1993). The maximum allowable rates for the M, R, S, and T sands are 600 Mcf/day, 927 Mcf/day, 1,071 Mcf/day, and 1,238 Mcf/day, respectively.

[9] For the M and R Sands, the majority of the data wells were not hydraulically fractured for at least two years after perforation. We believe that this indicates good permeability in these sands.

[Docket No. CP94–565–000, et al.]

Texas Eastern Transmission Corp., et al.; Natural Gas Certificate Filings

June 1, 1994.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corp.

[Docket No. CP94–565–000]

Take notice that on May 23, 1994, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–565–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities in the Caillou Island and Lake Raccourci Fields, Timbalier Bay, located in Terrebonne Parish, Louisiana, all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

Texas Eastern proposes to abandon several segments of pipeline which vary in diameter from 4-inch to 12-inch and vary in length from 0.22 miles to 2.45 miles, as well as ten platforms and associated piping, twenty-nine measuring stations, and one barge-mounted compressor.

Texas Eastern, it is said, has determined that there is no current or foreseeable future need for the subject facilities and proposes to abandon the facilities in order to eliminate ongoing maintenance and operating expenses associated with these facilities.

Comment date: June 22, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP94–568–000]

Take notice that on May 25, 1994, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–568–000, a request pursuant to section 7 of the Natural Gas Act, as amended, and §§ 157.205, 157.212 and 157.216 (18 CFR 157.205, 157.211 and 157.216) of the Commission's regulations under the Natural Gas Act, and Panhandle's authorization in Docket No. CP83–83–000 to: (1) Abandon the existing measurement facility for the Town of Hardesty, Oklahoma, and construct and operate new delivery facilities for the Town of Hardesty, and (2) modify the delivery facilities for the Town of Taloga, Oklahoma. Both towns are existing customers of Panhandle and these modifications are proposed in order to provide adequate service to both towns, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that the existing delivery points for the towns are located on field gathering lines. It is stated that because of declining wellhead production and pressures on these lines, reliable firm service cannot be guaranteed for the 1994/1995 heating season without a modification to the physical supply source for these delivery facilities. It is further stated that in order to service these customers, Panhandle is proposing this modification to interconnect the delivery facilities into Panhandle's transmission system. Panhandle states that the existing pipelines that currently provide service to the towns will continue to be utilized as field gathering lines; therefore, Panhandle is not proposing the abandonment of any pipeline facilities.

Comment date: July 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corp.

[Docket No. CP94–567–000]

Take notice that on May 25, 1994, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–567–000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon by sale to Newfield Exploration Company (Newfield) Texas Eastern's Line No. 62, a 4.8 mile non-contiguous lateral located in the Eugene Island Area, offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Line No. 62 was constructed pursuant to Texas Eastern's Part 157 blanket construction certificate and that Line No. 62 is wholly owned by Texas Eastern. It is further stated that Line No. 62 is comprised of 4.8 miles of 8 inch pipeline and a related metering facility, that was constructed by Texas Eastern to access gas reserves in the Eugene Island Block 182 "A" area. Texas Eastern avers that Line No. 62 is a non-contiguous lateral which connects to Sea Robin Pipeline Company's pipeline system in Eugene Island Block 197 in offshore Louisiana.

Texas Eastern states that it entered into a gas purchase agreement dated February 28, 1984 (Gas Purchase Agreement), with Exxon Corporation (Exxon). It is further stated that pursuant to the Gas Purchase Agreement, the natural gas reserves located at or near Eugene Island Block 182 "A" were dedicated to Texas Eastern for its system supply. It is stated that on November 1, 1992, Newfield acquired from Exxon the natural gas reserves in Eugene Island Block 182 "A", and that Texas Eastern and Newfield, subsequently, mutually agreed to terminate the Gas Purchase Agreement on June 16, 1993.

Texas Eastern stated that it has transported, on an interruptible basis, the Eugene Island Block 182 "A" reserves on Line No. 62 for various shippers who purchase Newfield's reserves, since termination of the Gas Purchase Agreement. Therefore, Texas Eastern is requesting permission and approval to abandon by sale, Line No. 62 to Newfield for $650,000. However, it is stated that the Offer to Purchase between Texas Eastern and Newfield is contingent on Texas Eastern's receipt of the Commission authorization requested herein by July 1, 1994.

Texas Eastern submits that abandonment of Line No. 62 is in the public interest since such abandonment by sale to Newfield, will give Newfield an economic alternative to installing new and duplicative offshore facilities, and that abandonment by sale limits the environmental impact associated with duplicative facilities.

It is further asserted that the abandonment by sale to Newfield, will also allow Texas Eastern to avoid costs associated with the physical abandonment of Line No. 62, and the abandonment of the lateral will eliminate Texas Eastern's ongoing operation and maintenance costs associated with Line No. 62.

Comment date: June 22, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Equitrans, Inc.

[Docket No. CP94–569–000]

Take notice that on May 26, 1994, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed a request with the Commission in Docket No. CP94–569–000 pursuant to Sections 157.205 and 157.212(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install a delivery tap under Equitrans' blanket certificate issued in Docket No. CP83–508–000 and CP86–676, pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Equitrans proposes to install a delivery tap on its H–106 line located in the City of Waynesburg, Greene County, Pennsylvania. Equitrans states that the tap would be instituted for deliveries to Equitable, an affiliate of Equitrans, to permit retail gas service of approximately 1 Mcf on a peak day to Howard Dohn of Waynesburg, Pennsylvania. Equitrans further states it would offer the proposed service within the existing certificated transportation entitlement of Equitable under Equitrans' Rate Schedule FTS.

Equitrans states that it has sufficient capacity to accomplish the proposed deliveries without detriment to its other existing customers.

Comment date: July 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. K N Interstate Gas Transmission Co.

[Docket No. CP94–571–000]

Take notice that on May 27, 1994, K N Interstate Gas Transmission Co. (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No.

CP94–571–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate eight new delivery taps and appurtenant facilities under K N Interstate's blanket certificate issued in Docket No. CP83–140–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N Interstate proposes to install eight new delivery taps in Thomas and Wichita Counties, Kansas; Adams, Furnas, Gosper and York Counties, Nebraska; and Fremont County, Wyoming, under existing transportation agreements between K N Interstate and K N Energy, Inc.; K N Interstate and Peoples Natural Gas Co.; and K N Interstate and Northern Gas Co. It is stated that the additional delivery points will facilitate the delivery of natural gas to direct retail customers. It is stated that the total cost of installing the eight delivery taps will be $148,550.

Comment date: July 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. 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. 94–13975 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. IR–1533–000]

Corn Belt Power Cooperative; Petition for Waiver

June 3, 1994.

Notice is hereby given that the Corn Belt Power Cooperative (Corn Belt) has filed on May 27, 1994, pursuant to § 292.402 of the Commission's Regulations a petition for waiver of certain obligations imposed under §§ 292.303(a) and 292.303(b) of the Commission's Regulations (18 CFR Part 292 Subpart C) which implement section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Corn Belt has duly implemented the Commission's PURPA Regulations by its PURPA implementation on May 27, 1994.

Corn Belt seeks waiver on behalf of Boone Valley Cooperative, Butler County Rural Electric Cooperative, Calhoun County Electric Cooperative, Franklin Rural Electric Cooperative, Hidden Rural Electric Cooperative, Humboldt County Rural Electric Cooperative, Iowa Lakes Electric Cooperative, Sac County Rural Electric Cooperative and Wright County Rural Electric Cooperative (Members). Specifically, Corn Belt seeks a waiver of the requirement contained in 18 CFR 292.303(a) which would require these member electric cooperatives to purchase power made available from any qualifying facility (QF) and of the obligation in 18 CFR 292.303(b) which would require Corn Belt to make sales to any QF. The applicant believes that purchases by the Members from QFs or sales by Corn Belt to QFs are unnecessary to encourage cogeneration or small power production and are not otherwise required by section 210 of PURPA.

Any person desiring to be heard or objecting to the granting of the petition for this waiver of the Commission's Regulations should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13980 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–271–000]

East Tennessee Natural Gas Co.; Report on Account 191 Trailing Costs and Revised Account 191 Direct Bill Amounts

June 3, 1994

Take notice that on June 1, 1994, East Tennessee Natural Gas Company (East Tennessee) filed a report covering the costs and recoveries recorded in Account 191 during the period August 1993 through April 1994. East Tennessee also filed First Revised Sheet No. 6 of its FERC Gas Tariff, Second Revised Volume No. 1, which imposed adjusted direct bill amounts reflecting the revised level of costs resulting from adjustments to Account 191 shown in the report.

East Tennessee requests an effective date of May 1, 1994.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13982 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–266–000]

ANR Pipeline Co., Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on May 31, 1994, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of June 1, 1994:

Fourth Revised Sheet No. 9
Fourth Revised Sheet No. 13
Fourth Revised Sheet No. 16
Fourth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its tariff to implement recovery of $8.6 million of costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation fee surcharge applicable to its part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS shippers to recover the remaining ten percent (10%). ANR has requested that the Commission accept the tendered sheets to become effective June 1, 1994.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 385.214). All such motions or protests should be filed on or June 10, 1994. 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 application are on file with the Commission and area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13978 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–32–000]

Colorado Interstate Gas Co.; Tariff Filing

June 3, 1994.

Take notice that on June 1, 1994, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 11, reflecting an increase in the fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.49% to 0.78% effective July 1, 1994.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and that the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before June 10, 1994. 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. 94–13979 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–573–000]

East Tennessee Natural Gas Co.; Request Under Blanket Authorization

June 3, 1994.

Take notice that on May 31, 1994, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–573–000 a request pursuant to §§ 157.205 and 157.212 of the Commissions' Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a new delivery point under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to establish a new delivery point for its firm transportation customer, Elk River Public Utility District (Elk River). In order to establish this point East Tennessee proposes to remove an existing Sewannee Sands meter and renovate the existing Sewannee meter number 75–9088. East Tennessee will install the necessary cross-over piping and riser to deliver gas to Elk River in Grundy County, Tennessee and will be located on an existing East Tennessee right-of-way. East Tennessee will install, own, operate and maintain all facilities and will be reimbursed 100% for its construction. It is stated that the proposal will not result in a change in authorized quantities of gas to be delivered to Elk River.

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 § 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. 94–13981 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–259–000]

El Paso Natural Gas Co.; Tariff Filing

June 3, 1994.

Take notice that on May 31, 1994, El Paso Natural Gas Company (El Paso), tendered for filing and acceptance pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act and section 31 of the General Terms and Conditions of El Paso's Second Revised Volume No. 1–A Tariff, certain tariff sheets.

El Paso states section 31.4(b) of its tariff provides the mechanism by which El Paso will adjust each Shipper's Monthly Amortized Amount for interest calculated on the unrecovered balance of its stranded investment cost in Washington Ranch. The tariff further provides that El Paso will adjust its rates for any differences resulting from the use of estimated interest versus actual interest and such differences shall be added to or deducted from the estimated interest for the upcoming six (6) month period.

El Paso states that no adjustment for differences in the estimated interest rate for the period January 1, 1994 through June 30, 1994 is necessary since the interest rate did not change.

El Paso states the Monthly Amortized Amount has been adjusted for estimated interest. The estimated interest has been calculated pursuant to § 154.67(c)(2)(iii) of the Commission's Regulations, for the period July 1994 through December 1994, on the unrecovered balance of the stranded investment costs. El Paso states that the revised Washington Ranch Reservation Surcharges and resulting Monthly Billed Amounts are shown on the tendered tariff sheets.

El Paso requests that the tendered tariff sheets be accepted for filing and permitted to become effective July 1, 1994.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994.

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. 94–13983 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FP94–270–000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on June 1, 1994, Equitrans, Inc. (Equitrans) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, the following proposed tariff sheets, with a proposed effective date of July 1, 1994:

Original Sheet No. 9
Original Sheet No. 10–19

Equitrans states that it is proposing to recover its Account No. 191 costs attributable to gas purchases made prior to September 1, 1993, that were incurred as a consequence of Equitrans providing a bundled merchant function. Equitrans states that this filing is being made to recover known and measurable purchase gas costs which have been incurred and booked in Account No. 191 (Account No. 191 Costs) as determined and allocated in accordance with the procedures set forth in § 27.2 of the General Terms and Conditions of Equitrans' FERC Gas Tariff as approved and made effective by the Commission.

Equitrans states that the total amount to be direct billed by this filing under § 27.2 (iii) of the tariff is $4,257,231.37. This amount reflects all unrecovered Account No. 191 Costs which have not been previously collected, plus interest calculated in accordance with § 154.305 of the Commission's Regulations as detailed in Schedule C2 hereto. The unrecovered Account No. 191 Costs include actual costs of gas purchased through August 31, 1993, plus adjustments booked to Account No. 191. Also included are anticipated carrying charges of $24,422.69 through the projected payment date of July 20, 1994.

Equitrans states that the balance reflected in its Account No. 191, does not reflect refunds owed to Equitrans from Texas Eastern Transmission Corporation pursuant to the Commission's "Order Approving Settlement" issued May 12, 1994 in Docket No. RP85–177, et al. (67 FERC ¶ 61,170), as well as certain other refunds which are due to Equitrans from various pipelines, producers, and marketers. Pursuant to § 27.2(ii) of Equitrans' FERC Gas Tariff, Equitrans states that it will make subsequent section 4 filings to flow through refunds related to these matters to Equitrans' former sales customers on the same basis as Account No. 191 costs are allocated herein.

Any person desiring to be heard or protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994. 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. 94–13984 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–275–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on June 1, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current GSR surcharge and implements a GSR-Reverse Auction (R.A.) surcharge, both of which are designed to recover Northern's gas supply realignment costs. Therefore, Northern has filed Eighth Revised Sheet Nos. 50 and 51 to revise/implement these surcharges effective July 1, 1994.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington,

D.C., 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13991 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–48–000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on May 26, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance termination notices for terminated service agreements with the following customers:

Rate Schedule ODL–1 Customers

Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
The Washington Water Power Company

Rate Schedule DS–1 Customers

City of Buckley, Washington
Greeley Gas Company
Western Gas Supply

Rate Schedule SGS–1

Greeley Gas Company

Northwest states that the Commission issued an order on October 1, 1993, in Docket No. RS92–69, *et al.*, accepting Northwest's tariff sheets with eliminated all sales service on the Northwest system. Accordingly, Northwest states that it has terminated sales service to the above listed Rate Schedules ODL–1, DS–1 and SGS–1 customers as of November 1, 1993.

Northwest states that termination notices along with the actual volume and revenue data for the twelve months immediately preceding the date of each termination of service has been included in its filing.

Northwest states that a copy of this filing has been served upon all customers mentioned above who were parties to these rate schedules and upon affected states regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 395.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10 1994. 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. 94–13992 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–274–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on June 1, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858–R.A. surcharges, both of which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Seventh Revised Sheet Nos. 50 and 51 to revise these surcharges effective July 1, 1994.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13990 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–86–000]

Pacific Gas Transmission Co.; Change in Rates

June 3, 1994.

Take notice that on June 1, 1994, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance proposed tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A and Second Revised Volume No. 1. PGT requests these tariff sheets become effective on July 1, 1994.

PGT further states that it is submitting these tariff sheets to comply with paragraphs 37 and 23 of the terms and conditions of First Revised Volume No. 1–A and Second Revised Volume No. 1, respectively of its FERC Gas Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages". These tariff changes reflect the new fuel and line loss surcharge percentage to become effective July 1, 1994. Also included, as required by paragraphs 37 and 23, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PGT further states that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. 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. 94–13993 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–211–001]

Pacific Gas Transmission Co.; Notice of Compliance Filing

June 3, 1994.

Take notice that on June 1, 1994, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations thereunder, certain revised tariff sheets in compliance with the Commission's Order in this proceeding dated May 20, 1994. PGT states that the revised tariff sheets reflect the Commission's Order to add language to the Transportation General Terms and conditions of PGT's FERC Gas Tariff, First Revised Volume No. 1–A giving Releasing Shippers an option of selecting less stringent credit worthiness criteria for parcels of one year or less of service through PGT's Capacity Release Program contained in paragraph 28. PGT requests these tariff sheets become effective on May 21, 1994.

PGT states that copies of this filing has been served on PGT's jurisdictional customers and interested state commissions and all parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 10, 1994. 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. 94–13994 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–262–022, RP88–262–023, RP88–262–026, RP88–262–027, CP89–817–004, and CP89–917–000]

Panhandle Eastern Pipe Line Co.; Technical Conference

June 3, 1994.

Take notice that a technical conference has been scheduled in the above-captioned proceedings for Thursday, June 16, 1994 at 10 a.m., in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

The purpose of this conference is to allow the participants to discuss issues related to Panhandle Eastern Pipe Line Company's general refund liability in Docket No. RP88–262, and its liability for refunds arising from its customers' conversions from firm sales service to firm transportation service (the D–2 refund issue).

In particular, the parties should be prepared to discuss Panhandle's draft revised refund report circulated to parties in this proceeding on April 29, 1994, and Panhandle's refund liability, as a result of D–2 Billing after conversions, for the period prior to the effective date of the Docket No. RP88–262 rates.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13995 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–5–000]

Midwestern Gas Transmission Company; Rate Filing

June 3, 1994.

Take notice that on May 31, 1994, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Tariff Sheet No. 7 for a proposed effective date of July 1, 1994, pursuant to Article I of the Stipulation and Agreement filed by Midwestern in Docket No. RP91–78 and accepted by the Commission on July 25, 1992.

Midwestern states that this filing reflects revisions in the recovery of take-or-pay and contract reformation costs billed to Midwestern by its upstream supplier, Tennessee Gas Pipeline Company (Tennessee) pursuant to section XXX of Tennessee's General Terms and Conditions.

Midwestern further states that the revised demand surcharge amount reflects a reduction to zero from the previously effective demand surcharge amount, which was filed on December 1, 1993, in Docket No. TM94–2–5. The current volumetric charge will not change.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing show file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13985 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–260–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on May 31, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fifth Revised Sheet No. 25, to be effective July 1, 1994.

Natural states that the filing is submitted to commence recovering effective July 1, 1994, $1,952,840 net premium paid for coal gasification supplies which is part of its gas supply realignment program.

Natural requested whatever waivers may be necessary to permit the tariff sheet as submitted herein to become effective July 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Natural states that it has reached a tentative settlement with members of the Natural Customer Group (NCG) regarding recovery from them of GSR costs. Natural suggests that members of the NCG may preserve their rights by filing an abbreviated protest which may be supplemented if the settlement is not approved.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 10, 1994. 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. 94–13986 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–578–000]

NorAm Gas Transmission Company; Application

June 3, 1994.

Take notice that on June 1, 1994, NorAm Gas Transmission Company (NGT), a subsidiary of NorAm Energy Corporation, whose main office is located at 1600 Smith Street, Houston, Texas 77002, filed an abbreviated application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended and part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder (18 CFR 157.7 and 157.18), requesting issuance of a Commission order authorizing NGT (formerly Arkla Energy Resources Company) to abandon an existing transportation and exchange transaction with Tennessee Gas Pipeline Company. NGT's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

This transaction provided for Tennessee to receive for the account of NGT certain quantities of gas produced in Mississippi Canyon Block 148, Offshore Louisiana, and to transport such quantities to NGT at various points of delivery.

This transportation and exchange service was previously certificated on November 15, 1994, under Docket No. CP84–248–000 (29 FERC ¶ 61,184) and, according to NGT and Tennessee, has been inactive, is no longer necessary and has been terminated by the written consent of both parties. No facilities will be abandoned as a result of the abandonment of this service. As such, certificate authorization is no longer necessary.

NGT states that, although the contract between Tennessee and NGT was filed by Tennessee as part of Tennessee's tariffs, due to administrative oversight the contract was never included in NGT's tariffs.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 24, 1994, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 or if the Commission on its own review of the matter, finds that a grant of the certificate for the proposal is required by the public convenience and necessity. If the Commission 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 necessary for NGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13987 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–272–000]

NorAm Gas Transmission Company; Filing

June 3, 1994.

Take notice that on June 1, 1994, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of July 1, 1994:

Second Revised Sheet No. 4.3
Alternate Second Revised Sheet No. 4.3

NGT states that these revised tariff sheets are filed in compliance with § 5.7(c)(ii)(2)(B), First Revised Sheet Nos. 107 and 108 of NGT's tariff.

NGT states that pursuant to said tariff provision, the proposed tariff sheets adjust NGT's cashout balancing revenue credit for the period January through March 1994.

Any person desiring to be heard or protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 10, 1994. 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. 94–13988 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–147–000]

Northern Natural Gas Co.; Technical Conference

June 3, 1994.

In the Commission's order issued on March 31, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Tuesday, June 14, 1994, at 1 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13989 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–269–000]

Southern Natural Gas Co.; GSR Cost Recovery Filing

June 3, 1994.

Take notice that on May 31, 1994, Southern Natural Gas Company (Southern) submitted for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect an increase in GSR billing units effective June 1, 1994, due to new transportation commitments under Rate Schedule FT:

Eighth Revised Sheet No. 15

Eighth Revised Sheet No. 17
Sixth Revised Sheet No. 29
Sixth Revised Sheet No. 30
Sixth Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's customers and interested state commissions

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13996 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–264–000]

Southern Natural Gas Co., GSR Cost Recovery Filing

June 3, 1994.

Take notice that on May 31, 1994, Southern Natural Gas Company (Southern) set forth its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differential costs under realigned gas supply contracts or contract buyout and transactional costs associated with continuing realignment efforts during the period February 1, 1994 through April 30, 1994. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, with the proposed effective date of July 1, 1994:

Ninth Revised Sheet No. 15
First Alternate Ninth Revised Sheet No. 15
Ninth Revised Sheet No. 17
First Alternate Ninth Revised Sheet No. 17
Seventh Revised Sheet No. 18
First Alternate Seventh Revised Sheet No. 18

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13997 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–261–000]

Tennessee Gas Pipeline Co., Change Pursuant to Tariff Adjustment Provisions

June 3, 1994.

Take notice that on May 31, 1994, Tennessee Gas Pipeline Company (Tennessee) filed to revise its recovery of take-or-pay and contract reformation costs pursuant to Article XXV of the General Terms and Conditions of Volume One of its FERC Gas Tariff. As part of the filing, Tennessee tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective July 1, 1994:

Second Revised Sheet Nos. 38–42

Tennessee states that the purpose of the filing is to reflect the recovery of an additional $68,574 of buyout/buydown costs, including interest, which are in the nature of excess royalty settlement payments. Tennessee's total additional costs of $164,132 have been allocated under an equitable sharing formula of 50% absorption-41.8% demand-8.2% volumetric in conformance with the Stipulation and Agreement approved by Order of the Commission on June 25, 1992, in Docket Nos. RP86–119, *et al.*

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. 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. 94–13998 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–262–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1994

Take notice that on May 31, 1994, Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover gas supply realignment costs (GSR Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states it is filing to recover GSR Costs from customers in accordance with the procedures set forth in § 15.2(C) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and in accordance with the Commission's order issued April 22, 1993 (April 22 Order), September 17, 1993 (September 17 Order) and December 17, 1993 (December 17 Order) in Docket Nos. RS92–11–000, RS92–11–003, RS92–11–004, RP88–67–000, et al., (Phase I/Rates), and RP92–234–001. Texas Eastern states that Order No. 636 and the April 22, September 17 and December 17 Orders permit Texas Eastern to file this limited Section 4 filing to continue recovery of its GSR Costs.

Texas Eastern states that the filing includes known and measurable GSR Costs incurred since the date of its previous quarterly filing, plus carrying charges through May 31, 1994, totalling $29,414,633. Additional interest of $676,421 at the current FERC annual rate of 6.00% is added for carrying charges from June 1, 1994 to the projected payment dates. The proposed effective date of the filing is July 1, 1994.

Texas Eastern states that copies of the filing were served on firm customers of

Texas Eastern and interested state commissions, as well as current interruptible customers.

Inasmuch as Texas Eastern's global settlement has been approved, without modification, by the Commission and upon its effective date such settlement would resolve any issues that may be presented by the instant proceeding, Texas Eastern requests that the Commission not establish any proceedings in the instant docket prior to the effective date of Texas Eastern's global settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. 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. 94–13999 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–263–000]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on May 31, 1994, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date on July 1, 1994:

Original Sheet No. 186
Original Sheet No. 187
Original Sheet No. 188
Sheets Nos. 189–199

Texas Eastern states that the above tariff sheets are filed pursuant to section 15.2(B) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that the purpose of this filing is to refund a net overrecovery in its Account No. 191 attributable to gas purchases made prior to June 1, 1993, the date of implementation of Order No. 636 on Texas Eastern's system. Texas Eastern states that the overrecovery resulted due to a large refund payment from Koch Gateway Pipeline Company (Koch, formerly United Gas Pipe Line Company). Texas Eastern states that the refund payment, totalling $2,771,946.90 results in a credit balance as of April, 1994, of $2,737,007, which Texas Eastern proposes in the instant filing to refund to its customers pursuant to its FERC Gas Tariff, plus carrying charges calculated in accordance with Section 154.305 of the Commission's regulations.

Texas Eastern states that under the terms of its Order No. 636 Global Settlement in Docket No. RP85–177–119, et al. (Settlement), approved by order issued May 12, 1994, it has agreed to refund all amounts collected under its account No. 191 direct billings that exceed a cap of $121 million. Texas Eastern states that while the Settlement is not yet effective, the Commission's approval of the instant proposal of a direct billing refund will reduce the amount of the refunds payable under the Settlement when it becomes effective, by providing for disposition of the instant refund amounts at an earlier date. Texas Eastern states that the allocation methodology for the instant direct billing refund is the same as provided in the Settlement.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994. 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 a file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14000 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–47–006]

Texas Gas Transmission Corp.; Filing

June 3, 1994.

Take notice that on May 24, 1994, Texas Gas Transmission Corporation (Texas Gas) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 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 June 20, 1994. 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. 94–14001 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–34–006 and RP93–34–007]

Transwestern Pipeline Co.; Reports of Refunds

June 3, 1994.

Take notice that on May 27, 1994, Transwestern Pipeline Company (Transwestern) tendered for filing two refund reports. Transwestern states that the reports document refunds of amounts pertaining to IT revenue credit and firm reservation charges due customers under Transwestern's settlement in Docket No. RP93–34.

Transwestern states that it is filing the refund reports pursuant to Articles III and IV of the Joint Stipulation and Agreement filed on November 23, 1993, in the above referenced docket. Additionally, in accordance with

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. Preambles ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993), Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

§ 154.67(c)(2)(iii) of the Commission's Regulations, Transwestern states that interest is included on the refund amounts.

Any person desiring to protest said filings should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Regulations. All such protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14002 Filed 6–08–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–213–001]

Transwestern Pipeline Co.; Amendment

June 3, 1994.

Take notice that on May 27, 1994, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, submitted an amendment to its abbreviated application filed February 3, 1994, in Docket No. CP94–213–000. Transwestern's amendment seeks authorization for an abandonment by sale to Mewbourne Oil Company (Mewbourne) of certain small diameter pipelines, meter stations and related facilities located in Lipscomb County, Texas and Ellis County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that the submitted amendment revises the original February 3, 1994, application in three respects: (1) Net book value amount for the South Higgins facilities and the Trenfield facilities has been changed from $252,950 to $369,127 as of December 31, 1993. The original application inaccurately stated that the sales price was equal to the net book value of the facilities. The sales price to Mewbourne will remain at $252,950; (2) Journal entries for Account 108 and 101 on Exhibit Y of the original application inaccurately showed the original cost of the facilities to be $252,950 instead of $1,123,220. As revised, Transwestern feels Exhibit Y is consistent with the accounting treatment applicable to the abandonment by sale of a non-operating unit and will not reflect a gain or loss on the sale of these facilities in its accounting records; and, (3) Exhibit Z–1 of the original application incorrectly listed the Squire No. 1 well rather than the Squire No. 2 well, and the length of pipe of the subject facilities. With respect to the Trenfield facilities, the following line and segments should be revised as follows: MC–2–02 should be 1,408 feet rather than 9,500 feet; MC–2–09 should be 10,788 feet which was previously not included; and MC–2–11 should be 5,600 feet rather than 5,131 feet.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 10, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 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 Transwestern to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14003 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–267–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on May 31, 1994, Wyoming Interstate Company, Ltd. (WIC), tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1 and Second Revised Volume No. 2. WIC states that the proposed changes would increase revenues from jurisdictional transportation service by $3.6 million based on the 12-month period ending February 28, 1994, as adjusted. WIC requested an effective date of July 1, 1994.

WIC states that the rates filed herewith are designed to enable WIC to recover its jurisdictional cost of service.

WIC states that copies of WIC's filing have been served on WIC's jurisdictional transportation customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994. 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. 94–14004 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4894–5]

Agency Information Collection Activities Under OMB; Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The

ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 11, 1994.

FOR FURTHER INFORMATION: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Notice of Supplemental Distribution of a Registered Pesticide Product. (*EPA ICR No.:* 0278.05; *OMB No.:* 2070–0044). This is a request for extension of the expiration date of a currently approved collection with no changes. The current clearance expires on January 31, 1995.

Abstract: Under section 3(e) of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), pesticide registrants may distribute or sell their registered pesticide product under another person's name. Such distribution and sale is termed "supplemental distribution". To participate in this program, registrants must notify the Agency each time they make their product available for supplemental distribution. To notify the Agency, registrants must complete and submit *EPA Form No.:* 8570–5, *titled:* "Notice of Supplemental Distribution of a Registered Pesticide Product". The form requests the following information: a) EPA registration number of the product to be distributed; b) distributor company number; c) name and address of the basic registrant; e) name to be used on the distributed product; f) name and address of the distributor; g) signature and title of the appropriate distributor officer and date signed; and) name and title of the appropriate contract registrant company official signed.

Both the distributor are required to the information.

The Agency uses the information to ensure that all distributors as well as the original registrant are registered.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1 hour per response for reporting, and 5 hours per recordkeeping annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Manufacturers, distributors and retailers of residential wood heaters and laboratories that conduct certification tests.

Estimated No. of Respondents: 10,000.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 1, 1994

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–13[illegible]–8–94; 8:45 am]

BILLING CODE 656[illegible]

[FRL–4894–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July [illegible]

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2[illegible]

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Residential Wood Heaters (40 CFR Part 60, Subpart AAA) (*EPA ICR No.* 1176.04; *OMB No.* [illegible]. This is a request for extension of a currently approved information collection.

Abstract: Manufacturers, testing laboratories are required to submit periodic reports and maintain records to comply with the NSPS. Manufacturers must give 30 days advance notice of scheduled certification testing, report the results of the certification tests, and submit a statement biennially certifying that no changes have been made to the model line that affect emission performance. Manufacturers must affix labels to wood heaters and must prepare an owner's manual in accordance with the regulations. Testing laboratories must apply to EPA for accreditation and report the results of the initial and annual proficiency tests. Both manufacturers and laboratories are required to keep records pertaining to certification tests.

EPA uses the information supplied by the manufacturers to ensure that best demonstrated technology is being applied to reduce emissions from wood heaters and to ensure compliance with the certification procedures and emission standards. EPA uses the information from the testing laboratories to grant or deny accreditation and to assist in enforcement and compliance activities. Commercial owners are required to maintain names and addresses of previous owners of used wood heaters. This information is necessary to prevent the sale of new, uncertified wood stoves under a claim that they are exempt used stoves.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1 hour per response for reporting, and 5 hours per recordkeeping annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Manufacturers, distributors and retailers of residential wood heaters and laboratories that conduct certification tests.

Estimated No. of Respondents: 54 for reporting and 3 for recordkeeping.

Estimated No. of Responses per Respondent: [illegible]

Estimated Total Annual Burden on Respondents: 75 hours.

Frequency of Collection: On occasion for test results, annually for laboratory proficiency and biennially for a manufacturer certification that no changes have been made to the model line that affect emission performance.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M St. SW., Washington, DC 20460

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 1, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–13958 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4894–9]

Availability of FY 93 Grant Performance Reports for Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed end-of-year evaluations of eight state air pollution control programs (Alabama Department of Environmental Management, Florida Department of Environmental Protection, Georgia Environmental Protection Division, Kentucky Department for Environmental Protection, Mississippi Bureau of Pollution Control, North Carolina Department of Environment, Health, and Natural Resources, South Carolina Department of Health and Environmental Control and Tennessee Department of Conservation and Environment) and 16 local programs (Knox County Department of Air Pollution Control, Tn—Chattanooga-Hamilton County Air Pollution Control Bureau, Tn—Memphis-Shelby County Health Department, Tn—Nashville-Davidson County Metropolitan Health Department, Tn—Jefferson County Air Pollution Control District, Ky—Western North Carolina Regional Air Pollution Control Agency, NC—Mecklenburg County Department of Environmental Protection, NC—Forsyth County Environmental Affairs Department, NC—Palm Beach County Public Health Unit, Fl—Hillsborough County Environmental Protection Commission, Fl—Dade County Environmental Resources Management, Fl—Jacksonville Air Quality Division, Fl—Broward County Environmental Quality Control Board, Fl—Pinellas County Department of Environmental Management, Fl—City of Huntsville Department of Natural Resources, Al—Jefferson County Department of Health, Al). These audits were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act. EPA Region IV, has prepared reports for the twenty-four agencies identified above and these 105 reports are now available for public inspection.

ADDRESSES: The reports may be examined at the EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Linda Thomas, at the above Region IV address, for information concerning States of Alabama, Florida, Mississippi, Georgia, and local agencies. Vera Bowers, at the above Region IV address, for information concerning the States of Kentucky, North Carolina, South Carolina, Tennessee, and local agencies.

Dated: May 25, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–14067 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4895–2]

Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that the Environmental Engineering Committee (EEC) of the Science Advisory Board will meet June 28–30, 1994 in room 3 north of the conference center on the ground floor of the mall area at EPA Headquarters Building, 401 M Street SW, Washington D.C. The meeting, which is open to the public, will start at 9:00 AM on the June 28 and adjourn by 4:00 on June 30.

On June 28, the EEC will review the *Technology Innovation Strategy of the United States Environmental Protection Agency*, External Discussion Draft, January 1994. The Agency plans to provide the Committee with comments already received on the strategy. The charge for this review is still in the negotiation process. On June 29, the EEC will conduct consultations on waste minimization and combustion issues for the Office of Solid Waste. On June 30, the EEC will be briefed on the Use Cluster Scoring System, the Hazardous Waste Identification Rule, and Superfund Presumptive Remedies. The Committee will consider a draft contribution to the "Re-inventing the Science Advisory Board" effort, discuss its contribution to the Science Advisory Board's Futures Project, and consider what activities it might usefully undertake in FY95.

An agenda for the meeting and a copy of the charge is available from Ms. Dorothy Clark, Staff Secretary, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington D.C. 20460 (202–260–6552). Members of the public desiring additional information about the conduct of the meeting should contact Mrs. Kathleen Conway, Designated Federal Official, Environmental Engineering Committee by mail at the address above, by telephone at 202/260–2558, by fax at 202/260–7118, or by internet at

Conway Kathleen@epamail.epa.gov.

Anyone wishing to provide written comment should supply Mrs. Conway with 35 copies. Anyone wishing to make brief oral comments should contact Mrs. Conway by 2:00 Eastern Time June 22.

Dated: June 3, 1994.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 94–14076 Filed 6–8–94; 8:45am]

BILLING CODE 6560–50–P

[FRL–4894–8]

Pennsylvania: Final Determination of Adequacy of the Commonwealth's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of final determination of full program adequacy for the Commonwealth of Pennsylvania's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/

Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, state/tribal landfill permit programs. The Agency intends to approve adequate state/tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved state/tribal permit programs provide interaction between the state/tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in state/tribal areas with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the state/tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a state/tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Resources (PADER) applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Pennsylvania's MSWLF permit program application and proposed a determination on November 4, 1993, that Pennsylvania's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. EPA is today issuing a final determination that the Commonwealth of Pennsylvania's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the Commonwealth of Pennsylvania shall be effective June 9, 1994.

FOR FURTHER INFORMATION CONTACT: USEPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew Uricheck, mailcode (3HW53), telephone (215) 597–7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs that incorporate the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which state/tribal programs must satisfy to be determined adequate.

EPA intends to approve state/tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits or other forms of prior approval, as imposing several minimum requirements. First, each state/tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state/tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state/tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state/tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether state/tribal programs are "adequate" based on the criteria outlined above.

B. Commonwealth of Pennsylvania

On July 23, 1993, Pennsylvania submitted an application for adequacy determination for its MSWLF permit program. On November 4, 1993, EPA published a tentative determination of adequacy for all portions of Pennsylvania's program. Further background on the tentative determination of adequacy appears at 58, FR 58862–58864, November 4, 1993.

A public comment period began on November 4, 1993, and ended on December 22, 1993. In this notice of tentative determination, EPA announced that a public hearing would be held on December 22, 1993, in Harrisburg, PA. A public hearing was held on December 22, 1993. No one requested the opportunity to speak or offered public comments at the public hearing.

In the Commonwealth's final application for adequacy determination, Pennsylvania proposed non-regulatory revisions to those portions of their existing program which did not fully meet the Federal requirements in EPA's 40 CFR part 258. EPA tentatively determined in the November 4, 1993 **Federal Register** that once minor changes as described below were made, Pennsylvania's MSW landfill permitting program would ensure compliance with 40 CFR part 258. PADER has made the changes specified in the November 4, 1993 **Federal Register**, and as listed below.

Subpart A—General

The current Pennsylvania requirements fully comply with: 40 CFR 258.1 (hereinafter referred to as § 258.—), Purpose, Scope, and Applicability; § 258.2, Definitions; and § 258.3, Consideration of other Federal laws.

Subpart B—Location Restrictions

1. The current Pennsylvania requirements fully comply with: § 258.11, Floodplains; § 258.12, Wetlands; and § 258.15, Unstable areas.

2. Airport Safety (§ 258.10) and Seismic Impact Zone (§ 258.14) siting-restrictions are addressed by Pennsylvania's revision of their permit application forms requiring permittees to comply with the notification requirements of § 258.10 (PADER Form D) and to consider seismic impacts in their design as stated in § 258.14 (PADER Form 24).

3. Fault Areas (§ 258.13)—Pennsylvania has provided a certification from the Pennsylvania Geologic Survey which states that there are no Holocene Faults in the Commonwealth of Pennsylvania, and therefore this requirement is not applicable. EPA concurs with this position.

4. Closure of Existing MSWLF Units (§ 258.16)—Section 258.16 will not be adopted by Pennsylvania, since Pennsylvania has certified that no currently operating landfills are sited in areas impacting airport safety (§ 258.10), floodplains (§ 258.11), or unstable areas (§ 258.15), as defined in these sections.

Subpart C—Operating Criteria

1. The current Pennsylvania requirements fully comply with: § 258.20, Hazardous Waste Exclusion; § 258.21, Daily Cover; § 258.22, Disease Vector Control; § 258.24, Air Criteria; § 258.25, Access Requirements; § 258.26, Run-on/Run-off; § 258.27, Surface Water; and § 258.29, Record Keeping.

2. Explosive Gas Control (§ 258.23)—Pennsylvania's program meets these requirements through Pennsylvania Code, title 25, chapter 273, section 292 (273.292), which requires regular passive-venting and monitoring of

facility structures. If critical levels of methane gas are reached in facility structures or at the facility boundary, the owner/operator is required to conduct active venting on the landfill system. In the event of an emergency situation, Pennsylvania requires the owner/operator to immediately implement their previously prepared and approved contingency plan (see 25 Pa. Code section 273.303).

3. Liquids Restrictions (§ 258.28)—Pennsylvania revised permit application Form 25 to prohibit the recirculation of leachate except at those landfills that have a composite liner.

Subpart D—Landfill Design

1. In accordance with § 258.40(a)(1) and (c), Pennsylvania has demonstrated that their alternate liner system, consisting of a double synthetic liner/double leachate collection system design (25 Pa. Code sections 273.251--273.258), ensures compliance with the requirements of this section. Pennsylvania has made this demonstration through mathematical modeling, using the Hydrologic Evaluation of Landfill Performance (HELP) and Multimedia Exposure Assessment (MULTIMED) Models. Pennsylvania's modeling shows that this liner system meets the § 258.40 performance standard under worst-case assumptions anywhere in the Commonwealth. Pennsylvania-specific data were used as input parameters to the models when available and appropriate. In addition, worst-case conditions were assumed for other parameters where data from Pennsylvania were not applicable or available.

Pennsylvania's existing regulations also allow an option of using two feet of natural (clay) material for the secondary (lower) liner, in place of a second synthetic liner. Additional PADER modeling documentation did not fully demonstrate that this option would meet the § 258.40 performance standard under worst-case assumptions throughout the Commonwealth. Therefore, PADER has revised their MSW permit application forms relating to liner design (Form 24) to require any applicant proposing this option to provide a demonstration that the liner system meets the performance standards of 40 CFR 258.40 on a case-by-case, site-specific basis, through the use of mathematical modeling.

Subpart E—Ground-Water Monitoring and Corrective Action

1. The current Pennsylvania requirements fully comply with: § 258.50, Applicability; § 258.51. Ground-water monitoring systems; and § 258.57, Selection of Remedy.

2. Ground-Water Sampling and Analysis Requirements (§ 258.53), Detection Monitoring Program (§ 258.54) and Assessment Monitoring Program (§ 258.55)—Through the use of existing authorities and appropriate permit conditions, Pennsylvania will require Appendix I sampling of leachate collected in the detection zone of the liner system. Based on the results of that testing, Pennsylvania will require the owner/operator to include any detected parameters exceeding the Maximum Contaminant Level (MCL) in the routine ground-water sampling and analysis program (25 Pa. Code section 273.284). If appendix I MCL's are exceeded in the sampling wells, sampling for all appendix II parameters will be required. If ground-water degradation has been detected in accordance with 25 Pa. Code section 273.286, Pennsylvania will require that a ground-water assessment plan be prepared and implemented. With these mechanisms in place, through the revisions of PADER Forms 8, 19, 50, and 51, Pennsylvania's program ensures compliance with the requirements of these sections.

3. Assessment of Corrective Measures (§ 258.56) and Selection of Remedy (§ 258.57)—Pennsylvania's program will ensure compliance with these sections through Pennsylvania's abatement plan requirements (25 Pa. Code section 273.287). In the event that an abatement plan must be prepared and implemented by an owner/operator, Pennsylvania requires that the permit be modified. The permit modification process includes public involvement.

4. Implementation of the Corrective Action Program (§ 258.58)—Pennsylvania ensures compliance with the requirements of this section through both 25 Pa. Code section 273.287 and the Clean Streams Law, which prohibits pollution of any waters in the Commonwealth.

Subpart F—Closure and Post-Closure Care

1. Closure Criteria (§ 258.60)—Pennsylvania requires, through a revised Form 24, flexible membrane final covers. However, Pennsylvania may approve a clay cap in situations where the use of a flexible membrane cover may be impracticable. In addition, Pennsylvania requires the use of a drainage layer to further limit infiltration by diverting rainfall from the cap, thus further ensuring that the final cover system meets the EPA performance criteria. Pennsylvania, through Form 24, requires that the final cover be in place within six months of the last receipt of waste. Time extensions for construction of the final cover can be granted by Pennsylvania where weather conditions prohibit proper cover construction, or where it is technically impractical to construct a final cover within six months.

2. Post-Closure Care Requirements (§ 258.61)—Although Pennsylvania's regulations do not specifically state that post-closure must occur for 30 years, Pennsylvania requires that post-closure continue until leachate generation ends and gas collection is no longer necessary (25 Pa. Code sections 271.314, 271.341 and 271.342). In addition, Pennsylvania requires that bonds needed for financial assurance be calculated for a minimum period of thirty (30) years. With these requirements in place, EPA has determined that Pennsylvania's program ensures compliance with the requirements of this section.

Subtitle G—Financial Assurance

1. The current Pennsylvania requirements fully comply with: § 258.70, Applicability; and § 258.74, Allowable Mechanisms.

2. Financial Assurance for Post-Closure Care (§ 258.72) and Financial Assurance for Corrective Action (§ 258.73)—Pennsylvania considers a facility to be active until final closure is reached. At the time of final closure, the owner/operator must have a bond that is based upon the total estimated cost to Pennsylvania for completing final closure. Through the above mechanisms, EPA believes that Pennsylvania's program will ensure compliance with these sections.

C. Public Comments

EPA Region III received the following written public comments on its tentative determination of full program adequacy approval of the Pennsylvania MSW landfill permitting program.

One commenter urged EPA to reconsider its approach in approving the Pennsylvania liner system on a statewide worst case approach, believing that the 40 CFR part 258 regulations do not allow such an option, but only provide for a site-specific variation to the prescribed composite liner. This same writer also stated that the double geomembrane liner design proposed by the State of Florida was found to fail "reasonable" worst case assumptions statewide, in an independent review by a landfill design consultant.

The Agency believes that the flexibility afforded to an approved state to approve an alternate liner design, as long as that design meets the design performance standard, allows the application of a statewide alternate

design, again as long as it can be demonstrated that the standards are met on a statewide basis. There are at least four statements in the October 9, 1991 Preamble to the 40 CFR part 258 regulations supporting the position that it was EPA's intent to allow a statewide option. The Agency also has discussed this at technical training seminars (based on the 40 CFR part 258 Technical Manual) held in 1992 for the EPA regional staffs and the state agencies, the discussion of which addressed alternatives to landfill designs in approved states, including the adoption of a design standard that meets the performance standard in all locations in a state.

We do not consider comments on the assumptions contained in the State of Florida's demonstration applicable to Pennsylvania, since we are requiring a Pennsylvania-specific demonstration of compliance to EPA's performance standard. We also note that this commenter stated that "(the Florida consultant) is not familiar with the assumptions used by the State of Pennsylvania . . .".

Another commenter requested that PADER be required to hold a public hearing for each new landfill permitted, and be required to respond to public comments, rather than be allowed the option of doing so based on public interest. PADER has authority to hold a public hearing on every new landfill permitted in the Commonwealth, and in recent years, has held a public meeting or hearing on all new landfills. PADER's regulations provide for public notice and require PADER to evaluate all comments received and address applicable comments prior to a permit decision. Comments can also be submitted to PADER at any time during the operation of the facility. In regard to a related concern that any proposed corrective action measures be discussed at a public meeting, PADER also assured EPA that any such action would be considered a "major permit modification", and thus subject to PADER's public participation requirements.

This same commenter noted that EPA requested additional modeling and leachate data and narrative information concerning PADER's documentation of their liner system alternative, and stated that EPA should not approve the Pennsylvania liner system until this information was received. EPA agrees with this comment, and delayed issuing this Final Determination until this data was submitted and reviewed. This new documentation provided additional support to PADER's position that their double synthetic liner system meets EPA's 40 CFR part 258 performance standards anywhere in Pennsylvania. It did not fully demonstrate that the option of using a clay liner as the second (secondary) liner of PADER's double liner requirement could meet the standard anywhere in the state. Therefore, PADER will require any permittee proposing to choose this option to demonstrate that the EPA performance standards are maintained on the site-specific basis.

This writer opposed the recirculation of any leachate. EPA disagrees with this comment, as 40 CFR 258.28(a)(2) clearly authorizes the recirculation of leachate under certain circumstances. He also suggested that PADER require tests for "all chemicals regulated by the EPA". PADER has agreed to a groundwater monitoring program that EPA believes is adequate to cover all the chemicals listed in appendices I and II, the limits of the groundwater sampling required under 40 CFR part 258.

This commenter also asked that seismic impact concerns should be considered at all locations in the Commonwealth. PADER has clarified their statement and intent to revise permit application forms to insure that all permit applicants in Pennsylvania will be required to address seismic concerns.

Two commenters stated that Pennsylvania should be required to adopt a minimum 30 year post-closure care period for all post-closure care requirements, not just for their (existing) bonding requirements. EPA believes that PADER's existing requirement that post-closure care continue until leachate generation ends and gas collection is no longer necessary fully satisfies EPA's concern that care continue until the landfill wastes are stabilized. The PADER regulations require the bond to be maintained for at least 10 years after the facility reaches final closure, which is defined as the date that no further maintenance is needed at the site. We note that 40 CFR 258.61(b) allows an approved state to decrease (or increase) the length of the post-closure care period based on landfill specific concerns.

One commenter raised the issue of whether or not Pennsylvania ground-water samples would be filtered or not filtered. 40 CFR 258.53 states that ground-water samples shall not be field filtered prior to laboratory analysis. This commenter expressed the opinion that double samples, one unfiltered, and one filtered, would be preferable. PADER, in fact, requires that groundwater samples be both filtered and unfiltered prior to analysis.

This commenter expressed the opinion that municipal incinerator ash should not be accepted at MSW landfills in Pennsylvania. EPA's position on Municipal Waste Combustor (MWC) ash was that it was excluded from regulation as a hazardous waste under RCRA Subtitle C. The Supreme Court decision on May 2, 1994, however, ruled that MWC ash is not excluded from Subtitle C hazardous waste rules, meaning that if a specific combustor's ash fails the EPA prescribed tests and is determined hazardous, then that ash would not be allowed in a MSW landfill. PADER considers ash as a special handling waste, requiring additional handling and/or analysis considerations. In light of the recent Court ruling, and assuming no new Federal legislation to preempt it, PADER would require any MWC ash failing the Toxicity Characteristic Leaching Procedure (TCLP) tests to be handled in accordance with hazardous waste program requirements.

A commenter expressed concern that allowing PADER an option to approve, on a site-specific basis, a clay final cap on steep slopes (because of PADER's significant past experience that clay caps on steep slopes are more stable than flexible membranes) would encourage landfill operators to create steeper than normal slopes, to take advantage of any possible economic savings. They feared that steeper slopes would lead to even higher landfills, thereby creating a potential for increased runoff problems and visual pollution. EPA does not agree. First, depending on site-specific conditions, a synthetic cover is not always more expensive. Secondly, the final elevation and side slope geometry of a landfill is set during the permitting process based on stability and drainage design considerations, rather than final cover material.

One commenter maintained that it was premature to approve the Pennsylvania program before the publication of the final State/Tribal Implementation Rule (STIR). EPA disagrees with this statement, in that the Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the states. Instead, EPA is using the draft STIR as guidance for evaluating state permit programs, and maintains its discretion to approve state permit programs utilizing the draft STIR and/or other criteria which assure compliance with 40 CFR part 258. In addition, the public has the opportunity to comment on the criteria used by EPA to assure the adequacy of state MSWLF permit programs with each tentative determination published in the **Federal**

Register. The Agency discusses these criteria in each tentative determination published, including Pennsylvania's tentative determination. To date, tentative and/or final determinations have been issued for at least 38 states.

A commenter expressed concern that PADER has not yet established a wellhead protection program under Section 1428 of the Safe Drinking Water Act, and the possible negative impact of approval of their MSWLF permitting program without this program in place. States are not required to have a wellhead protection program in place in order to receive approval of the MSWLF permitting program. PADER is currently developing regulations for a wellhead protection program, in cooperation with EPA.

One commenter requested EPA to direct PADER to develop additional discretionary siting criteria to accompany the 40 CFR part 258 criteria, with the intent that the State take a more direct role in the siting of landfills. EPA is satisfied that the existing PADER regulations, with minor changes as described in the Pennsylvania Tentative Determination and this Final Determination, are adequate to ensure compliance with 40 CFR part 258, and we have no authority to direct PADER to adopt additional requirements.

This same commenter questioned the Commonwealth's consideration of seismic impacts in their review process. As stated previously, PADER agreed to revise their permit application forms to require all permit applicants to consider seismic impacts on location and design decisions.

A commenter also questioned if PADER had the resources and expertise to make the determinations required under 40 CFR part 258, and to take timely enforcement action. EPA believes that since the PADER staff is one of the largest and most experienced MSW landfill staffs among Region III states, having been involved with permitting decisions on over 50 landfills since 1988, that they are fully capable of making such determinations. The commenter also questioned PADER's reliance on information and data provided mainly by permit applicants. PADER reviews and evaluates all information received as part of the permit application. In addition, their regulations allow them considerable flexibility to require any additional information they feel is necessary to make their decisions.

A commenter stated that PADER did not have adequate hazardous waste screening requirements, and provided detailed suggestions on screening, tracking, and the financing of a hazardous waste program. These suggestions exceed the 40 CFR part 258 requirements, and are beyond EPA's authority to require them. PADER's regulations require all facilities to have a Commonwealth-approved waste analysis and acceptance plan. As part of the waste acceptance plan and site operational plan, the operator must identify how incoming waste are to be inspected to make sure no regulated quantities of hazardous waste are accepted at the facility. PADER requires that a waste screening plan be implemented at all facilities. The waste analysis and acceptance plan approved at the facilities addresses the standards for accepting residual (non-hazardous) waste.

This same commenter requested that PADER be directed to conduct research on ash treatment options. This is beyond the requirements of 40 CFR part 258. The commenter further suggested that MSW wastes be disposed of in dedicated landfill areas to facilitate possible future landfill reclamation. This is also not required by 40 CFR part 258. PADER has taken significant steps to prevent landfill disposal of recyclables, batteries, and yard waste. They also require facilities to keep records on where and when waste is disposed so reclamation may be easier in the future.

A commenter criticized Pennsylvania's implementation of financial assurance requirements under the Pennsylvania Municipal Authorities Act, and requested that EPA withhold final program approval until the Commonwealth prepares an approved plan for correcting their current procedures. The MSW requirements in Pennsylvania, including the financial assurance requirements, are administered by PADER through the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act, and the municipal waste regulations, rather than the Municipal Authorities Act. PADER's authority requires the permit applicant to have the appropriate bonding and insurance requirements in place prior to the issuance of a permit. EPA is satisfied that PADER's existing authorities and procedures fulfill the requirements of 40 CFR part 258, subpart G.

A commenter suggested that the addition of a requirement to add a bentonite mat underneath the secondary liner would significantly improve liner performance, and that EPA should therefore require this statewide. EPA disagrees. It could not be required unless determined to be needed to meet either a site-specific performance standard, or a statewide alternate liner requirement. While this has not been demonstrated to be needed for PADER's double synthetic liner system, it is an option for permittees to evaluate in performance modeling.

Two commenters objected to routine sampling of Appendix II parameters in leachate collected from the leachate detection system, on the grounds that it is excessive (costly) and goes beyond the intent of the groundwater monitoring screening process in 40 CFR 258. PADER agreed that the detection zone leachate system will only be routinely monitored for the Appendix I parameters. Appendix II analysis is required only in monitoring wells, and only if and when Appendix I criteria are exceeded in those wells.

D. Decision

Taking into consideration the public comments received as a result of our tentative determination, and revisions made to the PADER program as a result thereof, I conclude that the Commonwealth of Pennsylvania's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Pennsylvania is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state/tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the Federal Register. All of the requirements and obligations in Pennsylvania's program are currently in effect as a matter of Commonwealth law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply, nor do these requirements become enforceable by EPA as federal law. Consequently, EPA does not find it necessary to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval 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 notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: June 1, 1994.

Peter H. Kostmayer,

Regional Administrator.

[FR Doc. 94–14070 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2014]

Petitions for Reconsideration of Actions In Rulemaking Proceedings

June 2, 1994.

Petition for reconsideration has been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed June 24, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of part 97 of the Commission's Rules Concerning Message Forwarding Systems in the Amateur Service. (PR Docket No. 93–85, RM Nos. 7649, 7669, 7675, 7676, 7681, 7904)

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14017 Filed 6–8–94; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Proposed United States Courthouse-Federal Building, City of Sacramento, CA; Notice of Availability for a Final Environmental Impact Statement

The U.S. General Services Administration (GSA) hereby gives notice that a Final Environmental Impact Statement (FEIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) for a new U.S. Courthouse-Federal Building within the downtown area of the City of Sacramento, California. The site is bordered by H Street to the North, I Street to the South, 5th Street to the West, and 6th Street to the East.

The FEIS is on file and may be obtained from U.S. General Services Administration, Region 9, Attn: Lou Lopez, Public Buildings Service, Planning Staff (9PL), 525 Market Street, 35th Floor, San Francisco, California 94105–2799 ((415) 744–5253). A limited number of copies of the FEIS are available to fill single copy requests. Loan copies of the FEIS are available for review at the GSA Sacramento Field Office, 650 Capitol Mall, suite-5515, Sacramento, California.

Written comments on the FEIS should be sent no later than Monday, July 11, 1994 to Lou Lopez at the above listed address.

Dated: May 31, 1994.

Aki K. Nakao,

Acting Regional Administrator (9A).

[FR Doc. 94–14042 Filed 6–8–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[GN #2252]

Hearing Procedures for Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Office of Research Integrity (ORI) is publishing the revised Guidelines for Hearings Before the Research Integrity Adjudications Panel of the Departmental Appeals Board (DAB). Publication is intended to provide notice to the scientific community and the general public of the procedures followed by the DAB, based on their experience and applicable legal principles, on conducting hearings on ORI findings of scientific misconduct. These hearings are provided upon the request of the accused scientist and are made available for scientists who receive or apply for Public Health Service (PHS) support under grants, contracts, or cooperative agreements or who conduct research in PHS laboratories. The availability of hearings was first announced by ORI in November 1992. See 57 FR 53125, Nov. 6, 1992. These Guidelines were revised by the DAB on May 5, 1994, and will apply to any request for a hearing that occurs after the date of publication. They are published below.

FOR FURTHER INFORMATION CONTACT: Director, Division of Policy and Education, Office of Research Integrity, 5515 Security Lane, Rockville, MD 20852, (301) 443–5300.

Lyle W. Bivens,

Director, Office of Research Integrity.

Departmental Appeals Board Guidelines, Hearings Before the Research Integrity Adjudications Panel

I. What These Guidelines Are for and How To Get More Information

These guidelines will help you understand how to proceed before the Research Integrity Adjudications Panel, which is part of the Departmental Appeals Board in the Office of the Secretary of HHS. The Board may modify these guidelines to fit the needs of a particular case. In all cases, our objective is to fairly and promptly develop and consider a complete record of relevant and material evidence so that we can issue a sound decision.

These guidelines are intended for use in cases where HHS (through the Office of Research Integrity of the Public Health Service or the Deputy Assistant Secretary for Grants and Acquisition Management) proposes debarment or other administrative actions for scientific misconduct.

Below, we use the term "Respondent" to mean the person or organization which received a notice of proposed findings of scientific misconduct from HHS. The Respondent and HHS are the "parties" in the case.

Soon after a case is docketed at the Board, we will inform the parties of the name of a Board staff attorney who can respond to questions about procedures for the case. If you have general questions, there is a contact listed at the end of these guidelines.

II. How the Review Process Starts; Time Limits

HHS provides written notice to the Respondent of proposed findings of

scientific misconduct. The Respondent has thirty days after receiving the HHS notice to request a hearing by submitting a written request to the Research Integrity Adjudications Panel, Departmental Appeals Board, room 637–D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. At the same time, the Respondent must send a copy of the request to the official who sent the HHS notice.

If the Respondent does not file the hearing request within thirty days, the proposed HHS findings and remedies will be made final.

The filing date is the postmark date (or, if hand delivered or transmitted by fascimile, the date received by the Board). If the deadline falls on a Saturday, Sunday, or legal holiday, the filing date is the next business day.

III. How the Dispute Is Framed and What the Respondent's Hearing Request Must Include

The HHS written notice should clearly summarize the basis for the HHS proposed findings of misconduct and proposed administrative actions. HHS may, however, include with the notice an investigative report, and refer to that report (or specific parts of it) for any findings or legal conclusions underlying the proposed findings of misconduct or proposed administrative actions.

The Respondent's hearing request must include a succinct statement identifying specific factual findings and administrative actions, set out in the written notice or report and relied on by HHS, which Respondent disputes. Factual findings that are stated or adopted in the notice and that are not specifically disputed by Respondent must be considered as facts to which Respondent has admitted. Administrative actions which are not specifically disputed in the request will be considered accepted. The hearing request should also identify any legal issues which the Respondent intends to raise.

Thus, the written notice, any parts of the report relied upon in the notice, and Respondent's hearing request together frame the dispute before the Panel. If HHS wishes to add new proposed findings of misconduct to the Panel proceeding, HHS must timely move to amend its findings.

IV. Establishing the Panel For the Case

The Research Integrity Adjudications Panel will consist of three members. Immediately after we receive the request for hearing, the Chair of the Board will designate from Board staff a Presiding Panel Member of the Research Integrity Adjudications Panel which will hear and decide the case. The Panel is assisted by a staff attorney who also functions as the parties' contact for questions about case status and procedures. The Presiding Panel Member chairs the Panel, sets procedures, presides at the preliminary conference and the hearing, and generally leads development of the case.

Upon request of either party, one of the other two Panel Members for the case will be a scientist or other expert from outside the board. This request should be timely made in order to avoid any delay in these proceedings.

Only unbiased and disinterested experts will be appointed.

V. Acknowledgement of Request for Hearing

The Presiding Panel Member will send the parties a written notice that we received the hearing request. This acknowledgment will describe the next steps and may include special information (such as earlier Board decisions which may be relevant) or requests for clarification. The acknowledgment will tell HHS to promptly notify the Presiding Panel Member and the Respondent of the name, address and telephone number of HHS's representative.

The acknowledgment also will tentatively schedule the preliminary conference (see VI below), usually for a date and time within two weeks of the acknowledgment. The date and time are tentative. Please advise the Board staff attorney immediately whether the proposed date and time are convenient and what telephone number we should use. Note that we will not permit any substantial delay, so that if the date is inconvenient, a party generally should request a postponement of no more than a few days.

VI. Preliminary Conference

The next step is the preliminary conference, which is designed for the Presiding Panel Member to discuss scheduling and other matters with the parties. Generally, this conference is conducted by telephone. The parties should be prepared to discuss anything that will enable the case to proceed fairly and efficiently, including: (1) Whether HHS has sufficiently defined the findings to which the Respondent must respond; (2) what documents, if any, should be submitted by whom and deadlines for submission; (3) the date, location and anticipated length of the hearing; (4) who the parties' witnesses will be and the general nature of their proposed testimony; (5) specification of disputes of fact and their materiality to the findings of scientific misconduct; (6) whether there is any need for briefing of issues prior to hearing; (7) simplifying, narrowing and clarifying issues; (8) stipulations or admissions of undisputed facts, authenticity of documents, admissibility of documents, and qualifications of expert witnesses; and (9) any other matter which the Presiding Panel Member finds it appropriate to discuss.

The conference will be audiotaped. At the end of the conference, after consulting the parties, the Presiding Panel Member will decide how the results of the conference will be noted for the record (for example, we may keep a copy of the tape in the record or summarize the results of the conference in a written document kept in the record).

VII. The Right To A Hearing; Waiver

The Respondent is entitled to an in-person hearing.

The Respondent may choose to waive his or her right to an in-person hearing so that the Panel will review and decide the case on the basis of the written record (including briefs and documents which both parties would be allowed to submit). This review may be accompanied by oral presentation by telephone.

If the Respondent chooses to proceed this way, the Presiding Panel Member will ask whether the HHS representative agrees to dispense with an in-person hearing (since HHS may have witnesses it wishes to present). Even if both parties agree to a review on the written record, the Presiding Panel Member may require the parties to participate in a telephone conference to respond to questions about issues in the case.

VIII. Hearing Procedures

The Presiding Panel Member will determine the place and time of the hearing after consulting the parties in the preliminary conference (see VI above). Generally, hearings are set at a site which is most convenient for the largest number of participants and which has appropriate facilities.

The Presiding Panel Member will preside at the hearing. Other Panel Members will attend as much of the hearing as the Members decide among themselves; all Members, of course, will have full access to the transcript of the hearing and the rest of the record. The hearings will be as informed as reasonably possible, consistent with the need to establish an orderly record. There are no formal rules of evidence applicable; however, the Presiding Panel Member may refer to the Federal Rules of Evidence for guidance.

The Presiding Panel Member generally will admit documents and testimony into the record unless clearly irrelevant, immaterial or unduly repetitious, so the parties should avoid frequent objections to questions and documents.

The HHS written notice, any report (or part of a report) relied on in the notice, and the Respondent's hearing request will be included in the record in any scientific misconduct hearing. They do not themselves constitute evidence, but frame the dispute; the notice and report may also contain findings which are considered admitted because not disputed in the hearing request. (See section III above). The Respondent should not consider the written notice and report to be a comprehensive summary of all the evidence that HHS may present at a hearing. HHS may present other relevant evidence at the hearing if HHS identifies it in a timely manner and no later than its final witness and exhibit list (which generally is submitted at least 30 days prior to the hearing), according to the procedures set by the Presiding Panel Member.

Both parties may make opening and closing statements, may present witnesses as agreed upon in the prehearing conference and may cross examine opposing witnesses. The Panel Members may ask questions as well. Witnesses will be warned that any false statement may be a basis for criminal prosecution

Hearings [illegible] open to the public. Generally, [illegible] witnesses' presence in the hearing [illegible]om when not testifying will be res[illegible]ed if a party requests it.

The hea[illegible] will be transcribed at Departme[illegible]pense and each party will be provid[illegible]opy of the transcript (this usu[illegible]kes about ten days, unless th[illegible]cript is lengthy). Generally [illegible]anscript and all other material[illegible] record are matters of public r[illegible]

IX. Post-[illegible] Briefing

The P[illegible] Panel Member, after consulti[illegible]rties at the end of the hearing, [illegible]ide whether post-hearing [illegible]'ll be allowed or required[illegible] set deadlines for briefing[illegible]

X. The [illegible]cision

Gene[illegible] Panel will complete its review [illegible] a written decision within [illegible]ter the last action in the proc[illegible]

The P[illegible]cision will be the final agency [illegible] remedies specific to the Pub[illegible] Service (such as prohibiti[illegible]ice on advisory committees, boards or peer review groups). On debarment under 45 CFR part 76 and 48 CFR 9.4 and 309.4, the Panel's decision will be a recommendation to the Deputy Assistant Secretary for Grants and Acquisition Management (DASGAM), who generally will make a final decision within thirty days of the Panel recommendation. DASGAM may reject findings of fact which form the basis for the Panel decision only if DASGAM determines them to be arbitrary and capricious or clearly erroneous.

XI. Burden of Proof

HHS must always prove scientific misconduct by a preponderance of the evidence.

XII. Submitting Material to Panel, Contacts With Panel

Whenever a party submits anything to the Panel, that party must include a statement that he or she has at the same time given a copy to the other party.

Time limits for filing briefs and documents will be set by the Presiding Panel Member. Calculating filing deadlines is done in the same manner as for the request for hearing (see II above).

No party may engage in any ex parte contact with Panel Members or any other Board staff. This means that you must never provide written materials to the Panel without giving a copy to the other party, and you must never communicate orally with Panel Members or other Board staff about matters in the case outside the presence of the other party. Exceptions: you may speak to the Board staff attorney assigned to your case on purely procedural matters. For guidance, the Panel may refer to the provision on ex parte contacts contained in the Board's published procedures (45 CFR 16.17).

The materials submitted to the Panel during a proceeding under these Guidelines are considered public records and may be disclosed to any person requesting the record. See 58 FR 29228 (May [illegible]).

XIII. Panel's Po[illegible]

A. In General

The Panel, on [illegible] through the Presiding Panel [illegible], may exercise the Board's plenary authority to take whatever action the Panel deem necessary for fair, complete, and expeditious resolution of the case. For guidance, the Panel may refer to 45 CFR part 16 (in particular, 45 CFR 16.13).

B. Discovery

The Presiding Panel Member may order a party to submit information which the Presiding Panel Member determines may be directly relevant and material to dispositive issues in the case and likely to be important to a sound decision. Failure of a party to comply with such an order may result in the panel drawing a negative inference from the failure (that is, the panel may assume that the evidence would substantiate the proposition for which the evidence was sought). The Respondent may also have rights to certain information under the Freedom of Information Act, but this is independent of the process in these guidelines.

* * * * *

Questions? If you have any questions about these procedures, call Andrea M. Selzer, Senior Attorney, at 202/690–6012. In her absence, please call the Departmental Appeals Board at 202/690–5501 and ask for assistance with the Research Integrity Adjudications Panel guidelines.

Issuance: September 30, 1992.

Revised: May 5, 1994.

[FR Doc. 94–13939 Filed 6–8–94; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

[Announcement Number 453]

Cooperative Agreements for Active Varicella Surveillance and Epidemiologic Studies

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a program for competitive cooperative agreement applications to conduct surveillance and case investigations for varicella disease (chicken[illegible]). Funds will be provided to conduct active surveillance and epidemiologic studies to monitor disease trends prior to licensure of varicella vaccine and continuing for a period after vaccine licensure.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority areas of immunization and infectious diseases, and surveillance and data systems. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under sections 301(a) and 317(k)(3) of the Public Health Service Act [42 U.S.C. 241(a), 247b (k)(3)].

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants for this program are the official State and local public health agencies. To ensure statistical validity, these surveillance areas must have populations of at least 100,000 to provide a sufficient number of varicella cases each year during the anticipated period of declining varicella incidence after vaccine licensure and expected wide use of the vaccine in children.

Availability of Funds

Approximately $500,000 is available in FY 1994 to fund 2 to 4 cooperative agreements. It is expected that the average award will be $165,000, ranging from $100,000 to $250,000. It is expected that awards will begin on or about August 15, 1994, and will be made for a 12-month budget period within a project period of up to 5 years. 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. There are no matching or cost participation requirements; however, the applicant's anticipated contribution to the overall program costs, if any, should be provided on the application. Funds awarded under this cooperative agreement cannot be used to supplant existing State expenditures in this area.

Objectives

1. To establish a reporting system to accurately define the baseline incidence and epidemiological profile of varicella disease prior to licensure and wide use of varicella vaccine.

2. To maintain and expand the reporting system to obtain similar data for a period of time after vaccine licensure in order to identify changes occurring in the epidemiology of varicella as a result of vaccine usage, and to ascertain the immunization status of cases and evaluate the demographic and clinical profiles of vaccinated and unvaccinated cases.

Purpose

The purpose of these cooperative agreements is to provide assistance to selected State, city, or local areas in developing, maintaining and evaluating active surveillance systems that will provide (1) age-, gender-, race-, and ethnicity-specific incidence and clinical information on cases of varicella disease prior to or at the time of licensure of varicella vaccine in a defined population; and (2) similar information in addition to immunization status of cases following licensure of varicella vaccine.

Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under Item A. (Recipient Activities) and CDC will be responsible for the activities listed under Item B. (CDC Activities). The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Survey and describe the demography of health care providers, physicians, schools, and institutions within the surveillance area or population under study and identify appropriate reporting and sampling units for surveillance and epidemiologic studies.

2. Establish, maintain, and evaluate an active surveillance system with the capacity to monitor varicella disease trends in a well-defined population and to identify changes in disease incidence and prevalence as a result of the use of varicella vaccine.

3. Using this active surveillance system, collect, analyze and disseminate information that should include age-, gender- and race- and ethnicity-specific incidence of varicella disease; clinical data on reported cases that include the types of complications, rates of hospitalization, lengths of stay, and use of serologic tests to confirm the diagnosis of varicella; detection of outbreaks; and, in selected samples of cases, incidence of illness in household contacts and information on the number of school days lost to children and work days lost to adult patients and parents of children with varicella disease. Such information will likely require specific investigation (follow-up of each reported case in the study population).

4. Following licensure of the vaccine, the immunization status of all reported cases, including age of vaccination, other vaccines simultaneously administered, etc., should be ascertained in addition to the information obtained prior to licensure, as described in item 3 above. With wide use of the vaccine, it is anticipated that the incidence of varicella disease will be reduced (by 50%–90%) to a level that will permit the collection of more detailed data for all cases (e.g., incidence of illness in household contacts, number of school days lost to children and work days lost to adult patients and parents of children with varicella disease, risk of specific complications and clinical course of disease).

5. Participate in the analysis of data, writing of reports and presentation of findings.

The timing of activities following the establishment of an active surveillance system will depend on when the vaccine is licensed and how quickly populations become vaccinated. Pending the availability of funds, recipients may be requested to perform the following additional activities:

1. Compare trends in incidence and the epidemiology of varicella before and after licensure of varicella vaccine.

a. This should include, but not be limited to, rates of disease specific for age, sex, race and ethnicity, and if feasible, other demographic characteristics such as socioeconomic status.

b. Determine the relative impact of vaccine use with respect to age-specific rates of complications and hospitalization.

2. Ascertain the immunization status of cases and evaluate the demographic and clinical characteristics of vaccinated and unvaccinated cases.

3. Evaluate the surveillance system for the purpose of recommending methods that can be used to enhance national surveillance.

B. Centers for Disease Control and Prevention (CDC) Activities

1. Provide technical assistance in the design and execution of the project.

2. Provide assistance to recipients regarding development and implementation of all surveillance activities, data collection methods including case investigation forms, and analysis of data.

3. Assist in the development and implementation of data management processes, including development of computer programs for data entry and interim analyses.

4. Participate in the analysis of data, writing of reports, presentation and publication of findings, and development and dissemination of

information to enhance national surveillance.

Review and Evaluation Criteria

A. Initial Application

Applications will be reviewed and evaluated according to the following weighted criteria:

1. The applicant's understanding of the purpose of the proposed activity and the feasibility of accomplishing the outcomes described. (10%)

2. The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support, and ability to access appropriate target sources of reporting. (10%)

3. The adequacy of the description of an appropriate plan, and the extent to which these proposed sources of case reports will ensure an adequate sample size and representativeness of populations at risk for varicella to ensure that the epidemiologic analysis of the impact of varicella vaccine, and the assessment of cases with respect to vaccination status will be appropriate and statistically valid. (15%)

4. The adequacy of the plan for establishing the active surveillance system described under recipient activities and supporting evidence that the applicant can implement and maintain these systems. (25%)

5. The extent to which the applicant demonstrates capacity for timely access to public health surveillance data from the jurisdiction or area under study, and a capacity to integrate future surveillance activities into existing surveillance systems. (15%)

6. The degree to which the proposed objectives are specific, measurable, time-phased, and consistent with the defined purpose of this program, and the quality of the methods and instruments to be used to evaluate the program. (15%)

7. The qualifications, including training and experience, of project personnel and the projected level of effort by each toward accomplishment of the proposed activities. (10%)

In addition, consideration will be given to the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

B. Continued Funding

Continuation awards within the project period will be made on the basis of the following criteria:

1. The degree to which accomplishments in the prior budget period show that the applicant is meeting its objectives;

2. The extent to which objectives for the new budget period are consistent with the purpose of the cooperative agreement and are specific, measurable, and time-phased.

3. The degree to which the proposed methods of achieving the stated objectives are likely to be successful.

4. The adequacy of methods and plans to evaluate program activities.

5. The extent to which the budget is clearly explained, reasonable, and consistent with the intended use of the cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This order sets up a system for State and local review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State recommendations on applications submitted to CDC, they should forward them to the CDC, Attention: Elizabeth M. Taylor, Grants Management Officer, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Mailstop E–16, Atlanta, Georgia 30305, no later than 60 days after the application deadline date for the new awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.185, Immunization Research, Demonstration, Public Information and Education, Training, and Clinical Skills Improvement Projects.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the completed application Form PHS–5161–1 must be submitted to Elizabeth M. Taylor, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16, Atlanta, Georgia 30305, on or before June 30, 1994.

Applications will be considered to meet the deadline if they are:

1. Received on or before the stated deadline date, or,

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must 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 will not be acceptable proof of timely mailing.)

Applications which do not meet the criteria in 1. or 2. above, are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Eddie L. Wilder, Senior Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16, Atlanta, Georgia 30305, telephone (404) 842–6805.

Programmatic technical assistance may be obtained from Sandra J. Holmes, Ph.D., M.H.A., Medical Epidemiologist, Surveillance, Investigation and Research Branch, National Immunization Program, Centers for Disease Control and Prevention (CDC), Mailstop E–61, Atlanta, Georgia 30333, telephone (404) 639–8257.

Please refer to Announcement Number 453 when requesting information and submitting an application in response to this Request for Assistance.

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 "Introduction," through the Superintendent of Documents, Government Printing Office,

Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 3, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14021 Filed 6–8–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing an amendment to the notice of a meeting of the Blood Products Advisory Committee, which is scheduled for June 21 and 22, 1994. This meeting was announced in the Federal Register of May 20, 1994 (59 FR 26506). The amendment is being made to announce the agenda for June 22, 1994. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–6700.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 1994, FDA announced that a meeting of the Blood Products Advisory Committee would be held on June 21 and 22, 1994. On page 26507, column 1, the "*Type of meeting and contact person*" and the "*Open committee discussion*" portions of this meeting are amended to read as follows:

Type of meeting and contact person. Open committee discussion, June 21, 1994, 8 a.m. to 8:30 a.m.; open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:30 p.m.; open committee discussion, June 22, 1994, 8 a.m. to 8:45 a.m.; open public hearing, 8:45 a.m. to 9:45 a.m., unless public participation does not last that long; open committee discussion, 9:45 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 6 p.m.

Open committee discussion. On June 21, 1994, the committee will discuss and provide recommendations on plasma collected by apheresis, particularly with regard to infrequent donations of different frequencies, and on autologous blood donation, and in the afternoon, will discuss and provide recommendations on red cell loss during source plasma collection and plateletpheresis, and will hear an informational summary of regulatory issues concerning stem cells. On June 22, 1994, the committee will discuss and provide recommendations on issues related to sample collection kits labeled for detection of human immunodeficiency virus (HIV) infection. The discussion will reexamine the approach described in **Federal Register** notices of February 17, 1989 (54 FR 7279), and July 30, 1990 (55 FR 30982), to evaluate the safety and effectiveness of collection kits. The notices provided guidance as to FDA's concerns at that time. However, in light of subsequent scientific and technological developments and the changing nature of the HIV epidemic, FDA has been reconsidering the information provided in those notices and recognizes that other approaches may be useful in reviewing HIV collection kits. The committee will also consider and make recommendations on appropriate post-marketing studies of novel sample (e.g. dried blood spots, urine, oral fluid) collection systems intended for professional use only. Additionally, the discussion will focus on specimen collection systems intended for over-the-counter purchase and home use, which provide test results anonymously, along with telephone counseling and medical referral. The question whether approval of an HIV home collection test would create a precedent applicable to over-the-counter (OTC) testing for other serious medical conditions also may be raised.

Dated: June 3, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–14016 Filed 6–6–94; 11:44 am]

BILLING CODE 4160–01–F

Office of Inspector General

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office of the Secretary, HHS, Office of Inspector General.

ACTION: Notice.

SUMMARY: This notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services to reflect organizational changes in chapter AF, Office of Inspector General (OIG).

EFFECTIVE DATE: This notice is effective on June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, (202) 619–0089.

SUPPLEMENTARY INFORMATION: Chapter AF, the Office of Inspector General's Statement of Organization, Functions and Delegations of Authority Chapter AF, published in the **Federal Register** on November 7, 1989 (54 FR 46775), is amended as follows:

1. Section AF.10, Office of Inspector General—Organization, is revised to read as follows:

Section AF.10 Office of Inspector General—Organization

There is at the head of the OIG a statutory Inspector General, appointed by the President and confirmed by the Senate. The Office of Inspector General consists of six organizational units:

A. Immediate Office of the Inspector General (AFA).

B. Office of the Principal Deputy Inspector General (AFA1).

C. Office of Audit Services (AFH).

D. Office of Investigations (AFJ).

E. Office of Evaluation and Inspections (AFE).

F. Office of Civil Fraud and Administrative Adjudication (AFL).

2. Section AFJ.10, Office of Investigations—Organization, is revised to read as follows:

Section AFJ.10 Office of Investigations—Organization

The Office of Investigations comprises the following components:

A. Immediate Office.

B. Criminal Investigations.

C. Investigations Policy and Oversight.

3. Section AFJ.20, Office of Investigations—Functions, is revised by deleting existing paragraph C., and by redesignating existing paragraph D. to read as the new paragraph C.

4. A new section AFL.00, Office of Civil Fraud and Administrative Adjudication (OCFAA)—Mission, is added to read as follows:

Section AFL.00 Office of Civil Fraud and Administrative Adjudication (OCFAA)—Mission

The Office of Civil Fraud and Administrative Adjudication is responsible for protecting the government-funded health care programs and deterring fraudulent conduct by health care providers through the negotiation and imposition of civil money penalties, assessments and program exclusions. It works with

various investigative agencies and organizations in the development of health care civil fraud cases, including *qui tam* cases referred by the Department of Justice.

5. A new section AFL.10, Office of Civil Fraud and Administrative Adjudication—Organization, is added to read as follows:

Section AFL. 10 Office of Civil Fraud and Administrative Adjudication—Organization

The Office of Civil Fraud and Administrative Adjudication comprises the Assistant Inspector General and an immediate staff.

6. A new section AFL.20, Office of Civil Fraud and Administrative Adjudication—Functions, is added to read as follows:

Section AFL.20 Office of Civil Fraud and Administrative Adjudication—Functions

This office is directed by the Assistant Inspector General for Civil Fraud and Administrative Adjudication.

1. The office provides policy guidance and technical expertise to the Department, other Federal agencies, carriers, intermediaries, providers and private organizations on civil fraud law and regulations, penalties, sanctions and other remedies. It maintains liaison with the Department of Justice on the civil fraud aspects of health care and other HHS investigations.

2. The office coordinates and helps investigate matters arising under the Program Fraud Civil Remedies Act, the Civil Monetary Penalties Law, and the Medicare and Medicaid Patient and Program Protection Act, including alleged misconduct by health care entities and others under Medicare and the State health care programs. It assists the Department of Justice to investigate and evaluate civil fraud lawsuits brought under the qui tam provisions of the Federal False Claims Act and related statutes.

3. The office directs and coordinates medical reviews on civil money penalty and exclusion cases to ensure that findings and conclusions are correct and supported by medical records. It evaluates proposals to exclude individuals and entities from participation in the Department's health care programs. It conducts administrative reviews on proposed exclusions and provides written reports incident to the reviews. It negotiates, implements and monitors settlement agreements and exclusion requirements and, in cases of default, implements penalty provisions. It assists in investigations related to requests for reinstatement by excluded individuals and entities, and conducts administrative reviews in accordance with regulations, and adjudicates the requests for reinstatement. It maintains indices of sanctioned individuals and entities and prepares reports of sanction and penalty activities for distribution.

Dated: May 27, 1994.

June Gibbs Brown,

Inspector General.

[FR Doc. 94–14051 Filed 6–8–94; 8:45 am]

BILLING CODE 4150–04–M

Public Health Service

Agency for Toxic Substances and Disease Registry; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HT (Agency for Toxic Substances and Disease Registry), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 58 FR 7568, dated February 8, 1993) is amended to reflect organizational changes within the Agency for Toxic Substances and Disease Registry (ATSDR) that will: (1) Establish the Public Health Practice Coordination Group within the Office of the Assistant Administrator, ATSDR; (2) revise the functional statement for the Division of Toxicology; and (3) revise the functional statements for the Division of Health Assessment and Consultation (DHAC) and the Office of the Director, DHAC. The revised functional statements will provide a more accurate description of the responsibilities of the Divisions.

After the functional statement for the Office of Program Operations and Management (HTB1), insert the following:

Public Health Practice Coordination Group (HTB2)

(1) Coordinates follow-up actions at sites evaluated by the Division of Health Assessment and Consultation (public health assessments), Division of Health Studies (health investigations), Division of Health Education (community health education), and other parts and programs of ATSDR as appropriate; (2) coordinates inter-divisional community involvement plans for sites where more than one division is conducting site activities; (3) coordinates ATSDR's Minority Health Program; (4) coordinates ATSDR's Minority Health Program; (4) coordinates other special projects as required.

Delete the functional statements for the Division of Health Assessment and Consultation (HTB6) and the Office of the Director (HTB61) and insert the following:

The mission of ATSDR is to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. In particular, the Division is responsible for mitigating the public health impacts to communities resulting from exposures to hazardous substances in the environment and for undertaking appropriate interventions to prevent adverse health effects. In order to fulfill that mission, the Division: (1) Conducts public health assessments and other related health activities such as site review updates and Record of Decision reviews, to determine the health implications of releases or threatened releases of hazardous substances into the environment; in particular, such activities are conducted for Superfund, Resource Conservation and Recovery Act (RCRA), petitioned, and other sites; (2) conducts and evaluates exposure pathways analyses and other exposure screening analyses to identify impacted communities, to include biologic sampling, personal monitoring and health surveys, and related environmental assessments, as appropriate; (3) identifies and implements appropriate intervention at impacted communities to prevent exposures and/or adverse health effects; (4) provides health and medical consultations and technical support to address public health hazards at Superfund, RCRA, petitioned, and other sites where hazardous materials have been released into the environment; (5) issues public health advisories when a release or threatened release of a hazardous substance poses an imminent health hazard; (6) establishes a center of excellence for the development of innovative approaches, applied research methods and procedures for the analysis and use of health, demographic, and environmental data, and community health concerns.

Office of the Director (HTB61)

(1) Plans, directs, coordinates, evaluates, and manages the operations of the Division of Health Assessment and Consultation;

(2) develops goals and objectives and provides leadership, policy formation, and guidance in program planning and development;

(3) provides program management, administrative and logistical support services for the division;

(4) coordinates division activities with other components of ATSDR and other Federal, State and local agencies;

(5) initiates specific research and medical activities as appropriate to the Division's mission and program needs;

(6) oversees implementation of a quality assurance and training program for the Division's activities.

Delete the functional statement for the Division of Toxicology (HTB9) and insert the following:

(1) Coordinates all activities associated with toxicologic profiles and toxicologic research;

(2) Identifies and publishes a list of the most hazardous substances related to Superfund releases and sites;

(3) Provides chemical-specific consultations as needed;

(4) Initiates research to expand knowledge of the relationship between exposure to hazardous substances and adverse human health effects through toxicologic studies of hazardous substances;

(5) Coordinates ATSDR toxicology activities with the Environmental Protection Agency, National Toxicology Program, and other appropriate Federal, State, local, or public programs.

Dated: May 27, 1994.

David Satcher,

Administrator.

[FR Doc. 94–14024 Filed 6–8–94; 8:45 am]

BILLING CODE 4160–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3714; FR–3397–N–04]

NOFA for Public and Indian Housing Family Investment Centers; Amendment and Notice of Waiver of Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment and notice of waiver of publication requirements.

SUMMARY: This notice further amends a NOFA that was published in the **Federal Register** on February 28, 1994 (59 FR 9592), and was amended on April 19, 1994 (59 FR 18570). This amendment: (1) Includes Comprehensive Improvement Assistance Program (CIAP) language, where appropriate; (2) decreases the amount of funds made available competitively under the NOFA for Family Investment Centers (FIC) for Public and Indian Housing; and (3) announces the award of $2 million to the Chicago Housing Authority (CHA) on an emergency basis for eligible purposes. In conjunction with the announcement of the award to the CHA, the Secretary is also publishing his reasons for waiving the requirements of paragraphs (1), (2), and (3) of section 102(a) of the Department of Housing and Urban Development Reform Act of 1989.

FOR FURTHER INFORMATION CONTACT: Marcia Y. Martin, Office of Resident Initiatives (ORI), or Dom Nessi, Director, Office of Native American Programs (ONAP), Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone numbers: ORI (202) 708–3611; and ONAP (202) 708–1015 (these are not toll-free numbers). Hearing- or speech-impaired persons may use the Telecommunications Device for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–8339 or 202–708–9300 (not a toll-free number) for information on the program.

SUPPLEMENTARY INFORMATION: On February 28, 1994, the Department published its NOFA for Public and Indian Housing Family Investment Centers (59 FR 9592).

The NOFA was amended for the first time on April 19, 1994 (59 FR 18570), and is being amended further by this notice. This amendment clarifies that Comprehensive Improvement Assistance Program (CIAP) language was inadvertently left out of the NOFA, in the sections on Ranking Factors and Checklist of Application Submission Requirements.

The Department also is announcing that of the $69 million being made available under the NOFA, it intends to make $2 million available immediately to the Chicago Housing Authority (CHA) for purposes of demonstrating in public housing comprehensive, coordinated, and strategic approaches to neighborhood revitalization and the serious issue of violent crime reduction. As a result, the amount of funding available for competitive awards under the NOFA is decreased to $67 million.

Recently, the Department was charged by the President with determining effective measures for addressing the urgent problems of violent crime at public housing developments in Chicago, such as in the Robert Taylor Homes and Stateway developments. As a result of dialogues and needs assessments undertaken with CHA and local agencies and service providers, HUD determined that comprehensive, long-term efforts would be most effective in addressing the lack of educational and employment training opportunities for residents of those developments.

The Secretary has also determined, under section 102(a)(5) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(a)) (HUD Reform Act), that the Department's Family Investment Centers program is an appropriate emergency funding resource to address the range of services identified by CHA. The funds will be used to: coordinate services utilizing public and private resources; assess and address personal welfare issues, and correlated crime; expand and improve the delivery of support services; provide funding for essential training and services that cannot otherwise be provided; improve the capacity of management to assess the training and service needs of eligible families; and coordinate the provision of training and services that meet such needs. HUD expects that this funding will demonstrate the importance of long-term commitments to local neighborhood revitalization and to servicing the educational, employment, and personal welfare needs of public housing residents, thereby reducing crime and its root causes.

In making his determination that the requirements of paragraphs (1), (2), and (3) of section 102(a) of the HUD Reform Act should be waived to make FIC funds available immediately to CHA, the Secretary has stated:

> There is an immediate need to effect this funding because of the emergency provisions which prevail in Chicago. As you know, we have already committed to make modernization assistance available to CHA out of the special reserve under section 14(k) of the 1937 Act [United States Housing Act of 1937, 42 U.S.C. 14371] for emergencies. The CHA emergency includes severe problems of firearms control, drugs, and youth gangs, all of which have been demonstrated in the recent CHA "sweeps" efforts. These same near-siege conditions apply to Family Investment Center funding. (Secretary's Memorandum on Family Investment Center Emergency Determination, June 3, 1994.)

Accordingly, FR Doc. 94–4413, the NOFA for Public and Indian Housing Family Investment Centers, published at 59 FR 9592 (February 28, 1994), and amended at 59 FR 18570 (April 19, 1994), is further amended as follows:

1. In the Summary on page 9592, column 1, the first sentence is amended by revising the total amount of funding available under the NOFA from "$69 million" to "$67 million".

2. Under the heading "Allocation Amounts" on page 9592, in the third column, the first sentence of the second paragraph is amended by revising the total amount of funding available under the NOFA from "$69 million to "$67 million", and the following new sentence is added to the end of the second paragraph, as amended, to read as follows:

Further, the Department intends to make $2 million available immediately as emergency funds for the Chicago Housing Authority (CHA), for purposes of demonstrating in public housing developments a comprehensive, coordinated, and strategic approach to neighborhood revitalization and the serious issue of violent crime reduction.

3. On page 9596, column 1, paragraph (j) of Section I.G(1) is revised to read as follows:

(j) The extent to which the HA has demonstrated that it will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/ Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP-eligible activities that result in employment, training, and contracting opportunities for eligible residents [25 points].

4. On page 9596, column 2, paragraph (k) of Section I.G(2) is revised to read as follows:

(k) The extent to which the HA has demonstrated that it will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/ Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP eligible activities that result in employment, training, and contracting opportunities for eligible residents [25 points].

5. On page 9597, column 2, paragraph (18) of Section III.A is revised to read as follows:

(18) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/ Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP-eligible activities that result in employment, training, and contracting opportunities for eligible residents;

6. On page 9598, column 1, paragraph (5) of Section III.B is revised to read as follows:

(5) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP-eligible activities that result in employment, training, and contracting opportunities for eligible residents.

7. On page 9599, column 1, paragraph (11) of Section III.C is revised to read as follows:

(11) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/ Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP-eligible activities that result in employment, training, and contracting opportunities for eligible residents.

Dated: June 3, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–14059 Filed 6–8–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–4210–05; NVN 57164]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Douglas County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described land, comprising 2.50 acres, has been examined and is determined to be suitable for classification for lease or conveyance pursuant to the authority in the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

Mt. Diablo Meridian, Nevada

T. 14 N., R. 20 E.;
Sec. 8, SE¼SE¼NW¼NW¼.

Containing 2.50 acres.

SUPPLEMENTARY INFORMATION: The public land is located two miles south of Carson City. The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. There is currently an application on file by Douglas County to construct a fire and sheriff's station on the site.

The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior, and the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior. 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 but not the mineral leasing laws, the material disposal laws, or the Geothermal Steam Act. The segregation shall terminate upon issuance of a conveyance document or publication in the Federal Register of an order specifying the date and time of opening.

DATES: On or before July 25, 1994, interested parties may submit comments.

ADDRESSES: Written comments should be sent to: Walker Resource Area Manager, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706–0638. 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.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Walker Area Realty Specialist, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706–0638; (702) 885–6000.

Dated: May 26, 1994.

John Matthiessen,

Walker Resource Area Manager.

[FR Doc. 94–13954 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–HC–M

[UT–040–03–4210–05, UTU–71137]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, recreation and public purpose conveyance.

SUMMARY: The following described public land in Garfield County, Utah has been examined and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Amendment Act of 1988, (Pub. L. 100–648). The lands to be conveyed and the proposed patentees are as follows:

Patentee: Antimony Town.
Location: Salt Lake Meridian, Utah, T. 31 S., R. 2 W., Sec. 10, NW¼SE¼SE¼, containing 10 acres.
Patentee: Boulder Town.
Location: Salt Lake Meridian, Utah, T. 33 S., R. 4 E., Sec. 3, Lot 6, containing 9.27 acres.
Patentee: Escalante Town.
Location: Salt Lake Meridian, Utah, T. 35 S., R. 2 E., Sec. 24, NE¼SE¼NE¼, containing 10 acres.

These lands are hereby segregated from all forms of appropriation under the public land laws, including the mining laws.

The communities propose to use the lands as solid waste transfer stations. 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. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the same. The Secretary of the Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation and maintenance of the transfer station.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance will be subject to all valid rights and reservations of record.

4. The communities listed above assume all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or the release of hazardous substances from the above listed tracts, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

5. Provided, that the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

6. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance of the lands to the District Manager, Cedar City District Office, 176 D.L. Sargent Drive, Cedar City, Utah 84720.

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 lands for transfer stations.

Any adverse comments will be reviewed by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this notice will become the final determination of the Department of the Interior on August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Escalante Resource Area office by contacting Gregg Christensen, P. O. Box 225, Escalante, Utah 84726 or telephone (801) 826–4291.

Dated: May 31, 1994.

Gordon R. Staker,

District Manager.

[FR Doc. 94–13955 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–DQ–P

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: U.S. Fish and Wildlife Service, PRT–697823, Assistant Regional Director, Ecological Services, Region 5

The applicant requests an amendment to their current permit to include take activities for the following species: Delmarva fox squirrel (*Sciurus niger cinereus*); Roanoke logperch (*Percina rex*); duskytail darter (*Etheostoma* [*Catonotus*] sp.); Lee County Cave isopod (*Lirceus usdagalun*); harperella (*Ptilimnium nodosum*); running buffalo clover (*Trifolium stoloniferum*); sandplain gerardia (*Agalinis acuta*); shale barren rock-cress (*Arabis serotina*); and smooth coneflower (*Echinacea laevigata*) for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, and must be received by the Regional Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Phone: (413) 253–8627; FAX: (413) 253–8482.

Ralf Pisapia,

Assistant Regional Director, Ecological Services.

[FR Doc. 94–14022 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[920–4210–06; NMNM 022486]

Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 1,265.42-acre withdrawal for the Bear Springs, Bland, La Cueva, Las Conchas, Sulphur Flat, Borrego Ranger Station, and San Geronimo Administrative Sites; Cerro Pelado Lookout; Horseshoe Springs Recreation Area; and Paliza Recreation Area, all in the Sante Fe National Forest, continue for an additional 20 years. The lands

will remain closed to mining, but will be opened to such forms of disposition as may by law be made of the National Forest System lands, and have been and will remain open to mineral leasing.

DATES: Comments should be received by September 7, 1994.

ADDRESSES: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7502.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505–438–7594.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, proposes that the existing land withdrawal made by Public Land Order No. 1515 be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

The lands are described as follows:

New Mexico Principal Meridian

Santa Fe National Forest

Paliza Recreation Area (466.19 acres)
T. 17 N., R. 3 E.,
Sec. 9, S½ of lot 1;
Sec. 10, S½ of lot 1;
Sec.15, lot 3 and SW¼NW¼;
Sec. 16, lot 1, S½NE¼, NE¼SW¼, S½SW¼, and N½SE¼;
Sec. 21, lots 3 and 4.

Sulphur Flat Administrative Site (223.85 acres)
T. 19 N., R. 3 E.,
Sec. 16, lots 1, 2, and SW¼.

Horseshoe Springs Recreation Area (150 acres)
T. 19 N., R. 3 E.,
Sec. 18, E½NE¼NE¼, E½W½NE¼NE¼, SE¼NE¼SW¼NE¼, NE¼SE¼SW¼NE¼, S½SE¼SW¼NE¼, SE¼NE¼, NE¼SE¼, N½NE¼NW¼SE¼, SE¼NE¼NW¼SE¼, and NE¼SE¼NW¼SE¼;
Sec. 17, W½NW¼NW¼.

La Cueva Administrative Site (65.49 acres)
T. 19 N., R. 3 E.,
Sec. 20, lots 7 and 8.

Bear Springs Administrative Site (130 acres)
T. 17 N , R. 4 E.,
Sec. 29, S½ of lot 3, lot 4, NE¼SW¼SW¼, N½SE¼SW¼, SE¼SE¼SW¼, and W½SW¼SE¼.

Las Conchas Administrative Site (59.89 acres)
T. 18 N., R. 4 E.,
Sec. 3, lots 16 and 27.

Cerro Pelado Lookout (160 acres)
T. 18 N., R. 4 E.,
Sec. 19, NE¼.

Bland Administrative Site (10 acres)
T. 18 N., R. 4 E.,
Sec. 25, SE¼SW¼SE¼NW¼, SW¼SE¼SE¼NW¼, NE¼NW¼NE¼SW¼, and NW¼NE¼NE¼SW¼.

The areas described aggregate 1,265.42 acres in Sandoval County.

The purpose of the withdrawal is to protect the Bear Springs, Bland, La Cueva, Las Conchas, Sulphur Flat, Borrego Ranger Station, and San Geronimo Administrative Sites; Cerro Pelado Lookout; Horseshoe Springs Recreation Area; and Paliza Recreation Area, all in the Santa Fe National Forest. The withdrawal segregates the lands from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose of the withdrawal, but the lands will be opened to such forms of disposition as may by law be made of the National Forest System lands.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: May 31, 1994.

Frank Splendoria,

Acting Associate State Director.

[FR Doc. 94–14043 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–FB–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0099), Washington, DC 20503, telephone 202–395–7340.

Title: Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs 30 CFR Part 733.

OMB Number: 1029–0099

Abstract: This information collection requirement allows any interested person to request that OSM evaluate an approved State program.

Bureau Form Number: 1029–0099

Frequency: On Occasion

Description of Respondents: Any interested person (individuals, businesses, institutions, organizations)

Annual Responses: 3

Annual Burden Hours: 495

Estimated Completion Time: 165 hours

Bureau clearance officer: John A. Trelease (202) 343–1475

Dated: April 22, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–14060 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–355]

Certain Vehicle Security Systems and Components Thereof; Decision Not To Review an Initial Determination Terminating Investigation Based on a Summary Determination of Patent Invalidity and To Affirm the Presiding Administrative Law Judge's Decision Not To Terminate the Investigation Based Upon Complainant's Withdrawal of its Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 18) issued on April 19, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation terminating the investigation based on summary determination of patent invalidity. The Commission also determined to affirm the ALJ's denial of complainant's motion to terminate the investigation based upon withdrawal of its complaint

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, and sale after importation of certain vehicle security systems and components thereof, on August 25, 1993. Complainant Code-Alarm, Inc. ("Code-Alarm") alleged infringement of claims 1–16 of U.S. Letters Patent 5,049,867 (the '867 patent). The complaint named four respondents: Audiovox Corp. ("Audiovox"); Directed Electronics Inc. ("Directed"); Magnadyne Corporation ("Magnadyne") and Nutek Corporation ("Nutek"). On January 3, 1994, Code-Alarm and Audiovox filed a joint motion to terminate the investigation with respect to Audiovox on the basis of a license agreement, and the ALJ granted that motion in an ID that was not reviewed by the Commission. 59 FR 11308 (March 10, 1994).

On September 3, 1993, respondent Directed Electronics Inc. ("Directed") filed a motion for summary determination of the investigation on the ground that the '867 patent is invalid under 35 U.S.C. 102(b) by reason of an on-sale bar. Respondents Magnadyne and Nutek subsequently joined in Directed's motion. Code-Alarm and the Commission investigative attorney (IA) opposed the motion for summary determination.

After discovery and the filing of pre-hearing statements, and six days before the trial before the ALJ was to begin, Code-Alarm filed a motion to terminate the investigation based upon withdrawal of its complaint. Respondents filed an opposition to Code-Alarm's motion to terminate, and the IA filed a response supporting a motion to terminate with prejudice.

On February 7, 1994, the ALJ issued an order (Order No. 16) denying the motion to terminate as of that time, pending resolution of issues raised by the motion for summary determination and other outstanding motions. The ALJ postponed the trial and a set schedule for supplemental briefing regarding Directed's motion for summary determination. The parties thereafter filed supplemental documents regarding the motion for summary determination, in which they maintained their original positions. On April 19, 1994, the ALJ denied Code-Alarm's motion to terminate the investigation based on withdrawal of its complaint and issued an ID (Order No. 18) terminating the investigation based on summary determination of invalidity based on an on-sale bar.

Code-Alarm petitioned for review of the ID and appealed the ALJ's denial of its motion for termination of the investigation based on withdrawal of its complaint. The IA petitioned for review of the ID granting summary determination. Respondents filed an opposition to both petitions. Respondents and the IA filed responses in opposition to Code-Alarm's appeal of the denial of the motion to terminate based upon withdrawal of the complaint. Respondents also filed a motion to strike Code-Alarm's petition for review and a conditional opposition to notices of withdrawal filed by Code-Alarm's outside counsel. Respondents' motion to strike was denied by the Commission, and the Commission allowed complainant's outside counsel to withdraw from representing complainant notwithstanding respondents' conditional opposition.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: June 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14072 Filed 6–8–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32513]

Missouri Pacific Railroad Company—Trackage Rights Exemption—Northeast Kansas & Missouri Division, Mid-Michigan Railroad Company, Inc.

Northeast Kansas & Missouri Division, Mid-Michigan Railroad Company, Inc., has agreed to grant overhead trackage rights to Missouri Pacific Railroad Company over approximately 65 miles of rail line from milepost 42.7 at Hiawatha, KS, to milepost 107.7 at Upland, KS, in Brown, Nemaha and Marshall Counties, KS. The trackage rights were to become effective on or after May 27, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, Omaha, NE 68179.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 2, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14036 Filed 6–8–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32512]

Union Pacific Railroad Company—Trackage Rights Exemption—Northeast Kansas & Missouri Division, Mid-Michigan Railroad Company, Inc.

Northeast Kansas & Missouri Division, Mid-Michigan Railroad Company, Inc., has agreed to grant overhead trackage rights to Union Pacific Railroad Company over approximately 65 miles of rail line from milepost 42.7 at Hiawatha, KS, to milepost 107.7 at Upland, KS, in Brown, Nemaha and Marshall Counties, KS. The trackage rights were to become effective on or after May 27, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false

or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, Omaha, NE 68179.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 2, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14035 Filed 6–8–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States and Commonwealth of Pennsylvania* v. *Delaware Regional Water Quality Control Authority*, Civil Action No. 91–2787, was lodged on May 24, 1994 with the United States District Court for the Eastern District of Pennsylvania.

The Consent Decree concerns violations of the Federal Water Pollution Control Act (also known as the "Clean Water Act"), 33 U.S.C. 1251 *et seq.*, and the Pennsylvania Clean Streams Law, 35 P.S. § 691.2 *et seq.*, at the defendant's publicly-owned municipal and residential wastewater treatment plant located in Chester, Pennsylvania.

The complaint in this action alleged that, from 1986–91, the defendant discharged pollutants into the Delaware River in excess of several of the effluent limitations established in its National Pollutant Discharge Elimination system ("NPDES") permit; discharged, on several occasions, untreated wastewater into tributaries of the Delaware River; failed to operate all of its facilities and equipment as required by its permit; and failed to comply with certain sampling and reporting requirements of its permit. The proposed Consent Decree requires defendant to comply fully with all terms and conditions of its NPDES permit, to construct and operate an additional secondary clarifier at its plant by May 1, 1997, and to pay a civil penalty of $350,000, plus interest that has accrued on that sum since May 1992.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and Commonwealth of Pennsylvania* v. *Delaware Regional Water Quality Control Authority* (E.D. Pa.), DOJ Ref. #90–5–1–1–3445.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, suite 1300, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–13953 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Madison, Florida and State of Florida*, Civil Action No. *TCA–94–40220*, was lodged on May 16, 1994 with the United States District Court for the Northern District of Florida (Tallahassee Division).

The proposed consent decree resolves the United States' civil claims against the City of Madison ("City") and the State of Florida for violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1311 and 1342, resulting from the discharge of pollutants from the City's wastewater treatment plant, in violation of the City's National Pollutant Discharge Elimination System ("NPDES") Permit. The proposed consent decree requires that the City pay the United States $100,000 in civil penalties for past violations of the Clean Water Act and provides for stipulated civil penalties to be paid for any failure by the City to comply with its NPDES Permit limitations in the future.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Madison, and State of Florida*, DOJ Ref. #90–5–1–1–3938.

The proposed consent decree may be examined at the office of the United States Attorney, 315 S. Calhoun Street, suite 510, Tallahassee, Florida 32301; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–13949 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Sun Company, Inc. (R&M) and Atlantic Refining & Marketing Corp.*, Civil Action No. 94-CV-3246, was lodged on May 26, 1994 with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree settles an action brought under Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. 7413, seeking an injunction and civil penalties for defendants' violations of (1) procedural and substantive requirements imposed by Pennsylvania's implementation plan (SIP) enacted pursuant to Section 110 of the Act; 42 U.S.C. 7410; (2) the Prevention of Significant Deterioration

(PSD) requirements of 42 U.S.C. 7470, *et. seq.*, and the regulations promulgated thereunder; and (3) the New Source Performance Standards (NSPS) promulgated pursuant to 42 U.S.C. 7411. Pursuant to the Consent Decree, defendants have agreed to pay a civil penalty of $1.4 million and undertake certain corrective actions directed towards reducing emissions of nitrogen oxides, sulfur dioxide and particulate matter.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Sun Company, Inc., et. al.*, DOJ Ref. #90-5-2-1-1744.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Twelfth Floor, Philadelphia, PA 19106; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94-13952 Filed 6-8-94; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 87–94]

Privacy Act of 1974; Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Drug Enforcement Administration (DEA) proposes to modify an existing system of records entitled, "Investigative Reporting and Filing System (IRFS), Justice/DEA–008."

The DEA proposes to modify its IRFS system which covers drug enforcement-related records to (1) more clearly describe the categories of individuals covered by the system and the categories of records in the system, (2) provide specificity with respect to the routine uses of the information in the system, (3) remove unnecessary exemptions, (4) more accurately respond to other notice captions, in particular those captions identified as "Retrievability," and "Retention and Disposal," and (5) reflect that an automated index, containing limited, unclassified data, will be available to Federal Law enforcement agencies. The index will assist these agencies in determining whether DEA may have a more detailed record which is relevant to their law enforcement responsibilities, and which may be made available to them upon request.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30–day period in which to comment on the new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 40-day period in which to review this system.

Therefore, please submit any comments by July 11, 1994. The public, OMB and the Congress are invited to send written comments to Patricia E. Neely, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

A description of the modified system of records is provided below. In addition, the Department has provided a report to OMB and the Congress in accordance with 5 U.S.C. 552a(r).

Dated: June 3, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

SYSTEM NAME:

Investigative Reporting and Filing System, Justice/DEA–008.

SYSTEM LOCATION:

Drug Enforcement Administration; 700 Army Navy Drive, Arlington, VA 22202; and field offices. For field office addresses, see appendix identified as "DEA Appendix—List of Record Location Addresses, Justice/DEA–999."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Drug offenders

B. Alleged drug offenders; and

C. Persons suspected of drug offenses.

D. Defendants.

Such individuals may include individuals registered with DEA and responsible for the handling, dispensing, or manufacturing of controlled substances under the Comprehensive Drug Abuse Prevention and Control Act of 1970.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subpart A:

Subpart A is (1) a manual index (which serves as a backup to the automated index described in subpart B) and (2) paper case file records consisting of: Criminal Investigative Files; Regulatory Audit and Investigatory Files; and General Investigative Files. These files may include investigative and confidential informant reports and all documented findings and investigative "lead" information relative to preregistrant inspections, investigations, targeted conspiracies, and trafficking situations, etc. The reports pertain to the full range of DEA criminal drug enforcement and regulatory investigative functions that emanate from the Comprehensive Drug Prevention and Control Act of 1970.

For example, records in the Criminal Investigative Case Files may include a systematic gathering of information targeted on an individual or group of individuals operating in illegal drugs either in the United States or internationally; reports on individuals suspected or convicted of narcotics violations; reports of arrests; information on drug possession, sales, and purchases by such individuals; and information on the transport of such drugs, either inside the United States or internationally, by such individuals. Records in the Regulatory Audit and Investigatory Files may include similar investigative reports regarding those individuals specifically identified under item C. of the "Categories of Individuals Covered by the System." Records in the General Investigative Files may generally include fragmentary or low priority information on an individual which is not significant enough to open a case file.

Subpart B:

Subpart B is an automated index containing limited, summary-type data which are extracted from and which point to the case files described in subpart A above. Examples of such data include: Record number; subject name (person, business, vessel), aliases and soundex; personal data; (occupation(s), race, sex, date and place of birth, height, weight, hair color, eye color, citizenship, nationality/ethnicity, alien status); special considerations (fugitive, armed/dangerous); resident and criminal address (business and personal); miscellaneous numbers (telephone, passport, drivers license, vehicles registration, social security number, etc.); relevant case file numbers, with indicators for active investigations; date/stamp (event) data

(Subpart B will contain no classified information.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained to enable DEA to carry out its assigned law enforcement and criminal regulatory functions under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91–513), Reorganization Plan No. 2 of 1973, and Title 21 United States Code; and to fulfill United States obligations under the Single Convention on Narcotic Drugs.

PURPOSE:

The records in this system have been compiled for the purpose of identifying, apprehending, and prosecuting individuals connected in any way with the illegal manufacture, distribution, or use of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant records or any relevant facts derived therefrom may be disclosed to:

(1) Other Federal, State, local, and foreign law enforcement and regulatory agencies, and components thereof, to support their role in the detection and monitoring of the distribution of illegal drugs in the United States or such other roles in support of counterdrug law enforcement as may be permitted by law; direct, electronic, "read only" access by Federal law enforcement agencies only to subpart B of this system of records may be permitted to enable these agencies to: (i) Identify DEA law enforcement information or activities which may be relevant to their law enforcement responsibilities and, where such information or activities is identified, request access to the underlying case files records described in subpart A, and (ii) ensure appropriate coordination of such activities with DEA; (2) Other Federal, State, local, and foreign law enforcement and regulatory agencies, and components thereof, to the extent necessary to elicit information pertinent to counter-drug law enforcement; (3) Foreign law enforcement agencies through the Department of State (with whom DEA maintains liaison), and agencies of the U.S. foreign intelligence community to further the efforts of those agencies with respect to the national security and foreign affairs aspects of international drug trafficking; (4) individuals and organizations in the course of investigations to the extent necessary to elicit information about suspected or known illegal drug violators; (5) Federal and state regulatory agencies responsible for the licensing or certification of individuals in the fields of pharmacy and medicine to assist them in carrying out such licensing or certification functions; (6) any person or entity to the extent necessary to prevent an imminent or potential crime which directly threatens loss of life or serious bodily injury; (7) news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (8) a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; (9) National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; and (10) to a court or adjudicative body before which DEA is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by DEA to be arguably relevant to the litigation: (i) DEA, or any subdivision thereof, or (ii) any employee of DEA in his or her official capacity, or (iii) any employee of DEA in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv) the United States, where DEA determines that the litigation is likely to affect it or any of its subdivisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records described in subpart A of the "Categories of Records in the System" are maintained on standard index cards and in standard file folders at DEA Headquarters and field offices. Records described in subpart B are stored on a computer database at the DEA and on a mainframe at the Department of Justice Computer Center.

Retrievability:

Information will be retrieved by accessing either the manual or automated index by name and by cross-referencing the name with a number assigned to the case file. In addition to other Federal law enforcement agencies (reference routine use a. above), the law enforcement components of the Department of Justice may have direct, electronic, "read only" access (under subsection (b)(1) of the Privacy Act) to subpart B of the "Categories of Records in the System." These data will assist DOJ law enforcement components in identifying whether there may be detailed records which reside in subpart A of this system of records that may be relevant to their law enforcement responsibilities. Where such records are identified, DOJ law enforcement components may request access.

Safeguards:

Access is limited to designated employees with a need-to-know. All records are stored in a secure area of a secure building. In addition to controlled access to the building, the areas where records are kept are either attended by responsible DEA employees, guarded by security guard, and/or protected by electronic surveillance and/or alarm systems, as appropriated. In addition, paper records, including the manual index, are in locked files during off-duty hours and unauthorized access to the automated index is also prevented through state-of-the-art technology such as encryption and multiple user ID's and passwords.

RETENTION AND DISPOSAL:

Paper records will be transferred to the Washington National Records Center 10 years after date of last entry; and destroyed 25 years after date of last entry. The related index will be deleted 25 years after date of last entry. Approval pending DEA records management and the NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator, Operations Division, Drug Enforcement Administration, Freedom of Information Section, Washington, D.C. 20537.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to: Drug Enforcement Administration, Freedom of Information Section, Washington, D.C. 20537.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORDS PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

(a) DEA personnel, (b) Confidential informants, witnesses and other cooperating individuals, (c) Suspects and defendants, (d) Federal, State and local law enforcement and regulatory agencies, (e) foreign law enforcement agencies, (f) business records by subpoena, and (g) drug and chemical companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). In addition, the system has been exempted from subsections (c)(3), (d), and (e)(1), pursuant to subsection (k)(1). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 94–14013 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–09

[AAG/A Order No. 89–94]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Investigation (FBI) proposes to describe a separate system of records entitled, "FBI Counterdrug Information Indices System" (CIIS) (JUSTICE/FBI–016).

The newly described FBI system reflects that automated indices, containing limited data, will be available to Federal law enforcement agencies. The indices will assist these agencies in determining whether the FBI may have a more detailed record which is relevant to their law enforcement responsibilities, and which may be made available to them upon request.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be provided a 30-day period in which to comment on the new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 40-day period in which to review these systems.

Therefore, please submit any comments by July 11, 1994. The public, OMB and the Congress are invited to send written comments to Patricia E. Neely, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

A description of the system of records is provided below. In addition, the Department has provided a report to OMB and the Congress in accordance with 5 U.S.C. 552a(r).

Dated: June 3, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/FBI–016

SYSTEM NAME:

FBI Counterdrug Information Indices System (CIIS) (JUSTICE/FBI–016)

SYSTEM LOCATION:

The Department of Justice (DOJ) Computer Center, Rockville, Maryland, and at FBI Headquarters, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who relate in any manner to official FBI drug law enforcement investigations including, but not limited to, subjects, suspects, victims, witnesses, and close relatives and associates who are relevant to an investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system will consist of automated indices to information located in drug law enforcement case files of the FBI. Examples of the case files include those concerning the distribution of controlled substances, continuing criminal enterprises, racketeering enterprises, Organized Crime Drug Enforcement Task Forces cases, and organized crime-drug intelligence cases.

These automated indices contain limited summary type data extracted from the case files. These indices will serve as a pointer system to FBI case files containing drug law enforcement information; but the system does not contain the case files themselves. Access to the case file information must be gained by separate contact with the appropriate FBI office, outside this system, after the system has been queried. The system will facilitate better exchange of drug law enforcement information between and among the FBI and DEA, and such other law enforcement agencies as may participate in the counterdrug investigative information sharing program which this system serves.

Only specified data fields from these records will be provided. Examples of data fields included are name, case file number, race, sex, name identifiers (alias, true-name, main, reference, individual, non-individual), locality indicators, date of birth, place of birth, ID numbers, addresses, violation codes, investigative classification, and office of origin. Data fields from cases also include status, date case was opened, date case was closed, and point-of-contact information such as squad assigned, and auxiliary office. Additional point-of-contact information will be provided via a table of field offices and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system is found at 28 U.S.C. 534, and 44 U.S.C. 3101.

PURPOSE:

The records in this system have been compiled for the purpose of identifying, apprehending, and prosecuting individuals connected in any way with the manufacture, distribution, and use of illegal drugs. The system, by promoting the enhanced sharing of drug intelligence, is intended to facilitate enhanced cooperation between and among the FBI and DEA and such other law enforcement agencies as may participate in the drug law enforcement information sharing program it serves, eliminate duplication of efforts, and enhance the safety of law enforcement personnel who conduct these inherently dangerous investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

System records or any pertinent information derived therefrom may be disclosed (through electronic or other means in the case of participating Federal law enforcement agencies, and through other, non-electronic means as appropriate in other cases) to:

(1) Federal, state, local, and foreign law enforcement agencies, and components thereof, to support their role in the detection and monitoring of the distribution of illegal drugs in the United States or such other roles in support of counterdrug law enforcement as may be permitted by law; direct, electronic, "read only" access, by Federal law enforcement agencies only, to the automated indices of this system of records may enable these agencies to: (i) Identify FBI law enforcement information or activities which may be relevant to their law enforcement responsibilities and, where such information or activities are identified, request access to information in FBI case files relating to drug law enforcement, and (ii) ensure appropriate coordination of such activities with the FBI;

(2) Federal, state, local, and foreign law enforcement agencies, and components thereof, to the extent necessary to elicit information pertinent to counterdrug law enforcement;

(3) Foreign law enforcement agencies with whom the FBI maintains liaison, and agencies of the U.S. foreign

intelligence community to further the efforts of those agencies with respect to the national security and foreign affairs aspects of international drug trafficking;

(4) Individuals and organizations in the course of investigations to the extent necessary to elicit information pertinent to counterdrug law enforcement;

(5) Any person, organization, or entity within the private or public sector, domestic or foreign, to the extent necessary to prevent an imminent or potential crime which could or does directly threaten loss of life, serious injury, or serious loss of property;

(6) The news media and/or the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(7) A Member of Congress or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of and at the specific request of the individual who is the subject of the record;

(8) National Archives and Records Administration and the General Services Administration for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; and

(9) To a court or adjudicative body before which the FBI is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the FBI to be arguably necessary to the litigation: (i) The FBI, or any subdivision thereof, or (ii) any employee of the FBI in his or her official capacity, or (iii) any employee of the FBI in his or her individual capacity where the DOJ has agreed to represent the employees, or (iv) the United States, where the FBI determines that the litigation is likely to affect it or any of its subdivisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING AND RECORDS IN THE SYSTEM:

STORAGE:

Records described in this system are stored on a mainframe computer at the DOJ Computer Center, and on back-up storage devices at FBI Headquarters, which are accessible by the FBI.

RETRIEVABILITY:

Information in the automated indices will be retrieved by name or other unique identifier. In addition to other Federal law enforcement agencies (reference routine use above), the law enforcement components of the DOJ may have direct, electronic, "read only" access (under subsection (b)(1) of the Privacy Act) to this system. This data will assist DOJ law enforcement components in identifying whether there may be detailed records which reside in the case files of the FBI that may be relevant to their law enforcement responsibilities. Where such records are identified, DOJ law enforcement components may request access to them.

SAFEGUARDS:

Access is limited to designated agency employees with a need-to-know. All records are stored in a secure area of a secure building. In addition to controlled access to the building, the areas where records are kept are either attended by responsible employees, guarded by security personnel, and/or protected by electronic surveillance and/or alarm systems, as appropriate. In addition, unauthorized access to the automated indices is also prevented through state-of-the-art technology such as encryption and user ID's and multiple passwords.

RETENTION AND DISPOSAL:

The automated indices in this system relate to case files which are characterized as either permanent or temporary, governed by NARA criteria in making such assessments. Depending on the nature of the case files to which they relate, the automated indices in this system will be retained permanently or disposed of in accordance with the FBI Records Disposition Schedule developed jointly by NARA and the FBI and approved by the United States District Court for the District of Columbia, Washington, DC.

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, Washington, DC 20535.

NOTIFICATION PROCEDURE:

Inquires should be addressed to: Federal Bureau of Investigation, Freedom of Information/Privacy Acts Section, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20535

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

The data maintained in the automated indices in this system is derived from information in FBI drug law enforcement related case files, which are not part of this system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 94–14011 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–02

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 the Compressor Crankshaft Failure Control Survey Project

Notice is hereby given that, on May 13, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CNG Transmission Corporation, Clarksburg, WV; Consumers Power Company, Jackson, MI; El Paso Natural Gas Company, El Paso, TX; Natural Gas Pipeline Company of America, Lombard, IL; Southern California Gas Company, Los Angeles, CA; Southern Natural Gas Company, Birmingham, AL; and Tennessee Gas Pipeline Company, Houston, TX. The general area of planned activity include studying the industry's experiences in failures of reciprocating compressor crankshafts by developing a survey designed to document the causes and costs of recent crankshaft failures and assembling responses to the survey; preparing a database based on the survey responses and analyzing the data; and producing a list of potential solutions and a technical plan addressing the problem and presenting the plan to the industry for implementation.

Membership in this venture remains open, and SwRI intends to file

additional written notification disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–13948 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—"Ultra Low Emission Engine Program"

Notice is hereby given that, on May 13, 1994 pursuant, to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SWRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Suzuki Motor Corporation, Engine Design Division and Toyota Motor Corporation have withdrawn from participation; and the period of performance has been extended for one year to September 30, 1994.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On November 13, 1991, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 9, 1991, 56 FR 64276.

This last notification was filed with the Department on April 1, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 1993, 58 FR 21318.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–13951 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Correction—Lonza Riverside

In the **Federal Register** (FR Doc. 94–7735) Vol. 59, No. 63 at page 15459, April 1, 1994, controlled substance Amphetamine (1100) should have been listed instead of Methamphetamine (1105).

Dated: May 23, 1994

Gene R. Haislip,

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

[FR Doc. 94–13399 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–7316).

Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

OSHA

Ethylene Oxide

1218–0108

On Occasion

Businesses or other for profit; small businesses or organizations 96 respondents; .09 hours per response; 9 total hours; 0 form The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with the occupational exposure to ethylene oxide. The standard requires employers to allow OSHA to have access to various records to ensure that employers are complying with disclosure provisions of the standard.

The standard also requires that employers contact the National Institute for Occupational Safety and Health (NIOSH) when there is no successor to receive or retain the records for the prescribed period of time. Employers may be required to submit their records to NIOSH.

	Proposed total burden hours
Federal Records Access	8
Federal Records Transfer	1
Total	9

Extension

Employment and Training Administration

Nonmonetary Determinations Report

1205–0150; ETA 207

Form	Affected public	Respondents	Frequency	Avg time per response (minutes)
ETA 207 ...	State Govt	53	4	244
ETA 207 ...	Local Govt	3	4	244

910 total hours.

Data are used to monitor the impact of the disqualification provisions, to measure workload, and to appraise adequacy and effectiveness of State and Federal nonmonetary determination procedures.

Reinstatement

Occupational Safety and Health Administration

Initial and Renewal Application for Training and Education Grant
1218–0020; OSHA–177
Ongoing
Non-profit institutions
150 respondents; 56 hours per response; 8,400 total hours

The OSHA Form 177 is used as the basis for the grant award. OSHA staff selects organizations for grant awards which demonstrate in the application that they can effectively carry out the objectives of the program.

Extension

Employment Standards Administration
29 CFR 570.35a—Work Experience and Career Exploration Programs
1215–0121
Biennially
Individuals or households; State or local governments

Requirement	Respondents	Number of responses	Avg time per response
Reporting	6	1	1 hour.
Recordkeeping (recording)	12	1	1 hour.
Recordkeeping (filing)	12	1000	½ minute.

118 total hours.

Signed at Washington, DC, this 3rd day of June, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–14038 Filed 6–8–94; 8:45 am]

BILLING CODE 4510–26–P

Office of the American Workplace

Secretary of Labor's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation; Establishment

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A–63 of March 1974, and after consultation with GSA, the Secretary of Labor has determined that the establishment of the Task Force on Excellence in State and Local Government through Labor-Management Cooperation is in the public interest.

The Task Force will investigate the current state of labor-management cooperation in State and local government and report back to the Secretary in response to the following questions:

1. What, if any, new methods or institutions should be encouraged or required to enhance the quality, productivity and cost-effectiveness of public sector services through labor-management cooperation and employee participation, recognizing the broad variety of functions performed by different levels of government and various other agencies and public organizations?

2. What, if any, changes to legal frameworks which impact on labor-management relations, including, collective bargaining and civil service legislation could be considered to enhance cooperative behaviors that would improve the delivery of services by reducing conflict, duplication and delays?

3. What, if any, should be done to increase the extent to which workplace problems are resolved directly by the parties themselves rather than through recourse to administrative bodies and the courts?

4. What, if anything, can be done to improve the coordination between appropriate executive and legislative bodies to enhance labor-management relations in the public sector and to create a climate where productivity improvement, innovation and risk taking are encouraged and rewarded?

5. What conditions are necessary to enable elected political leaders, public managers, public employees and labor organizations to work together to achieve excellence in state and local government? What are the obstacles, and how can they be overcome?

6. What examples of successful cooperative efforts are appropriate to serve as public sector models? Why have some initially successful efforts failed, and what can be done to enhance prospects for success?

The Task Force will be composed of up to 15 members representing the viewpoints of labor, management, agencies which administer collective bargaining laws covering State and local government employees, labor relations neutrals and the public.

The Task Force will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation. Such comments should be addressed to Charles Richards, U.S. Department of Labor, 200 Constitution Avenue NW., room S2302, Washington, DC 20210.

Signed at Washington, DC, this 26th day of May 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–14037 Filed 6–8–94; 8:45 am]

BILLING CODE 4510–85–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before July 11, 1994.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: New Collection.

Title: Generic Clearance Authority for the National Endowment for the Humanities.

Form Number: Not applicable.

Frequency of Collection: On occasion.

Respondents: Applicants for NEH support, NEH grantees, NEH panelists and reviewers.

Use: Application for NEH Grant Programs, Reporting Forms for NEH Grantees, Panelists and Reviewers and Program Evaluation.

Estimated Number of Respondents: 73,805.

Frequency of Response: Various.

Estimated Hours for Respondents to Provide Information: 4.4386 hours per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 327,596 hours.

Juan Mestas,

Deputy Chairman.

[FR Doc. 94–13938 Filed 6–8–94; 8:45 am]

BILLING CODE 7536–01–M

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Overview/Special Projects Section) to the National Council on the Arts will be held on June 28–29, 1994. The panel will meet from 9:30 a.m. to 5 p.m. on June 28, 1994 and from 9 a.m. to 5 p.m. on June 29, 1994. This meeting will be held in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on June 28, 1994 from 1 p.m. to 5 p.m. and on June 29, 1994 from 9 a.m. to 5 p.m. to review and discuss current Arts in Education program efforts and to make recommendations to the Arts in Education Program.

The remaining portion of this meeting from 9:30 a.m. to 12 p.m. on June 28, 1994 is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994. This session will be closed to the public pursuant to subsection (c) (4), (6), and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: June 3, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowments for the Arts.

[FR Doc. 94–14039 Filed 6–8–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; 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, Bioengineering and Environmental Systems.

Date and Time: June 30, 1994, 8:30 am–5 pm.

Place: Conference Room 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, BES, room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA. 22230, Telephone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: to review and evaluate proposals for Bioengineering and Environmental Systems as part of the selection process for group awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the government in the Sunshine Act.

Dated: June 6, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–14063 Filed 6–8–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communication Systems; 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 Electrical and Communication Systems (#1196).

Date and Time: June 27–28, 1994, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, room 530.

Type of Meeting: Closed.

Contact Person: Dr. Radhikishan Baheti, Program Director, Systems Theory, Division of Electrical and Communication Systems, Room 530, NSF, 4201 Wilson Blvd., Arlington, VA 22230, Phone (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: June 6, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–14062 Filed 6–8–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical & Communication Systems; 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 Electrical & Communication System.

Date and Time: June 28–29 8 am–5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 530, Arlington, Virginia 22230.

Contact Person: Dr. George Lea, Program Director, ECS, room 675, National Science Foundation, 4201 Wilson Blvd.

Telephone: 703/306–1339.

Type of Meeting: Closed.

Purpose of: To provide advice and recommendations concerning proposals.

Meeting: submitted to NSF for financial support.

Agenda: To review concept papers submitted to NSF for possible later proposal submissions (National Challenge Groups—Fiscal Year 1994).

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C.552b(c)(4) and (6) of the Government Sunshine Act.

Dated: June 6, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–14066 Filed 6–8–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science & Technology Infrastructure; 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 Science & Technology Infrastructure.

Date and Time: June 27–29, 1994, 8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., rooms 375, 380, & 1235, Arlington, Virginia 22230.

Contact Person: Dr. Nathaniel Pitts, Director, Office of Science and Technology Infrastructure, room 1270, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Telephone: 703/306–1318.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the facilities modernization component of the Academic Research Infrastructure Program.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 6, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–14065 Filed 6–8–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; 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 Undergraduate Education.

Date and Time: June 29, 1994, 7:30 p.m. to 9 p.m., June 30, 1994; 8:30 a.m. to 5 p.m., July 01, 1994; 8:30 a.m. to 1 p.m.

Place: Holiday Inn Arlington at Ballston, I–66 and Glebe Road, 4610 North Fairfax Drive, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. James Lightbourne, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1667.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Mathematical Sciences and Their Applications Throughout the Curriculum (CCD–MATH) Program Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: June 6, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–14064 Filed 6–8–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives:

New Appointees

James L. Blaha, Assistant for Operations, Office of the Executive Director for Operations

Frank J. Miraglia, Deputy Director, Office of Nuclear Reactor Regulation

Stephen G. Burns, Director, Office of Commission Appellate Adjudication

John B. Martin, Regional Administrator, Region III

Elizabeth Q. Ten Eyck, Deputy Director for Operations, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards

Bill M. Morris, Director, Division of Regulatory Application, Office of Nuclear Regulatory Research

In addition to the above new appointments, the following members are continuing on the PRB:

Jesse L. Funches, Deputy Controller, Office of the Controller

Francis P. Gillespie, Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Reactor Regulation

Martin Malsch, Deputy General Counsel for Licensing and Regulation, Office of the General Counsel

Luis A. Reyes, Deputy Administrator, Region II

John C. Hoyle, Assistant Secretary, Office of the Secretary

The following individuals are appointed as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Karen D. Cyr, Associate General Counsel, Office of the General Counsel

James L. Milhoan, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, Office of the Executive Director for Operations

In addition to the above new appointments, the following member will continue on the PRB Panel: Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: James F. McDermott, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–4661.

Dated at Rockville, Maryland, this 27th day of May, 1994.

For the U.S. Nuclear Regulatory Commission.

James F. McDermott,

Secretary, Executive Resources Board.

[FR Doc. 94–14073 Filed 6–8–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

National Information Infrastructure; Public Meeting

AGENCY: Office of Management and Budget.

ACTION: Notice of public meeting.

SUMMARY: The Clinton Administration has announced a public meeting to promote the security, integrity, and reliability of information on the emerging National Information Infrastructure (NII) in Washington on July 15, 1994. The meeting is sponsored by the NII Security Issues Forum and the U.S. Advisory Council on the NII. The Forum was established under the auspices of the Information Infrastructure Task Force (IITF) by Ron Brown, Secretary of Commerce. The public is invited to appear before the IITF and members of the Advisory Council at this meeting.

DATES: Persons wishing to be on the program should submit a 1–2 page position statement and requests to appear by June 28, 1994.

ADDRESSES: Position statements and requests to appear should be sent to the NII Security Issues Forum—Public Meeting, c/o U.S. Treasury Department, 3090 Annex, Washington, DC 20220. Statements may also be submitted via fax to (202) 622–2057 or through electronic mail. The Internet address is NII.SECURITYT@REAS.SPRINT.COM, and the X.400 address is /PN=NII.SECURITY/ PRMD=GOVT+TREAS/ ADMD=TELEMAIL/C=US.

FOR FURTHER INFORMATION CONTACT: For further information regarding the Public Meeting, contact Mr. Marty Ferris, U.S. Treasury Department, at (202) 622–1110. For information regarding the NII Security Issues Forum, contact Ms. Virginia Huth, Office of Management and Budget, at (202) 395–3785.

SUPPLEMENTARY INFORMATION: The public meeting will be the first step of a dialogue with the Administration to assess the security needs and concerns of users, service providers, information providers, State, local and tribal governments and others.

"Americans will not use the NII to its full potential unless they trust that information will go where and when they want it and nowhere else," declared Sally Katzen, Administrator of the Office of Information Regulatory Affairs at OMB and chair of the Forum. "The Federal government is a primary user of the NII and thus a catalyst for change. Yet the NII will be designed, built, owned, operated, and used primarily by the private sector, making it essential that security on the NII be considered in partnership with the public."

The NII is envisioned as an advanced, digital network of networks that will allow individuals, businesses, government services providers, and others to send, receive, and share information, whether video, audio, text, or data, when and where they want it and at a reasonable cost. The U.S. Advisory Council represents industry, labor, academia, public interest groups, and state and local governments, and has identified security as a major concern.

Effective security will ensure the reliability of public networks especially during emergencies, the privacy of financial, health and other personal transmissions, the protection of intellectual property, the ability to send authenticated business messages, protection against the unauthorized interception of communications, and the integrity of financial transactions.

The public is invited to appear before the IITF and members of the Advisory Council at a public meeting to be held July 15, 1994, from 9 a.m. to 4 p.m. at the Commerce Department Auditorium in Washington, DC. Persons wishing to be on the program should submit a 1–2 page position statement and request to appear to the NII Security Issues Forum by June 28, 1994.

Position statements should address security needs from the point of view of a specific user sector or application of the NII such as health services, electronic mail, libraries, small business, education, manufacturing, environmental monitoring, electronic commerce, entertainment, electronic publishing, electronic data interchange, or government services.

Position statements should address three principal questions:

1. How will you use the NII?
2. What security exposures or risks are of concern to you?
3. What kinds of approaches should be taken to address these security concerns?

More information about the Clinton Administration's National Information Infrastructure initiative can be obtained from the IITF Secretariat. Inquiries may be directed to Yvette Barrett at (202) 482–1835, by e-mail to ybarrett@ntia.doc.gov, or by mail to U.S. Department of Commerce, IITF Secretariat, NTIA, Room 4892, Washington, DC, 20230.

For inquiries over the Internet to the IITF Gopher Server, gopher, telnet (login=gopher), or anonymous ftp to iitf.doc.gov. Access is also available over the World-Wide-Web. Questions may be addressed to nii@ntia.doc.gov.

For access by modem, dial (202) 501–1920 and set modem communication parameters at no parity, 8 data bits, and one stop (N,8,1). Modem speeds of up to 14,400 baud are supported.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 94–14080 Filed 6–8–94; 8:45 am]

BILLING CODE 3110–01–M

Standards for the Classification of Federal Data on Race and Ethnicity

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs

ACTION: Advance Notice of Proposed Review and Possible Revision of OMB's Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting; and Announcement of Public Hearings on Directive No. 15.

SUMMARY: During the past few years, OMB's Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting, has come under increasing criticism. These standards are used governmentwide for recordkeeping, collection, and presentation of data on race and ethnicity in Federal statistical activities and program administrative reporting. Since the standards were first issued 17 years ago, citizens who report information about themselves and users of the information collected by Federal agencies have indicated that the categories set forth in Directive No. 15 are becoming less useful in reflecting the diversity of our Nation's population. Accordingly, OMB currently is undertaking a review of the racial and ethnic categories in the Directive. (See Appendix for the text of Directive No. 15.)

ISSUES FOR COMMENT: OMB is interested in receiving comments from the public on (1) the adequacy of the current categories, (2) principles that should govern any proposed revisions to the standards, and (3) specific suggestions for changes that have been offered by various individuals and organizations.

ADDRESS: Written comments on these issues may be addressed to Katherine K. Wallman, Chief, Statistical Policy, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC. 20503.

DATE: To ensure consideration, written comments must be provided to OMB on or before September 1, 1994.

PUBLIC HEARINGS: To provide additional opportunities to hear views from the public on Directive No. 15, OMB has scheduled a series of hearings, as follows:

Date/Time	Location
July 7, 1994 10:00 a.m.	Thomas P. O'Neill, Jr. Federal Building Auditorium 10 Causeway Street Boston, Massachusetts (Local arrangements contact: Harold Wood, Bureau of the Census Regional Office, (617) 424–0500)
July 11, 1994 10:00 a.m.	State Capitol Building Old Supreme Court Chambers 200 East Colfax Street Denver, Colorado (Local arrangements contact: Jerry O'Donnell, Bureau of the Census Regional Office, (303) 969–7750)
July 14, 1994 10:00 a.m.	Federal Reserve Bank of San Francisco Interpretive Center 101 Market Street San Francisco, California (Local arrangements contact: Vicki Cooper-Murphy, Bureau of Labor Statistics Regional Office, (415) 744–7166)

If you wish to present an oral statement at any of these hearings, please contact the Statistical Policy Office (at the address below) by telephone or fax (do no use electronic mail) by July 1, 1994, and provide the following information: your name, address, telephone and fax numbers, and the name of the organization which you represent. After July 1, please call the appropriate local arrangements contact identified above to be placed on the hearing schedule. Persons testifying are asked to bring three (3) copies of their statement to the hearing. Written statements will also be accepted at the hearings. Depending on the number of persons who request to present their views, the hearings in each location may be extended to the following day.

ADDRESS: Requests to be placed on the hearing schedule should be directed to the Statistical Policy Office, Office of Management and Budget, 725 17th Street, N.W., Washington, D.C. 20503. Telephone: (202) 395–3093. Fax number: (202) 395–7245.

ELECTRONIC AVAILABILITY AND COMMENTS: This document is available on the Internet via anonymous File Transfer Protocol (ftp) from *ftp.census.gov* as */pub/docs/ombdir15.txt* in ASCII format (do not use any capital letters in the file name). For those who do not have ftp capability, the document can also be obtained through the gopher (*gopher gopher.census.gov*) and HTTP servers (accessible by mosaic, cello, lynx, etc.), or by sending an electronic mail message to *ftpmail@census.gov* with the following lines in the message area:

open
get/pub/docs/ombdir15.txt
quit

Comments may be sent via electronic mail to an OMB x.400 mail address, which is */s=ombdir15/c=us/admd=telemail/prmd=gov+eop*. The Internet address is *ombdir15@eop.sprint.com*. Comments sent to this address will be included as part of the official record. Do not use this electronic mail address to have your name included in the hearing schedule.

For assistance using electronic mail, ftp, gopher, or HTTP, please contact your system administrator. You may also want to send an electronic message to *access@census.gov* with a subject of *HELP* and nothing in the message area. You will receive by return electronic mail "FAQ (Frequently Asked Questions)" and more information on how to access the services on *census.gov*.

FOR FURTHER INFORMATION CONTACT: Suzann Evinger, Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, Telephone: (202) 395–3093.

SUPPLEMENTARY INFORMATION:

Background

Development of Directive No. 15.— Developmental work on the categories in OMB's Directive No. 15 originated in the activities of the Federal Interagency Committee on Education (FICE), which was created by Executive Order in 1964 More than 30 Federal agencies were members or regular participants in FICE's work to improve coordination of educational activities at the Federal level. The FICE Subcommittee on Minority Education completed a report in April 1973 on higher education for Chicanos, Puerto Ricans, and American Indians and sent it to then Secretary of Health, Education, and Welfare (HEW) Caspar Weinberger for comment. He showed particular interest in the portion of the report that deplored the lack of useful data on racial and ethnic groups. Further, he encouraged the implementation of the report's second recommendation which called for the coordinated development of common definitions for racial and ethnic groups, and the Federal collection of racial and ethnic enrollment and other educational data on a compatible and nonduplicative basis.

In June 1974, FICE created an Ad Hoc Committee on Racial and Ethnic

Definitions whose 25 members came from Federal agencies with major responsibilities for the collection or use of racial and ethnic data. This Ad Hoc Committee was charged with developing terms and definitions for the collection of a broad range of racial and ethnic data by Federal agencies on a compatible and nonduplicative basis. It took on the task of determining and describing the major groups to be identified by Federal agencies when collecting and reporting racial and ethnic data. While the Ad Hoc Committee recognized that there is frequently a relationship between language and ethnicity, it made no attempt to develop a means of identifying persons on the basis of their primary language. The Ad Hoc Committee wanted to ensure that whatever categories the various agencies used could be aggregated, disaggregated, or otherwise combined so that the data developed by one agency could be used in conjunction with the data developed by another agency. In addition, the Ad Hoc Committee thought that the basic categories could be subdivided into more detailed ethnic subgroups to meet users' needs, but that to maintain comparability, data from one major category should never be combined with data from any other major category.

In the spring of 1975, FICE completed its work on a draft set of categories, and an agreement was reached among OMB, the General Accounting Office (GAO), the HEW's Office for Civil Rights, and the Equal Employment Opportunity Commission (EEOC) to adopt these categories for a trial period of at least one year. This trial was undertaken to test the new categories and definitions and to determine what problems, if any, would be encountered in their implementation.

At the end of the test period, OMB and GAO convened an Ad Hoc Committee on Racial/Ethnic Categories to review the experience of the agencies that had implemented the standard categories and definitions and to discuss any potential problems that might be encountered in extending the use of the categories to all Federal agencies. The Committee met in August 1976 and included representatives of OMB; GAO; the Departments of Justice, Labor, HEW, and Housing and Urban Development; the Bureau of the Census; and the EEOC. Based upon the discussion in that meeting, OMB prepared minor revisions to the FICE definitions and circulated the proposed final draft for agency comment. These revised categories and definitions became effective in September 1976 for all compliance recordkeeping and reporting required by the Federal agencies represented on the Ad Hoc Committee.

Based upon this interagency agreement, OMB drafted for agency comment a proposed revision of the race and ethnic categories contained in its circular on standards and guidelines for Federal statistics. Some agencies published the draft revision for public comment. Following the receipt of comments and incorporation of suggested modifications, OMB on May 12, 1977, promulgated for use by all Federal agencies the racial and ethnic categories now contained in Directive No. 15, the text of which appears in the Appendix. This meant that for the first time, standard categories and definitions would be used at the Federal level in reporting and presentation of data on racial and ethnic groups. While OMB requires the agencies to use these racial and ethnic categories, it should be emphasized that the Directive permits collection of additional detail if the more detailed categories can be aggregated into the basic racial and ethnic classifications set forth in the Directive.

As demonstrated by this brief history, the present categories were developed through a deliberate cooperative process; participation of the agencies that use the categories was an essential element in that process.

1988 Proposed Revision.—The standards promulgated in 1977 have not been revised since that time. OMB did, however, publish in the January 20, 1988, **Federal Register** a draft Statistical Policy Circular soliciting public comment on a comprehensive revision of existing Statistical Policy Directives. Among the proposed changes was a revision of Directive No. 15 that would have added an "Other" racial category and required classification by self-identification. While this proposal was supported by many multi-racial and multi-ethnic groups and some educational institutions, it drew strong opposition from Federal agencies such as the Civil Rights Division of the Department of Justice, the Department of Health and Human Services, the EEOC, and the Office of Personnel Management, and from large corporations.

Respondents who opposed the change asserted that the present system provided adequate data, that any changes would disrupt historical continuity, and that the proposed change would be expensive and potentially divisive. Some members of minority communities interpreted the proposal as an attempt to provoke internal dissension within their communities and to reduce the official counts of minority populations. Because it was evident from all of these comments that this proposal would not be widely accepted, no changes were made at the time to Directive No. 15.

1993 Hearings.—During 1993, Congressman Thomas C. Sawyer, Chairman of the House Subcommittee on Census, Statistics, and Postal Personnel, held a series of four hearings (April 14, June 30, July 29, and November 3) on the measurement of race and ethnicity in the decennial census. OMB testified at the hearing on July 29. Information on these hearings may be obtained by contacting the Subcommittee at (202) 226–7523.

Workshop.—As a first step in undertaking its review of the racial and ethnic categories, OMB asked the Committee on National Statistics (CNSTAT) of the National Academy of Sciences to convene a workshop to provide an informed discussion of the issues surrounding a review of the categories. Convened on February 17–18, 1994, the workshop included representatives of Federal agencies, academia, social science research, interest groups, private industry, and local school districts. A report on the workshop will be forthcoming from CNSTAT.

Interagency Committee. OMB has established an Interagency Committee for the Review of the Racial and Ethnic Standards, whose members represent the many and diverse Federal needs for racial and ethnic data, including statutory requirements for such data. The Committee will be an integral part of this review process, by assisting OMB in the evaluation and assessment of proposed changes, for example, on the quality of resulting data and costs of implementation.

Suggested Changes and Criticisms

Your comments are invited on any aspect of Directive No. 15; if you are satisfied with the existing racial and ethnic categories, it would be useful for OMB to know that also. You may also wish to comment on the following suggestions and criticisms about the Directive that OMB received during the recent hearings and the CNSTAT workshop:

—adding a "multi-racial" category to the list of racial designations so that respondents would not be forced to deny part of their heritage by having to choose a single category;

—adding an "other" category for individuals of multi-racial backgrounds and those who want the option of specifically stating a unique identification;

—providing an open-ended question to solicit information on race and ethnicity, or combining concepts of race, ethnicity, and ancestry;

—changing the name of the "Black" category to "African American";

—changing the name of the "American Indian or Alaskan Native" category to "Native American";

—including Native Hawaiians as a separate category or as part of a "Native American" category (which would also include American Indians, Aleuts, and Eskimos), rather than as part of the "Asian or Pacific Islander" category;

—including Hispanic as a racial designation, rather than as a separate ethnic category; and

—adding a "Middle Easterner" category to the list of ethnic designations.

The critiques of the current standard and the proposals for change include as well a number of other concerns. For example:

—The categories and their definitions have been criticized for failing to be comprehensive and scientific. As cases in point, using the present definitions there are no proper categories for the original Indian population of South America or for Australian aborigines.

—Some have suggested that the geographic orientation of the definitions for the various racial and ethnic categories is not sufficiently definitive. They believe that there is no readily apparent organizing principle for making such distinctions and that definitions for the categories should be eliminated. Others disagree, stating that the current definitions of the racial and ethnic categories have served their uses well and thus should be maintained.

—The identification of an individual's racial and ethnic "category" often is a subjective determination, rather than one that is objective and factual, no matter what the process for arriving at the categories. Consequently, it has been suggested that it may no longer be appropriate to consider the categories as a "statistical standard."

—The issue of self-identification of race and ethnicity versus third party identification also has been raised. This issue will merit increased attention if multi-racial and/or multi-ethnic categories or identification procedures are adopted.

—Some have proposed eliminating the five-category combined racial and ethnic classification in favor of separate, mutually exclusive, racial and ethnic categories. The combined format now permitted by the Directive is particularly suitable for observer identification, and is used by the Department of Health and Human Service's Office for Civil Rights, the Equal Employment Opportunity Commission, and the Office of Federal Contract Compliance because it facilitates aggregating data on the minority groups with which these agencies are concerned. The use of the Hispanic category in the combined format does not, however, provide information on the race of those selecting it. As a result, the combined format makes it impossible to distribute persons of Hispanic ethnicity by race and, therefore, reduces the utility of the four racial categories by excluding from them persons who would otherwise be included. Thus, the two formats currently permitted by Directive No. 15 for collecting racial and ethnic data do not provide comparable data.

—The perceived importance of historical comparability of racial and ethnic data has been questioned by some. Since the names of the categories have changed in the decennial censuses, and agencies use different methods even internally to collect the data, there is less continuity in racial and ethnic data than many believed. As a result, it has been suggested that this review of Directive No. 15 should have a more forward-looking approach, rather than being bound by past history.

—Some have suggested that consideration be given to collecting racial and ethnic data using "categories for response" that can be decoupled from "categories for reporting data." For example, the response categories could permit responses reflecting multiple origins; later these data would be aggregated into reporting categories following a set of standards and guidelines to make the reported data more useful for various program, administrative, and statistical purposes.

—There have also been suggestions that the classification of persons by race and ethnicity be eliminated entirely. Proponents of this view assert that the categories merely serve to perpetuate an over-emphasis on race in America and contribute to the fragmentation of our society.

Federal Uses of Racial and Ethnic Data

Given the broad range of suggestions and criticisms, OMB believes that a comprehensive review of all the categories is warranted. It is important to stress comprehensive, because these categories are not used simply for statistical purposes. Thus, while the use of the racial and ethnic categories in the collection of decennial census data is most widely known—and has most often been cited in the 1993 hearings and in the correspondence OMB receives—the categories are also used by Federal agencies for civil rights enforcement and for program administrative reporting. Some important examples of the Federal Government's uses of racial and ethnic data are:

- enforcing the requirements of the Voting Rights Act;
- reviewing State redistricting plans;
- collecting and presenting population and population characteristics data, labor force data, education data, and vital and health statistics;
- establishing and evaluating Federal affirmative action plans and evaluating affirmative action and discrimination in employment in the private sector;
- monitoring the access of minorities to home mortgage loans under the Home Mortgage Disclosure Act;
- enforcing the Equal Credit Opportunity Act;
- monitoring and enforcing desegregation plans in the public schools;
- assisting minority businesses under the minority business development programs; and
- monitoring and enforcing the Fair Housing Act.

These examples of statutory requirements are mentioned to foster public awareness and understanding of the Federal Government's many different needs for racial and ethnic data. Appreciation of the intended uses of the data helps determine what categories make sense. Further, these uses need to be taken into account when changes to the categories are suggested. In any event, OMB believes that it is essential for the Federal agencies to study the possible effects of any proposed changes to the categories on the quality and utility of the resulting data for a multiplicity of purposes.

General Principles for the Review of the Racial and Ethnic Categories

The critiques and suggestions for changing Directive No. 15 have underscored the importance of having a set of general principles to govern the current review process. The following principles were drafted in cooperation with Federal agencies serving on the Interagency Committee. Comments on these principles are welcomed.

1. The racial and ethnic categories set forth in the standard should not be interpreted as being scientific or anthropological in nature.

2. Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; respondent self-identification should be facilitated to the greatest extent possible.

3. To the extent practicable, the concepts and terminology should reflect clear and generally understood definitions that can achieve broad public acceptance.

4. The racial and ethnic categories should be comprehensive in coverage and produce compatible, nonduplicated, exchangeable data across Federal agencies.

5. Foremost consideration should be given to data aggregations by race and ethnicity that are useful for statistical analysis, program administration and assessment, and enforcement of existing laws and judicial decisions, bearing in mind that the standards are not intended to be used to establish eligibility for participation in any Federal program.

6. While Federal data needs for racial and ethnic data are of primary importance, consideration should also be given to needs at the State and local government levels, including American Indian tribal and Alaska Native village governments, as well as to general societal needs for these data.

7. The categories should set forth a minimum standard; additional categories should be permitted provided they can be aggregated to the standard categories. The number of standard categories should be kept to a manageable size, as determined by statistical concerns and data needs.

8. A revised set of categories should be operationally feasible in terms of burden placed upon respondents and the cost to agencies and respondents to implement the revisions.

9. Any changes in the categories should be based on sound methodological research and should include evaluations of the impact of any changes not only on the usefulness of the resulting data but also on the comparability of any new categories with the existing ones.

10. Any revision to the categories should provide for a crosswalk at the time of adoption between the old and the new categories so that historical data series can be statistically adjusted and comparisons can be made.

11. Because of the many and varied needs and strong interdependence of Federal agencies for racial and ethnic data, any changes to the existing categories should be the product of an interagency collaborative effort.

The agencies recognize that these principles may in some cases represent competing goals for the standard. Through the review process, it will be necessary to balance statistical issues, needs for data, and social concerns. The application of these principles to guide the review and possible revision of the standard ultimately should result in consistent, publicly accepted data on race and ethnicity that will meet the needs of the government and the public while recognizing the diversity of the population and respecting the individual's dignity.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

APPENDIX

DIRECTIVE NO. 15

Race and Ethnic Standards for Federal Statistics and Administrative Reporting (as adopted on May 12, 1977)

This Directive provides standard classifications for recordkeeping, collection, and presentation of data on race and ethnicity in Federal program administrative reporting and statistical activities. These classifications should not be interpreted as being scientific or anthropological in nature, nor should they be viewed as determinants of eligibility for participation in any Federal program. They have been developed in response to needs expressed by both the executive branch and the Congress to provide for the collection and use of compatible, nonduplicated, exchangeable racial and ethnic data by Federal agencies.

1. Definitions

The basic racial and ethnic categories for Federal statistics and program administrative reporting are defined as follows:

a. *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition.

b. *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

c. *Black.* A person having origins in any of the black racial groups of Africa.

d. *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

e. *White.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

2. Utilization for Recordkeeping and Reporting

To provide flexibility, it is preferable to collect data on race and ethnicity separately. If separate race and ethnic categories are used, the minimum designations are:

a. *Race:*
—American Indian or Alaskan Native
—Asian or Pacific Islander
—Black
—White

b. *Ethnicity:*
—Hispanic origin
—Not of Hispanic origin

When race and ethnicity are collected separately, the number of White and Black persons who are Hispanic must be identifiable, and capable of being reported in that category.

If a combined format is used to collect racial and ethnic data, the minimum acceptable categories are:
—American Indian or Alaskan Native
—Asian or Pacific Islander
—Black, not of Hispanic origin
—Hispanic
—White, not of Hispanic origin.

The category which most closely reflects the individual's recognition in his community should be used for purposes of reporting on persons who are of mixed racial and/or ethnic origins.

In no case should the provisions of this Directive be construed to limit the collection of data to the categories described above. However, any reporting required which uses more detail shall be organized in such a way that the additional categories can be aggregated into these basic racial/ethnic categories.

The minimum standard collection categories shall be utilized for reporting as follows:

a. *Civil rights compliance reporting.* The categories specified above will be used by all agencies in either the separate or combined format for civil rights compliance reporting and equal employment reporting for both the public and private sectors and for all

levels of government. Any variation requiring less detailed data or data which cannot be aggregated into the basic categories will have to be specifically approved by the Office of Management and Budget (OMB) for executive agencies. More detailed reporting which can be aggregated to the basic categories may be used at the agencies' discretion.

b. *General program administrative and grant reporting.* Whenever an agency subject to this Directive issues new or revised administrative reporting or recordkeeping requirements which include racial or ethnic data, the agency will use the race/ethnic categories described above. A variance can be specifically requested from OMB, but such a variance will be granted only if the agency can demonstrate that it is not reasonable for the primary reporter to determine the racial or ethnic background in terms of the specified categories, and that such determination is not critical to the administration of the program in question, or if the specific program is directed to only one or a limited number of race/ethnic groups, e.g., Indian tribal activities.

c. *Statistical reporting.* The categories described in this Directive will be used at a minimum for federally sponsored statistical data collection where race and/or ethnicity is required, except when the collection involves a sample of such size that the data on the smaller categories would be unreliable, or when the collection effort focuses on a specific racial or ethnic group. A repetitive survey shall be deemed to have an adequate sample size if the racial and ethnic data can be reliably aggregated on a biennial basis. Any other variation will have to be specifically authorized by OMB through the reports clearance process. In those cases where the data collection is not subject to the reports clearance process, a direct request for a variance should be made to OMB.

3. **Effective Date**

The provisions of this Directive are effective immediately for all new and revised recordkeeping or reporting requirements containing racial and/or ethnic information. All existing recordkeeping or reporting requirements shall be made consistent with this Directive at the time they are submitted for extension, or not later than January 1, 1980.

4. **Presentation of Race/Ethnic Data**

Displays of racial and ethnic compliance and statistical data will use the category designations listed above. The designation "nonwhite" is not acceptable for use in the presentation of Federal Government data. It is not to be used in any publication of compliance or statistical data or in the text of any compliance or statistical report.

In cases where the above designations are considered inappropriate for presentation of statistical data on particular programs or for particular regional areas, the sponsoring agency may use:

(1) The designations "Black and Other Races" or "All Other Races," as collective descriptions of minority races when the most summary distinction between the majority and minority races is appropriate;

(2) The designations "White," "Black," and "All Other Races" when the distinction among the majority race, the principal minority race and other races is appropriate; or

(3) The designation of a particular minority race or races, and the inclusion of "Whites" with "All Other Races," if such a collective description is appropriate.

In displaying detailed information which represents a combination of race and ethnicity, the description of the data being displayed must clearly indicate that both bases of classification are being used.

When the primary focus of a statistical report is on two or more specific identifiable groups in the population, one or more of which is racial or ethnic, it is acceptable to display data for each of the particular groups separately and to describe data relating to the remainder of the population by an appropriate collective description.

[FR Doc. 94-13079 Filed 6-8-94; 8:45 am]

BILLING CODE 3110-01-F

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of Information Collection OPM Form 2809-EZ1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. OPM Form 2809-EZ1, Enrollment Change and Brochure Request, is used only at Open Season to request an enrollment change, insurance plan brochures and other informational materials. If OPM Form 2809-EZ1 is used to request plan brochures, an OPM Form 2809-EZ2 is furnished to the enrollee for use if a plan change is desired.

Approximately 102,531 OPM Forms 2809-EZ1 are completed annually. Each form takes approximately 30 minutes to complete. The annual burden is 51,266 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received July 11, 1994.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design, (202) 606-0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director

[FR Doc. 94-13807 Filed 6-8-94; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1994, shall be at the rate of 30 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1994, 37.5 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 62.5 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of

the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: June 1, 1994.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–14040 Filed 6–8–94; 8:45 am]

BILLING CODE 7905–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Oak Valley, Riverside County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Oak Valley, located in Beaumont and Calimesa, Riverside County, California, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until September 7, 1994.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. V. Jackson Carney, III, Resolution Trust Corporation, c/o Landmark Land Companies, 2500 Landmark Drive, LaPlace, LA 70068, (504) 466–7469; Fax (504) 651–6057.

SUPPLEMENTARY INFORMATION: The Oak Valley property is located in north central Riverside County northwest of the junction of Interstate 10 and State Route 60, within the city limits of Beaumont and Calimesa, California. The site contains habitat for the Federally-listed endangered Least Bell's vireo and Stephen's kangaroo rat. The Oak Valley property consists of approximately 6,725 acres of undeveloped land except for an eighteen hole golf course which occupies approximately 202 acres. The property is contiguous with Noble Creek Park, which is managed by the Beaumont Cherry Valley Recreation and Park District, and adjacent to De Anza Park, which is managed by the Riverside County Regional Park and Open-Space District. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before September 7, 1994, by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]

Federal Register Publication Date:

_____

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing rate, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: June 2, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–13945 Filed 6–8–94; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Reserve Residential, St. John the Baptist Parish, LA; Airline Industrial North, St. John the Baptist Parish, LA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Reserve Residential and Airline Industrial North, located in Reserve, St. John the Baptist Parish, Louisiana, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until September 7, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. V. Jackson Carney, III, Resolution Trust Corporation, c/o Landmark Land Companies, 2500 Landmark Drive, LaPlace, LA 70068, (504) 466–7469; Fax (504) 651–6057.

SUPPLEMENTARY INFORMATION: The Reserve Residential property is located in the northwest portion of the intersection of Airline Highway (U.S. Hwy 61) and the Codshalk Canal in Reserve, Louisiana. The site is subject to the State's Coastal Zone Management Program, it has recreational value, and is adjacent to St. John the Baptist City Park. The Reserve Residential property consists of approximately 227.4 acres of undeveloped land. The site is bounded to the north by vacant land, to the west by St. John the Baptist Parish Airport, and to the south by Airline Highway.

The Airline Industrial North property is also located in the northwest portion of the intersection of Airline Highway (U.S. Hwy 61) and the Codshalk Canal in Reserve, Louisiana. The site is subject to the State's Coastal Zone Management Program, it has recreational value, and is adjacent to St. John the Baptist City Park. The Airline Industrial North property consists of approximately 122.37 acres of undeveloped land. The site is bounded to the north by St. John the Baptist Parish Airport, to the east by vacant land, to the west by Terra Haute

plantation, and to the south by Airline Highway. These properties are covered properties within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before September 7, 1994, by the Resolution Trust Corporation at the appropriate address stated above.

These entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]

Federal Register Publication Date:

[insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h))(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: June 2, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–13946 Filed 6–8–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34148; File No. S7–18–94]

EDGAR Review

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: The Securities and Exchange Commission ("Commission") is requesting public comment on the performance of the operational Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Responses will be used in the evaluation of EDGAR's readiness for and acceptability in support of mandated EDGAR filing for all domestic registrants.

DATES: Comments should be received on or before July 11, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comment letters should refer to File No. S7–18–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David T. Copenhafer, Director, at (202) 942–8800, Office of Planning, Administration and Security, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system is an information system developed by the Securities and Exchange Commission (SEC) to automate the filing, processing, and dissemination of more than 11 million pages of registration statements and applications received by the SEC each year. Begun in January 1989, and implemented for operational use in July 1992, the operational EDGAR system will ultimately receive submissions from over 15,000 companies that are registered with the SEC.

Currently, some 3,400 companies file reports electronically through EDGAR. Based on implementation and operation to date, the Commission is now contemplating expansion of EDGAR beyond this initial group of mandated filers, to include all domestic registrants as well as most third party filings with respect to those registrants. To this end, public comment is sought on the performance and success of the operational EDGAR system to date.

Respondents are asked to, as applicable:

—Identify the group they best represent: registrant, investment company, third-party filer, filing agent, training agent, secondary marketer (disseminator/service bureau), or the public;
—Identify the year they first began using EDGAR (Pilot or Operational system);
—Estimate the number of test filings they have submitted via EDGAR since it went operational on July 15, 1992; and
—Estimate the number of live filings they have submitted via EDGAR since it went operational on July 15, 1992.

Respondents are asked to comment on EDGAR performance in the following areas:

—Integrity (e.g., are filings processed correctly?, are fees calculated correctly?, does the content of disseminated filings equal what was submitted?);
—Reliability (e.g., availability of EDGAR, CompuServe and dissemination systems);
—Responsiveness (e.g., speed of filing, acceptance, notification and queries);
—Stability (e.g., lack of interruptions or outages);
—Security (e.g., safeguards against inappropriate access, use or modification of data);
—Capacity (e.g., adequacy of phone lines, storage and processing power); and
—Usability (e.g., ease-of-use and user-friendliness).

Respondents are also asked to:

—Identify any reason why the SEC should not adopt a rule requiring mandated EDGAR filing by all domestic registrants (as well as third parties making filings with respect to these registrants).

Third-party filers are encouraged to also comment on the experience of being a third-party filer.

Although participation is voluntary, responses are encouraged to ensure the valid assessment of EDGAR performance and capabilities.

Dated: June 2, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13963 Filed 6–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34155; File No. SR–CHX–94–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc., to Establish a Policy Relating to the Automatic Execution Feature of the Midwest Automated Execution System

June 3, 1944.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX has published to members a policy relating to the automatic execution feature of the Midwest Automated Execution ("MAX") System which, *inter alia*, automates the Exchange's Guaranteed Execution System ("BEST System") pursuant to Article XX, Rule 37 of the CHX Rules.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

The MAX System automates the requirements of Rule 37 of Article XX (the BEST System) which guarantees executions at the best market up to a certain size for agency orders. Numbered paragraph 7 under Rule 37[2] allows Specialists and floor brokers to seek relief from the requirements of the BEST System in unusual trading situations. For example, on January 26, 1994, the Exchange filed SR–CHX–94–2 which set forth a temporary policy that dealt with one type of unusual trading situation. That policy expired on April 9, 1994.[3]

The purpose of this rule filing is to publish to members a new policy that describes procedures to be followed in the event that unusual trading situations arise in the future which might require relief from the automatic execution feature of MAX in a particular stock.[4] In the event that the automatic execution feature is switched to the manual mode, the Exchange will disseminate this fact to MAX terminals as an administrative message, if time permits.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change has been endorsed by the Exchange's Floor Procedures Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the

[1] The policy, which was included in a Notice To Members dated May 31, 1994, states, in part, that beginning with the opening on April 4, 1994, specialists have had the ability to switch their MAX terminals off automatic execution at their respective posts. This new functionality is being implemented to allow specialists to timely switch to a manual execution mode when a certain analyst's report is broadcast on cable T.V., if market conditions in a particular stock warrant it. Specialists should switch to manual mode only when absolutely necessary and are required to return to the automatic execution functionality immediately when the primary market quotes accurately reflect market conditions. A specialist cannot remain in manual mode, under this paragraph, for more than 10 minutes without securing the permission of two (2) floor officials.

In all other instances, when a specialist believes it is necessary to be in a manual execution mode, he or she must always seek the permission of two (2) floor officials before switching to manual. This new functionality cannot be used merely because of a volatile market, but shall only be permitted when the primary market quotes are inaccurate due to market conditions. For example, this new functionality might be used if it became apparent that the NYSE invoked its unusual market conditions rule (pursuant to SEC Rule 11Ac1–1). Floor officials must be satisfied that the conditions which permit putting an issue on manual mode are present before granting a specialist's request to switch to the manual mode and shall monitor the conditions which formed the basis for their decision to ensure that specialists' return to the auto-execution feature when such conditions are no longer present. Specialists also have the responsibility, and are required, to immediately reinstate MAX's automatic execution functionality when the primary market quotes accurately reflect market conditions.

Specialists are reminded that when operating in the manual mode they still have the responsibility to fill customer orders according to CHX rules—including the BEST Rule. All pricing executions will be reviewed for accuracy.

The Exchange and the Committee on Floor Procedure anticipate that this capability will only be utilized on an infrequent basis and only in unusual circumstances.

[2] CHX Rule 37, Paragraph 7 states that in unusual trading situations, a specialist or floor broker may seek relief from the requirements of Rule 37, Paragraphs 1 through 6 from two members of the Committee on Floor Procedure or a designated member of the Exchange staff who would have authority to set execution prices.

[3] The temporary policy in File No. SR–CHX–94–2 was amended by the Exchange to provide for a "sunset" provision whereby the effectiveness of the policy would terminate on April 9, 1994. See letter from J. Craig Long, Foley & Lardner, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated February 2, 1994.

[4] The Commission notes that the policy does not permit specialists to switch to manual execution mode merely because a certain analyst's report is broadcast on cable television. The Commission would be concerned if the MAX terminals were switched off automatic execution in the absence of market conditions that resulted in inaccurate primary market quotes.

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–14 and should be submitted by June 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14030 Filed 6–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34156; File No. SR–NASD–94–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Application for Membership in the Association

June 3, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 4, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend sections 1(b) and 1(c) to Article III of the NASD By-Laws and Schedule C to the By-Laws to modify the process by which an applicant applies for membership in the Association. Below is the text of the proposed rule change. Proposed new language is italicized and deleted language is bracketed.

By-Laws Article III Membership

Application for Membership

Sec 1. (a) Application for membership in the Corporation, properly signed by the applicant, shall be made to the Corporation, on the form to be prescribed by the Corporation, and shall contain:

(1) An acceptance of and an agreement to abide by, comply with, and adhere to, all the provisions, conditions, and covenants of the Certificate of Incorporation, the By-Laws, the rules and regulations of the Corporation as they are or may from time to time be adopted, changed or amended, and all rulings, orders, directions and decisions of, and sanctions imposed by, the Board of Governors or any duly authorized committee, the provisions of the federal securities laws, including the rules and regulations adopted thereunder, including the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;

(2) An agreement to pay such dues, assessments, and other charges in the manner and amount as shall from time to time be fixed by the Board of Governors pursuant to these By-Laws;

(3) An agreement that neither the Corporation, nor any officer or employee thereof, nor any member of the Board of Governors or of any district or other committee, shall be liable, except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer or member of the Board of Governors or of any district or other committee, in his official capacity, or by any employee of the Corporation while acting within the scope of his employment or under instruction of any officer, board, or committee of the Corporation, in connection with the administration or enforcement of any of the provisions of the rules of the Corporation as they are or may from time to time be adopted, or amended, or any ruling, order, directive, decision of, or penalty imposed by, the Board of Governors or any duly authorized committee, the provisions of the federal securities laws, including the rules and regulations adopted thereunder, including the rules of the Municipal Securities Rulemaking Board and the Treasury Department; and

(4) Such other reasonable information with respect to the applicant as the Board of Governors may require.

(b) Any application received by the Corporation shall be referred to the District Committee of the [d]*D*istrict in which the applicant has his principal place of business, and if [a majority of the members of] such District Committee *or a Subcommittee designated by such District Committee* determines that the applicant has satisfied all of the admission requirements of the [By-Laws] *Corporation*, it shall [recommend the applicant's admission to the membership and promptly notify the Secretary of the Corporation of such recommendation] *promptly notify the Association's Membership Department of its determination.*

(c) If [a majority of the members of] such District Committee *or a Subcommittee designated by such District Committee* determines that the applicant fails to satisfy all of the admission requirements of the [By-Laws] *Corporation*, it shall promptly notify the [Secretary of the Corporation who shall thereafter take appropriate action as of the date when posted to the membership roll] *Association's Membership Department of its determination.*

(d) Each member shall ensure that this membership application with the Corporation is kept current at all times by supplementary amendments to the original application.

* * * * *

Schedule C

* * * * *

Part I—Applications For Membership

(1) Pre-Membership Interviews

(a) An applicant for membership in the Corporation shall furnish to the District Office *staff* for the District in which it has or intends to have its principal place of business:

(1) A copy of its [current submission to the Securities and Exchange Commission pursuant to Rule 15b1–2(c) under the Securities Exchange Act of

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The NASD amended the proposed rule change once subsequent to its original filing on March 11, 1994. This amendment changes the requirement that an applicant for membership in the NASD submit a copy of its "current submission to the Securities and Exchange Commission pursuant to Rule 15b1–2(c) under the Securities Exchange Act of 1934" to require that the applicant submit "Form BD filed with the Central Registration Depository." This amendment is technical in nature in that it corrects a deficiency that arose out of the 1992 amendments to the broker-dealer registration process which deleted Rule 15b1–2(c) and requires that Form BD be submitted to the NASD. See Securities Exchange Act Release No. 31660 (Dec. 28, 1992), 58 FR 11 (Jan. 4, 1993) (adoption of rule amendments to broker-dealer registration and reporting requirements).

1934] *Form BD filed with the Central Registration Depository;*

(2) Its most recent trial balance, balance sheet, supporting schedules and computation of new capital;

(3) A copy of its written supervisory procedures;

(4) A list of all officers, directors, general partners, employees and other persons who will be associated with it at the time of admission to membership;

(5) A description of business activities in which it intends to engage; and

(6) Such other relevant information and documents as may be requested by the District Office *staff.*

Unless otherwise determined by *a Subcommittee designated by* the District [c]Committee, an applicant's failure to respond or a materially inadequate response to a request for information by the District Office *staff* within sixty (60) days of the request shall result in the termination of that application.

(b) Before an applicant shall be admitted to membership in the Corporation, and within a reasonable period of time after receipt of the foregoing information, the District Office *staff* shall schedule a pre-membership interview at which responsible personnel of the applicant, as determined by the District Office *staff*, shall personally appear at the District Office. At such interview, the applicant shall demonstrate, in accordance with the criteria listed in section (1)(c) hereof, the appropriateness of its admission to membership in the Corporation to conduct the type of business intended in the manner specified in its submission. Unless otherwise determined by *a Subcommittee designated by* the District (c)Committee, an applicant shall have twelve (12) months, from the date of application made in accordance with section 1(a) above, to complete the premembership review process. Failure to complete requirements for review by *a Subcommittee designated by* the District [c]Committee by that date shall result in the termination of that application.

(c) The pre-membership interview shall address the applicant's business plans to determine their adequacy and consistency with the federal securities laws and the rules of the Corporation; good business practices in the investment banking or securities business; a member's fiduciary obligation to its customers; and the public interest and the protection of investors. The pre-membership interview and shall review, among other things,

(1) The nature, adequacy, source and permanence of applicant's capital and its arrangements for additional capital should a business need arise;

(2) The applicant's proposed recordkeeping system;

(3) The applicant's proposed internal procedures, including compliance procedures;

(4) The applicant's familiarity with applicable NASD rules and federal securities laws;

(5) The applicant's capability to properly conduct the type of business intended in view of the:

A. Number, experience and qualifications of the persons to be associated with it at the time of its admission to membership,

B. Its planned facilities,

C. Arrangements, if any, with banks, clearing corporations and others, to assist it in the conduct of its securities business,

D. Supervisory personnel, methods and procedures; and

(6) Other factors relevant to the scope and operation of its business.

(d) Within thirty (30) days after the conclusion of such pre-membership interview, or if further information and/or documents are requested, within thirty (30) days of the receipt of such information or documents, [the District Office] *a Subcommittee designated by the District Committee shall consider the application and* shall notify the applicant in writing whether its application has been granted, denied, or granted subject to restrictions on its business activities, and provide the rationale for such determination.

(e) In all cases where restrictions are placed on its business activities, the applicant shall, prior to approval of membership, execute a written agreement with the Corporation agreeing to abide by the restrictions specified in the determination and agreeing not to modify its business activities in any way inconsistent with such agreement without first notifying the Corporation and receiving its written approval. These restrictions shall remain in effect and are binding on the applicant and all successors to the ownership or control of the applicant until modified pursuant to [paragraph] *section* (3) below.

(2) Procedures for Review by the District Committee and the Board of Governors

(a) The [District Office's] *Subcommittee's* determination shall be [reviewed] *subject to review* by the relevant District Committee upon request made by the applicant, *filed* within 15 *calendar* days *after the date* [of receipt] of the notification. Until completion of the District Committee's review, an applicant denied membership shall not be admitted to membership, and an applicant admitted to membership subject to restrictions on its business activities may engage in business consistent with such restrictions only after it has executed the agreement required by [paragraph] *section* (1)(e) hereof.

(b) In connection with review by the District Committee, the applicant shall have the right to appear before a *Hearing* [s]*Subcommittee* of the District Committee, or the *Hearing* [s]*Subcommittee* may require such appearance. The applicant may present evidence and be represented by counsel. The *Hearing* [s]*Subcommittee* may request additional information to assist it in reaching a determination. A record shall be kept of the proceedings. *No member of the District Committee who served as a member of the Subcommittee designated pursuant to Section 1(d) shall participate in the determination by the District Committee.*

(c) The District Committee, after consideration of the record before it *developed by the Hearing Subcommittee* and the criteria contained in section (1)(c), above, shall within a reasonable time after *the* close of the record, notify the applicant in writing that its application has been granted, denied or granted subject to restrictions on its business activities and provide the rationale for such determination. The District Committee's determination shall be made independent of the determination of the [District Office] *Subcommittee designated by the District Committee* and shall not be limited thereby.

(d) The District Committee's determination shall be [reviewed] *subject to review* by the [Board of Governors] *National Business Conduct Committee (NBCC)* upon request made by the applicant, *filed* within 15 *calendar* days *after the date* [of receipt] of the notification. The [Board of Governors] *NBCC* may call for review any District Committee determination within forty-five *calendar* days [of] *after* the date of the notification. During the pendency of such review, an applicant denied membership shall not be admitted to membership and an applicant admitted to membership subject to restrictions on its business activities may engage in business consistent with such restrictions only after it has executed the agreement required by [paragraph] *section* (1)(e), above.

(e) In connection with review by the [Board of Governors] *NBCC,* the applicant shall have the right to appear before a [s]Subcommittee of the [Board

of Governors] *NBCC*, or the *NBCC* [s]Subcommittee may require such appearance. The applicant may supplement the record developed before the District Committee and be represented by counsel. The NBCC [s]Subcommittee may request additional information to assist the [Board of Governors] *NBCC* in reaching a determination. A record shall be kept of the proceedings.

(f) *Unless a matter is called for discretionary review by the Board of Governors (Board) pursuant to Section (2)(g),* [T]the [Board of Governors] *NBCC*, after consideration of the record before it *developed by the NBCC Subcommittee*, and the criteria stated in Section (1)(c), above, shall within a reasonable period of time after close of the record before it, notify the applicant in writing that its application has been granted, denied or granted subject to restrictions on its business activities, provide the rationale for such determination, *and shall constitute final action for the NASD for purposes of section (2)(h) below.* The [Board of Governors'] *NBCC's* determination shall be made independent of the determinations of the [District Office] *Subcommittee designated by the District Committee* and District Committee, and shall not be limited thereby. *In the event of discretionary review by the Board of Governors, the decision of the Board shall constitute final action of the NASD for the purposes of section (2)(h) below and the applicant shall be promptly notified in writing that its application has been granted, denied or granted subject to restrictions in its business activities, and shall be provided the rationale for such determination.*

(g) *Determinations of the NBCC may be reviewed by the Board of Governors solely on the request of one or more Governors. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of NBCC determinations. In reviewing any NBCC determination of an application for membership, the Board may affirm, reverse of modify any decision to accept, deny or accept subject to restrictions, an applicant. Discretionary review by the Board shall operate as a stay of any action or denial by the Subcommittee designated by the District Committee and any determination by the NBCC, until a decision is rendered by the Board.*

[(g)] *(h)* The applicant may apply for review of the *NBCC's or the* Board of Governors' determination to the Securities and Exchange Commission in accordance with Section 19 of the Securities Exchange Act of 1934, as amended.

[(h)] *(i)* In any case where restrictions have been placed upon its business activities by the Board of Governors, *NBCC*, [or] a District Committee, *or a Subcommittee designated by a District Committee*, the applicant shall, prior to approval of membership, execute the agreement required by paragraph (1)(e), above.

(3) Removal of Restrictions Imposed

(a) Upon written request by the member, any restrictions on the business activities of a member shall be reviewed and may be removed or modified by *a Subcommittee designated by* the District Committee for the District in which the member currently has its principal place of business, when, in the [District Committee's] *Subcommittee's* judgement, the member has demonstrated that such action is appropriate in light of the criteria contained in section (1)(c), above. In doing so, the District Committee shall consider the circumstances which gave rise to the imposition of the restrictions, the operations of the member since the imposition of the restrictions and any new evidence submitted in connection with the member's request.

(b) Any modification of restrictions shall be subject to review by *the District Committee and the NBCC or* the Board of Governors and the SEC pursuant to the procedures provided in Section (2), above. A refusal *by a Subcommittee designated by a District Committee* to *remove or* modify *any restrictions* shall be similarly reviewed but only upon [application] *request* of the member filed with the [Board of Governors] *District Committee that is filed* within ten *calendar* days *after the date* of notification of such refusal.

(c) Should the restrictions on a member's activity be modified, the agreement required by [paragraph] *section* (1)(e), above, shall be modified accordingly.

(4) Changes in Ownership or Control of Existing Members

Should the ownership or control of an existing member change, the Corporation may, in its discretion, condition continuance in membership in the Corporation on prompt compliance with the pre-membership interview procedures contained in this part I.

(5) Notification to the District Office of Certain Events

Members are required to notify in writing the Corporation's District Office for the District in which the member's main office is located no later than ten (10) business days after any of the following specified events: (1) Any merger of the member; (2) an acquisition by the member; (3) an acquisition of the member or substantially all of its assets; and (4) any change in the entity ownership or partnership capital of the member which results in one person or entity owning 50% or more of such equity ownership or partnership capital.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

By-Laws

Sections 1(b) and 1(c) to Article III of the NASD By-Laws currently provide that any application for membership in the Association shall be referred to the District Committee of the NASD district in which the applicant has its principal place of business, and that such District Committee shall make the determination as to whether the applicant satisfies or fails to satisfy all of the admission requirements of the NASD By-Laws. However, the provisions governing pre-membership interviews in Schedule C to the NASD By-Laws currently contemplate a possible three-step process under which the initial determination for Association eligibility is made by District Office staff with review, if appropriate, by the District Committee upon request by the applicant.

Although the provisions of Schedule C contemplate review of applications for membership in the Association by the District Office staff, no District, in fact, has ever made such a determination at a staff level. Additionally, such action would be inconsistent with the governing By-Law provision that requires that the District Committee shall make such an initial determination. The proposed rule change, therefore, would amend the NASD By-Laws and Schedule C to

modify and make consistent the process by which an applicant applies for membership in the Association in that it would require all initial applications for membership be reviewed by either the District Committee or a Subcommittee of the District Committee, with a right of appeal to the full District Committee.

Subsection 1(b) and 1(c) to Article III of the NASD By-Laws are proposed to be amended to establish the authority of a District Committee to designate a Subcommittee to make a determination of admissibility of an applicant and to require a designated Subcommittee to promptly notify the Association's Membership Department of its determination. The phrase "a majority of the members of" is proposed to be eliminated from Subsection 1(b) as unnecessary.

Schedule C

As an initial matter, Schedule C is proposed to be amended throughout by referencing the phrase "a Subcommittee designated by the District Committee" in place of the phrases "District Committee" or "District Office" wherever such replacement conforms the language of Schedule C to the proposed change in the By-laws establishing the ability for the District Committee to delegate authority to a Subcommittee to review and determine the admissibility of an applicant.

Subsection (1)(a) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that applications for membership in the Association are to be furnished to the District Office staff. Subsection 1(a)(6) is proposed to be amended to clarify that the applicant must provide in connection with its application submission such other relevant information and documents as may be requested by the District Office staff.

Subsection 1(b) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that the scheduling of an applicant's pre-membership interview and the determination of which responsible personnel shall appear on behalf of the applicant at such interview will be determined by the District Office staff.

Subsection (1)(d) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that the District Committee's designated Subcommittee, rather than the District Office, shall consider the application submission.

Subsection 2(a) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that it is the determination of the designated Subcommittee, rather than the District Office, which will be reviewed by the District Committee upon request of the applicant. Subsection 2(a) to part I of Schedule C to the By-Laws is also proposed to be amended to clarify that the applicant's request for review must be filed within 15 calendar days after notification of the Subcommittee's determination.

Subsection 2(b) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that, in connection with review by the District Committee, an applicant is entitled to appear before a Hearing Subcommittee of the District Committee and that no member of the District Committee who served as a member of the Subcommittee originally designated to review the applicant's submission and no member of the Hearing Subcommittee shall participate in the determination resulting from the District Committee's review.

Subsection 2(c) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that the District Committee's determination of the record developed before it shall be made independent of the determination of the Subcommittee designated by the District Committee.

Subsection 2(d) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that the District Committee's determination shall be subject to review by the National Business Conduct Committee ("NBCC") upon request made by the applicant filed within 15 calendar days after the date of notification to the applicant by the District Committee of its determination.

Subsection 2(e) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that in connection with review by the NBCC, the applicant has the right to appear before a Subcommittee of the NBCC.

Subsection 2(f) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that the NBCC's determination of the record developed before it shall be made independent of the determination of the Subcommittee designated by the District Committee, and shall constitute final action for the NASD for purposes of Subsection (2)(h) to part I of Schedule C to the By-Laws unless called for discretionary review by the Board of Governors. Subsection 2(f) to part I of Schedule C to the By-Laws is also proposed to be amended to clarify that a decision by the Board pursuant to its power of discretionary review shall constitute final action for purposes of Subsection (2)(h) to part I of Schedule C to the By-Laws and that such determination and its rationale shall be communicated to the applicant in writing.

Proposed new Subsection (2)(g) to part I of Schedule C to the By-Laws is intended to clarify that review by the Board of Governors of NBCC determinations is discretionary and may occur solely on the request of one or more governors, and not at the request of the applicant. Such discretionary review of the Board shall be in accordance with the resolutions of the Board governing the review of NBCC determinations. The Board may affirm, reverse or modify an NBCC decision. The commencement of the review shall operate as a stay of any action by the Subcommittee designated by the District Committee and any determination by the NBCC until a decision is reached by the Board.

Old Subsection (2)(g) to part I of Schedule C to the By-Laws is proposed to be designated Subsection (2)(h) and states that the applicant may apply for review to the Securities and Exchange Commission of any determination by the NBCC or the Board.

Old Subsection (2)(h) to part I of Schedule C to the By-Laws is proposed to be designated Subsection (2)(i) and clarifies that the requirements of the Subparagraph apply to determinations of restrictions placed on the applicant made by the NBCC or a Subcommittee designated by the District Committee, as well as to such determinations made by the Board or a District Committee.

Subsection (3)(a) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that review and removal or modification of restrictions placed on the applicant shall be done by a Subcommittee designated by the District Committee.

Subsection (3)(b) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that modifications of restrictions shall be subject to review by the District Committee and the NBCC, as well as by the Board and the SEC. Subsection (3)(b) to part I of Schedule C to the By-Laws is also proposed to be amended to clarify that the refusal by a Subcommittee designated by the District Committee to remove or modify restrictions shall also be subject to review, but only upon request of the member filed with the District Committee within ten calendar days after the date of notification of such refusal.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(8) of the Act,[3] which require, among other things, that the rules of the Association

[3] 15 U.S.C. 78o–3.

provide a fair procedure for the denial of membership to any person seeking membership therein or the prohibition or limitation by the Association of any person with respect to access to services offered by the Association or a member thereof, in that the proposed rule clarifies the process by which an applicant for membership in the Association is accepted, denied or accepted with limitations and eliminates any ambiguity in the Association's By-Laws and the Schedules to the By-Laws with respect to the application and administration of such process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–14 and should be submitted by June 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[Fr Doc. 94–14029 Filed 6–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34151; File No. SR–NASD–94–19]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Provide the NASD With Discretionary Authority to Exclude an Issuer From the Nasdaq Stock Market or Impose Additional or More Stringent Criteria for Inclusion in the Nasdaq Stock Market

June 3, 1994.

I. Introduction

On April 6, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The rule change adds provisions to Schedule D to the NASD By-Laws clarifying the NASD's discretionary authority to exclude an issuer from the Nasdaq Stock Market ("Nasdaq") or require additional or more stringent criteria for inclusion in Nasdaq.

Notice of the proposed rule change together with its terms of substance was provided by issuance of a Commission release and by publication in the **Federal Register**.[3] Three comments were received in response to the Commission release, one expressing general support and two opposing the proposal. This order approves the proposed rule change.

II. Description

According to the NASD, it submitted this rule filing primarily to address concerns about the increasing number of applications for inclusion in Nasdaq by companies controlled or substantially influenced by persons with a history of securities or commodities violations.[4] The NASD also indicated that its proposal to amend Sections 1 and 2 of Part II to Schedule D[5] is intended to codify certain principles underlying Nasdaq. First, the NASD states, that as operator of Nasdaq, it is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. Second, Nasdaq stands for integrity and ethical business practices in order to enhance investor confidence, thereby continuing to the financial health of the economy, and supporting the capital formation process. Third, inclusion in Nasdaq carries with it an implicit expectation that all Nasdaq issuers, from new public companies to companies of international stature, share these objectives. The proposal further clarifies that the NASD, in addition to applying the enumerated criteria set forth in Parts II and III to Schedule D, may exercise broad discretionary authority over the initial and continued inclusion of securities in Nasdaq in order to maintain the quality of and public confidence in its market. Under this broad discretion, and in addition to its authority under Subsection 3(a), the proposal notes that the NASD may deny initial inclusion or apply additional or more stringent

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[3] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Securities Exchange Act Release No. 33899 (Apr. 12, 1994), 59 FR 18171 (Apr. 15, 1994).

[4] In addition, this rule change corrects a technical deficiency in the NASD's rules. The proposal amends Part II, Section 3(a) of Schedule D to the NASD's By-Laws which currently provides the NASD, under certain circumstances, with the authority to apply additional or more stringent criteria for the initial or continued inclusion of particular securities or to suspend or terminate the inclusion of a security otherwise qualified for inclusion in Nasdaq. For many years, the NASD has interpreted Section 3(a) to authorize the NASD to deny inclusion of a security in Nasdaq. The NASD believes authority to deny inclusion is inherent in Section 3(a), otherwise the NASD would be required to include a security in Nasdaq in order to terminate the security's inclusion. The NASD has determined that its authority to deny inclusion of particular securities in Nasdaq in compliance with the enumerated provisions of Section 3(a) should be stated expressly. The proposed rule change, therefore, amends Part II, Section 3(a) of Schedule D to clarify this authority.

[5] NASD Manual, Schedules to the By-Laws, Schedule D, Part II, Secs. 1 & 2, (CCH) ¶¶ 1803 & 1804. Nasdaq includes both Nasdaq SmallCap Market and Nasdaq National Market securities. Sections 1 and 2 to Part II of Schedule D include the qualification requirements for domestic and Canadian securities and for non-Canadian foreign securities and American Depositary Receipts, respectively. The qualification requirements in Sections 1 and 2 of Part II to Schedule D apply to both the Nasdaq SmallCap Market and Nasdaq National Market securities.

criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes initial or continued inclusion of the securities in Nasdaq inadvisable or unwarranted in the opinion of the NASD, even though the securities meet all enumerated criteria for initial or continued inclusion in Nasdaq.

The NASD is concerned about an increase in recent years in the number of applications for inclusion in Nasdaq by issuers that are managed, controlled or influenced by persons with a history of significant securities or commodities violations.[6] In particular, the NASD is concerned about issuers substantially influenced by persons who have previously been the subject of a significant sanction for violations of state or federal securities laws, self-regulatory organization ("SRO") rules and regulations, or the subject of a felony conviction in connection with the purchase or sale of securities or commodities. The NASD believes that applications from these issuers for inclusion in Nasdaq reflect a pattern of activity in which persons with a history of securities or commodities violations seek to continue their violative conduct in the securities markets through the management, control or influence of a publicly-held company. The NASD has indicated that a case-by-case review of issuer applications has previously resulted in denials of certain applications pursuant to the "catch-all" provision of Part II, Section 3(a)(3) of Schedule D.[7]

In exercising discretion about whether to include an issuer in Nasdaq, the NASD will form a reasonable belief as to whether certain persons connected with an issuer may be predisposed to engage in further violative conduct contrary to interests of the investing public. In these cases, the NASD believes that the history of prior violative conduct raises concerns regarding the continuing potential for conduct in connection with the operation of the company or the market for its securities that would be considered fraudulent and manipulative, contrary to just and equitable principles of trade, or otherwise raise investor protection concerns.

The NASD's concern regarding situations where a person with a history of securities or commodities law violations manages, controls or influences a Nasdaq issuer is heightened by the fact that inclusion of the securities of such issuers in Nasdaq would exempt the transactions in these securities from Commission rules adopted to prevent certain fraud and abuse in the penny stock market. In August 1989, the Commission adopted Rule 15c2–6 to address sales practice abuses in low priced over-the-counter ("OTC") securities.[8] In general, this rule prohibits broker-dealers from selling a "designated security" to, or effecting the purchase of a "designated security" by, any person, unless the broker-dealer has approved the purchaser's account for such transactions and received from the purchaser a written agreement to the transaction.[9] On April 10, 1992, the Commission adopted the Penny Stock Disclosure Rules[10] which, in general, require that broker-dealers: (1) Furnish to a customer a risk disclosure document; (2) disclose the current bid and ask quotations and the commissions; and (3) provide monthly updates on the value of the securities. Among other exemptions, the Commission excluded from the scope of Rule 15c2–6 and the Penny Stock Disclosure Rules all issuers authorized or approved for inclusion in Nasdaq. The NASD believes that continued vigilance is required to ensure that inclusion in Nasdaq is not used as a vehicle to avoid compliance with the Penny Stock Disclosure Rules. The NASD further believes that prospective investors in the securities of a Nasdaq company are entitled to assume that securities included in Nasdaq meet the system's standards.[11]

III. Comments

As noted above, the Commission received three comment letters in response to the NASD's proposed rule change. The Task Force on Listing Standards of Self-Regulatory Organizations of the Federal Regulation of Securities Committee, Section of Business Law of the American Bar Association ("ABA Task Force") expressed general support for the NASD's initiative, but indicated concern over the retroactive application of the NASD's rule. In particular, the ABA Task Force is concerned that the NASD may exclude a current issuer based on a previously disclosed condition. The ABA Task Force believes that the NASD should only apply the rule retroactively to issuers where there is a change in control, disclosure of new material information, or other meaningful change in circumstance.[12] A second commenter opposed the proposal, asserting that the discretion accorded the NASD was unlimited and could lead the NASD to exclude an issuer from Nasdaq on a basis wholly unrelated to the legitimate concerns of administering Nasdaq.[13] Finally, a third commenter argued that the NASD's comparison to the NYSE and Amex rules is misplaced. In particular, this commenter argued that the rules of these exchanges provide greater procedural protection to issuers in that an appeal within the NYSE or Amex provides an automatic stay of the initial decision but does not with an

[6] As a result of its concerns, on June 2, 1993, the NASD filed a proposal to amend Part II, Section 3(a). Securities Exchange Act Release No. 32605 (July 9, 1993), 58 FR 38150 (July 15, 1993) (Commission notice of File No. SR–NASD–93–32). Concurrent with the filing of the instant proposal, the NASD withdrew File No. SR–NASD–93–32. Letter from T. Grant Callery, Vice President and General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC (Apr. 6, 1994).

[7] Section 3(a)(3) provides that "[t]he Association may, in accordance with Article IX of the NASD's Code of Procedure, apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if * * * the Association deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest." NASD Manual, Schedules to the By-Laws, Schedule D, Part II, Sec. 3(a)(3), (CCH) ¶ 1805 ("Section (3)(a)(3)").

[8] Securities Exchange Act Release No. 27160 (Aug. 22, 1989), 54 FR 35468 (Aug. 28, 1989).

[9] 17 CFR 240.15c2–6(a).

[10] The Penny Stock Sales Practice and Disclosure Rules of the Act are comprised of Rule 3a51–1 providing definitions of penny stocks and Rules 15g–1 to 15g–6, 15g–8 and 15g–9. In general, the Penny Stock Rules have been enacted to require more stringent regulation of broker-dealers that recommend penny stock transactions to customers. Under Rule 3a51–1 of the Act, Nasdaq securities are excluded from the scope of the Penny Stock Disclosure Rules, except that Nasdaq SmallCap securities under $5.00 are deemed penny stocks for purposes of Section 15(b)(6) of the Act. See, Securities Exchange Act Release No. 30608 (Apr. 20, 1992), 57 FR 18004 (Apr. 28, 1992).

[11] See In the Matter of Tassaway, Inc., Securities Exchange Act Release No. 11291 (Mar. 13, 1975), 45 SEC 706, 6 SEC Docket 427 ("primary emphasis must be placed on the interests of prospective future investors").

[12] Letter from John F. Olson, Chair, Committee on Federal Regulation of Securities, ABA Section on Business Law, and Robert Todd Lang, Chair, Task Force on Listing Standards of Self-Regulatory Organizations, ABA Section on Business Law, to Jonathan G. Katz, Secretary, SEC (Apr. 29, 1994). According to the letter, it was prepared by members of the ABA Task Force, circulated among the members and a substantial majority of the members agree with it. Nonetheless, the letter indicated that it does not represent the official position of the ABA, the Section of Business Law, the Federal Regulation of Securities Committee or the ABA Task Force.

[13] Letter from Andrew I. Telsey to Jonathan G. Katz, Secretary, SEC (Apr. 26, 1994). This commenter also asserted that the proposal was tantamount to a prior restraint on speech and a violation of the United States Constitution's guarantee of free speech. The Commission is convinced that the proposal, as designed, will have no such consequences. The NASD's proposal is similar in many respects to that of existing authority vested in other securities markets.

appeal within the NASD of an NASD decision.[14]

The NASD responded to these comments in letters dated May 17 and May 25, 1994.[15] With respect to the concerns of the ABA Task Force, the NASD believes that limiting this authority to prospective issuers or to issuers undergoing a material change in circumstance would inappropriately restrict its oversight of Nasdaq and hinder its review of individual issuers. In addition, the NASD believes that prospective investors are entitled to assume that the NASD protects the quality and integrity of Nasdaq.[16]

The NASD also believes that assertions that the proposed rule would provide the NASD boundless discretion are unwarranted. First, the nature and scope of the NASD's discretionary authority is set forth in the proposed new language. In addition, any determination to exclude an issuer will be made on a case-by-case basis in accordance with the procedures set forth in Article IX of the NASD's Code of Procedure,[17] and an aggrieved party may request the NASD to review its initial determination.[18] In addition, the NASD indicated that an issuer may request, or the NASD may voluntarily grant, a stay pending appeal within the NASD. Indeed, in the past, the NASD has delayed immediate delisting when the matter presented novel policy issues. Finally, if the aggrieved party is dissatisfied with a final determination of the NASD, it may then request that the Commission stay the NASD's action, and ultimately it may obtain review of the Commission's final order in the United States Court of Appeals.

IV. Discussion

Under Section 19(b) of the Act, the Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[19] No other finding is required.[20] In evaluating a given proposal, the Commission must examine the record before it and all relevant factors and necessary information.[21] Section 15A of the Act addresses with some specificity the requirements applicable to NASD rules, and those are the standards against which the Commission must measure the NASD proposal.[22]

The Commission has determined to approve the NASD's proposal. The Commission believes that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Sections 15A (b)(6) and 15A (b)(9) of the Act.[23] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Section 15A(b)(9) requires that the NASD's rule not impose any burden on competition not necessary or appropriate in furtherance of the Act. In addition, the Commission believes that the rule change will further the goals of Section 11A in that it will help preserve and strengthen the nation's securities markets.[24]

The Commission believes that inclusion of a security for trading in Nasdaq, like listing on an exchange, should not depend solely on meeting quantitative criteria, but should also entail an element of judgment given the expectations of investors and the imprimatur of listing on a particular market.[25] Securities listed for trading or included in Nasdaq often qualify for margin loans and are exempt from many of the state blue sky laws, which apply concepts of merit regulation to determine whether investors in that state may purchase the issuer's securities.

Almost twenty years ago, the Commission held in *In the Matter of Tassaway*[26] that the NASD is vested with discretionary authority to deny an issuer's request that its securities be included in Nasdaq. In that decision, the Commission stated that while exclusion from Nasdaq may hurt existing shareholders, the primary emphasis must be placed on the interest of prospective public investors and that this latter group is entitled to assume that the securities in Nasdaq meet the NASD standards. Although the Commission is of the view that the NASD's current rules authorize it to exclude an issuer, the proposal would clarify that authority. The Commission believes that this rule change provides greater protection to both existing and prospective investors. This rule change provides investors greater assurance that the risk associated with investing in Nasdaq is market risk rather than the risk that the promoter or other persons exercising substantial influence over the issuer is acting in an illegal manner.

The rule change will address the increase of applications by issuers for inclusion in Nasdaq where a person with a history of significant securities or commodities law violations is in a position to manage, control or influence the issuer to the detriment of investors. The rule change also responds to the related concern that inclusion of these securities in Nasdaq would exempt the

[14] Letter from Joseph McLaughlin, Brown & Wood, to Jonathan G. Katz, Secretary, SEC (May 6, 1994).

[15] Letters from T. Grant Callery, Vice President and General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC (May 17, 1994) and Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC (May 25, 1994).

[16] In connection with its prior proposal, SR-NASD-93-32, the NASD responded to a similar comment by the ABA Task Force by stating that limiting its discretion in the suggested manner would impose an arbitrary restriction on the NASD's oversight of Nasdaq. This, the NASD argued, could undermine public confidence in Nasdaq and would be contrary to interests of retail and institutional investors, issuers, broker-dealers and the public. See Securities Exchange Act Release No. 33899 (Apr. 12, 1994), 59 FR 18171 (Apr. 15, 1994) (Commission notice of File No. SR-NASD-94-19); File No. SR-NASD-93-32, Amendment No. 2 (File No. SR-NASD-93-32 was withdrawn by the NASD concurrent with the filing of File No. SR-NASD-94-19).

[17] NASD Manual, Code of Procedure, Art. IX, Sec. 1, (CCH) ¶ 3101. The NASD also noted that its Code of Procedure has been subject to public notice and comment, Securities Exchange Act Release No. 19097 (Oct. 4, 1982), 47 FR 44903 (Oct. 12, 1982) (Commission notice of SR-NASD-82-11), and has been approved by the Commission, Securities Exchange Act Release No. 21838 (Mar. 12, 1985), 50 FR 11035 (Mar. 19, 1985) (Commission approval of SR-NASD-82-11). The NASD also noted that its authority to exclude an issuer or to impose additional or more stringent criteria under the proposed rule is substantially similar to the authority it currently exercises under Section 3(a)(3).

[18] NASD Manual, Code of Procedure, Art. IX, Secs. 6 & 8, (CCH) ¶¶ 3106 & 3108.

[19] 15 U.S.C. 78s(b).

[20] The Commission's statutory role is limited to evaluating the rule as proposed against the statutory standards, and does not require the SRO to prove its proposal is the least burdensome solution to a problem.

[21] In the Securities Acts Amendments of 1975 ("1975 Amendments"), Congress directed the Commission to use its authority under the Act, including its authority to approve SRO rule changes, to foster the establishment of a national market system and promote the goals of economically efficient securities transactions, fair competition, and best execution. Congress granted the Commission "broad, discretionary powers" and "maximum flexibility" to develop a national market system and to carry out these objectives. Furthermore, Congress gave the Commission "the power to classify markets, firms, and securities in any manner it deems necessary or appropriate in the public interest or for the protection of investors and to facilitate the development of subsystems within the national market system." S.Rep. No. 75, 94th Cong., 1st. Sess., at 7 (1975).

[22] See 15 U.S.C. 78o-3.

[23] *Id.* § 78o-3(b)(6) and (9).

[24] *Id.* § 78k-1(a)(1)(A).

[25] See e.g., *In the Matter of Silver Shield Mining and Milling Company*, Securities Exchange Act Release No. 6214 (Mar. 18, 1960) ("use of the facilities of a national securities exchange is a privilege involving important responsibilities under the Exchange Act"); *In the Matter of Consolidated Virginia Mining Co.*, Securities Exchange Act Release No. 6192 (Feb. 26, 1960) (same).

[26] Securities Exchange Act Release No. 11291 (Mar. 13, 1975), 45 SEC 706, 6 SEC Docket 427.

transactions in these securities from Commission rules adopted to prevent certain fraudulent sales practices and abuses in the penny stock market.[27] The Commission agrees that with respect to the Nasdaq SmallCap Market, the rule change furthers the purposes of the Penny Stock Rules adopted under the Act. The rule change will provide the NASD with authority to ensure that securities which would otherwise be subject to the Penny Stock Rules merit this exemption when entering Nasdaq and continue to merit this exemption thereafter.

As indicated above, one commenter raised due process concerns. In the context of excluding issuers from Nasdaq, the Commission believes these concerns are addressed by the statutory and regulatory authority and obligations of the NASD. The Act requires the NASD to adopt and enforce rules designed, among other things, to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[28] The Act further requires that the NASD's rules provide a fair procedure when prohibiting or limiting access to Nasdaq,[29] which includes notification of the specific grounds for prohibiting or limiting access, providing an opportunity to be heard, and maintaining a record.[30] In accordance with these obligations, the NASD has established quantitative and qualitative criteria for inclusion in Nasdaq,[31] and procedures to review decisions to deny or limit access to an issuer the NASD determines does not satisfy the criteria for inclusion.[32] Those procedures provide an opportunity for a hearing[33] and, although not explicit, an opportunity to request a stay from the NASD. In addition to these obligations, the Act and Commission rules require the NASD to notify the Commission promptly of any final or summary action to prohibit or limit access to Nasdaq.[34] The Act and Commission rules further provide that any final action by the NASD is subject to review by the Commission.[35] In addition, the Commission may stay summary action by the NASD on its own motion or upon an application by the issuer.[36] Finally, a person dissatisfied with a final determination of the Commission may seek review of that decision by the United States Court of Appeals.[37]

The Commission believes that this rule strikes the appropriate balance between protecting investors and providing a marketplace for issuers satisfying the disclosure requirements under the federal securities laws. This rule change clarifies the NASD's current practice of using its authority under Section 3(a)(3) of Part II to Schedule D. The authority granted under Section 3(a)(3) is discretionary in nature and this rule change will continue to allow the NASD to exercise its discretion in applying the standards of Section 3(a)(3) on a case-by-case basis. The rule change will also provide important guidance to the NASD review process, and will alert issuers seeking inclusion in Nasdaq, as well as current Nasdaq issuers, that the NASD considers an issuer's connection to a person with a history of significant securities or commodities violations in determining whether to grant initial or continued inclusion of the security, and that the security may be subject to additional criteria as a condition for initial and continued inclusion in Nasdaq. The rule change establishes the NASD's discretionary authority under Part II, Sections 1 and 2 of Schedule D to deny initial inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes initial or continued inclusion of the securities in Nasdaq inadvisable or unwarranted, even though the securities meet all enumerated criteria for initial or continued inclusion in Nasdaq. Nonetheless, the Commission expects that before the NASD exercises its discretionary authority under the new rule, it will consider as one of several factors the extent to which events or circumstances giving rise to the proposed action were previously disclosed.

V. Conclusion

In conclusion, for the reasons stated above, the Commission finds that the rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–19 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14031 Filed 6–8–94; 8:45 am]

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[27] See Letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Joseph R. Hardiman, President, NASD (Jan. 10, 1990).

[28] 15 U.S.C. section 78*o*–3(b)(6).

[29] *Id.* section 78*o*–3(b)(8).

[30] *Id.* section 78*o*–3(h)(2).

[31] NASD Manual, Schedules to the By-Laws, Schedule D, Parts II & III, (CCH) ¶¶ 1803–1806A & 1807–1813.

[32] NASD Manual, Code of Procedure, Art. VIII, Secs. 1–10, (CCH) ¶¶ 3081–3090 (NASD procedures re: summary action prohibiting or limiting access to Nasdaq) and Art. IX, Secs. 1–9, (CCH) ¶¶ 3101–3109 (NASD procedures re: final action prohibiting or limiting access to Nasdaq).

[33] See *Belfort* v. *NASD*, No 93–7159, 1994 U.S. Dist. LEXIS 3457 (S.D.N.Y. Mar. 21, 1994) (court lacks jurisdiction because the plaintiff did not exhaust administrative remedies under the Act); *Dimensional Visions* v. *NASD*, 799 F. Supp. 29 (E.D. Pa. 1992) (same).

[34] 15 U.S.C. 78s(d)(1). The Commission rule promulgated pursuant to 15 U.S.C. 78s(d)(1) distinguishes between notice to the Commission of final action excluding an issuer from Nasdaq (17 CFR 240.19d–1(e)) and notice to the Commission of summary action excluding an issuer from Nasdaq (17 CFR 240.19d–1(i)). With respect to notice of final action, the rule requires that it be promptly filed with the Commission and include the name of the issuer and the last known place of business, the statutory and/or regulatory basis for excluding the issuer, a statement describing the issuer's response to the NASD's decision, a statement of the finding of facts and conclusions, a statement supporting the resolution of the principal issues raised, the effective date of the NASD's action and other information the NASD deems relevant. 17 CFR 240.19d–1(f). With respect to notice of summary action, the rule requires that it be filed with the Commission within 24 hours of the effectiveness of the action and include the name of the issuer and the last known place of business, a statement describing the specific statutory basis for summarily excluding the issuer, the effective date of the NASD's action and other information the NASD deems relevant. 17 CFR 240.19d–1(i).

[35] 15 U.S.C. 78s(d)(2) and 17 CFR 240.19d–3.

[36] 15 U.S.C. 78*o*–3(h)(3) and 17 CFR 240.19d–2.

[37] *Id.* section 78y(a)(1).

[38] 17 CFR 200.30–3(a)(12).

[Release No. 34–34137; File No. Phlx–94–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Modification of Trading Hours on the Big Cap Index

June 1, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the trading hours applicable to the Phlx's Big Cap Index ("Index"), a broad-based index. The trading hours originally proposed in connection with the Index were from 9:30 a.m. to 4:10 p.m. on business days. The Phlx now proposes to modify Phlx Rules 101 and 1101A to reflect that the trading hours of the Index from 9:30 a.m. to 4:15 p.m. on business days. Because the Exchange believes that this proposal is an extension of an existing policy of the Exchange to trade broad-based indexes until 4:15 p.m., it has submitted this proposed rule change effective immediately upon filing so that the Index will be open for trading until 4:15 p.m. each business day from the time it commences trading on May 17, 1994.

The text of the proposed rule change is available at the office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

On April 28, 1994, the Commission issued an order approving the Exchange's proposal to list and trade options on the Index.[3] That proposal had specified that the trading hours for the Index would be from 9:30 a.m. to 4:10 p.m., and the Commission approved the proposal with these trading hours in effect. However, the Exchange states that the trading hours were communicated incorrectly to Commission staff while the proposal was pending. The Exchange states that it intended for the Index to be open until 4:15 p.m. on each business day, consistent with all of the other broad-based indexes listed on the Exchange (as well as all other broad-based indexes listed on all other options exchanges). Further, the Exchange states that its Board of Governors approved the Index with the intention of having it trade until 4:15 p.m.[4] Traditionally, it has been the policy of the Phlx, as well as all of the other options exchanges, to trade broad-based indexes until 4:15 p.m. Additionally, early materials that were distributed to the public announcing the new Index and showing its specifications indicated that the Index would close at 4:15 p.m. Because at the time this proposal was filed the Index had not yet started trading, the Exchange does not expect any customer confusion regarding the change in the closing time of Index. Accordingly, the Exchange is submitting this filing as an extension of an existing policy and practice of the Exchange and requests that the filing be effective immediately upon filing pursuant to section 19(b)(3)(A).

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, and, in particular, section 6(b)(5) thereof, in that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, and Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Exchange rule, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13962 Filed 6–8–94; 8:45am]

BILLING CODE 8010–01–M

[3] See Securities Exchange Act Release No. 33973 (April 28, 1994), 59 FR 23245 (May 5, 1994).

[4] Phlx Rule 101 states that its Board of Governors shall determine by resolution the hours during which business may be transacted on the Exchange.

[Investment Company Act Rel. No. 20333; 813–128]

ABS Employees' Venture Fund Limited Partnership and Alex. Brown Investments Incorporated; Notice of Application

June 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: ABS Employees' Venture Fund Limited Partnership (the "Venture Partnership") and Alex. Brown Investments Incorporated (the "General Partner"), on behalf of themselves and all partnerships identical in all material respects (other than investment objective and strategy) that may be offered in the future to the same class of investors as those investing in the Venture Partnership (the "Subsequent Partnerships") (the Venture Partnership and the Subsequent Partnerships, collectively "the Partnerships") and any direct or indirect wholly-owned subsidiaries of Alex. Brown Incorporated that may be formed to serve as general partners of the Subsequent Partnerships.

RELEVANT ACT SECTIONS: Exemption requested under section 6(b) from all of the provisions of the Act except sections 9, 17 (except for certain provisions of sections 17(a), (d), (f), (g), and (j) as described herein), 30 (except for certain provisions of sections 30(a), (b), (d), and (f) as described herein), and 36–53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants seek an order exempting them from most of the provisions of the Act and permitting certain joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATE: The application was filed on January 13, 1994, and amended on May 17, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 135 East Baltimore Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Venture Partnership is a limited partnership organized under the laws of the State of Maryland. The General Partner, a wholly-owned subsidiary of Alex. Brown Incorporated, is a Maryland corporation that acts as the general partner of the Venture Partnership. All of the executive officers and directors of the General Partner and any corporation created to serve as general partner of the Subsequent Partnerships will be employees of Alex. Brown Incorporated or its subsidiaries.

2. The Venture Partnership's investment strategy will be to invest in particular securities in which each individual limited partner has elected to participate on a case-by case basis. The General Partner will screen investment opportunities that come to its attention through Alex. Brown & Sons Incorporated ("Alex. Brown") or other affiliates of Alex. Brown, and will inform the limited partners of the availability of certain of these opportunities for investment through the Venture Partnership. The General Partner will not recommend investments or exercise investment discretion. Capital contributions made to the Venture Partnership by participating limited partners will be allocated *pro rata* to the capital sub-accounts relating to a particular investment, and limited partners who elect not to participate in particular investment will have no interest therein.

3. Each Subsequent Partnership will be structured as a limited partnership. Certain Subsequent Partnerships may have an investment strategy similar to that of the Venture Partnership and will invest in securities in which individual limited partners have elected to participate on a case-by-case basis through allocations to capital sub-accounts. Other Subsequent Partnerships may be operated as pooled entities managed by their general partners. The General Partner is expected to serve as general partner for the Subsequent Partnerships, although one or more separate, wholly-owned subsidiaries of Alex. Brown Incorporated may be created to serve as general partner of the Subsequent Partnerships.

4. Each Partnership will offer limited partnership interests only to persons who are: (a) Employees of Alex. Brown who are present or former managing directors or principals of Alex. Brown or partners of Alex. Brown's predecessor, Alex. Brown Partners, or employees holding positions equivalent to managing director or principal with other wholly-owned subsidiaries of Alex. Brown Incorporated; (b) "accredited investors" as defined in rule 501(a)(6) of regulation D under the Securities Act of 1933; and (c) in the opinion of the General Partner (or in the case of any Subsequent Partnership, its general partner), sufficiently knowledgeable, sophisticated, and experienced in business and financial matters to be capable of evaluating the merits and risk of the partnership investment, able to bear the economic risk of such investment, and able to afford a complete loss of such investment. The Partnerships are intended to allow the participants to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

5. Alex. Brown Incorporated or its affiliates will bear all expenses incurred in connection with the organization of each Partnership. The Venture Partnership will bear its own operating expenses. No compensation will be paid to the General Partner for its services to the Venture Partnership and the General Partner will not receive reimbursement for its own expenses. Because the General Partner receives no compensation for its services to the Venture Partnership, it will not register as an investment adviser under the Investment Advisers Act of 1940. Applicants will consider at the time of formation of any Subsequent Partnership whether the General Partner (or any entity acting as general partner for such Subsequent Partnership) will be required to register as an investment adviser.

6. The General Partner of each Partnership will contribute capital to the Partnership in an amount equal to at least 1% of the aggregate initial capital contributions of that Partnership's initial limited partners. Each general partner will be capitalized so as to satisfy existing Internal Revenue Service guidelines regarding the characterization of an entity for federal income tax purposes as a partnership, rather than as an association taxable as a corporation.

7. Each Partnership will send its limited partners an annual report regarding its operations and valuation of Partnership assets as carried on the books of the Partnership. The report will set out information with respect to each limited partner's distributive share of income, gains, losses, credits, and other

items for federal income tax purposes. The annual report of the Venture Partnership and of each Subsequent Partnership with a similar investment strategy will contain unaudited financial statements because these Partnerships' assets will consist only of initial capital contributions and investments selected by individual limited partners. These Partnerships will maintain a file containing any financial statements and other information received from the issuers of the investments held by such Partnerships, and will make such file available for inspection by their limited partners. The annual report of each other Partnership will contain financial statements audited by independent public accountants.

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers or by former employees of such employers.

2. Applicants submit that the exemptions requested are consistent with the protection of investors in view of the substantial community of interest among all of the parties and the fact that each Partnership is an "employees securities' company" as defined in section 2(a)(13) of the Act. The Partnerships are organized and managed by persons who will be investing in the Partnerships, and will not be promoted by persons seeking to profit from fees or investment advice or from the distribution of securities.

3. On behalf of the Partnerships, applicants request relief from all of the provisions of the Act, and the regulations thereunder, except sections 9, 17 (except for certain provisions of sections 17 (a), (d), (f), (g), and (j) as described herein), 30 (except for certain provisions of sections 30 (a), (b), (d), and (f) as described herein), and 36–53, and the rules thereunder.

4. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other property. An exemption is requested from section 17(a) to permit the Partnerships to: (a) Purchase from Alex. Brown, or from an Alex. Brown affiliate, securities or interests in properties previously acquired for the account of Alex. Brown or the Alex. Brown affiliate; (b) sell to Alex. Brown or Alex. Brown affiliates securities or interests in properties previously acquired by the Partnerships; (c) invest in companies, partnerships, or other investment vehicles offered, sponsored, or managed by Alex. Brown or by an Alex. Brown affiliate ("Alex. Brown Sponsored Vehicles"); (d) purchase securities from Alex. Brown Sponsored Vehicles, except that bridge financing in Alex. Brown Sponsored Vehicles will be limited to 50% of the assets of a Partnership; (e) invest in securities of entities for which Alex. Brown or its affiliated persons have performed investment banking or other services and from which they may have received fees; (f) purchase interests in a company or other investment vehicle in which Alex. Brown or Alex. Brown affiliates or their respective employees own 5% or more of the voting securities, or that is otherwise affiliated with the Partnership or Alex. Brown; (g) purchase securities that are underwritten by Alex. Brown (including a member of a selling group) on terms at least as favorable to the Partnership as those offered to investors other than "affiliated persons" (as defined in the Act) of Alex. Brown; (h) participate as a selling securityholder in a public offering that is underwritten by Alex. Brown or by an Alex. Brown affiliate or in which Alex. Brown or an Alex. Brown affiliate acts as a member of the selling group; (i) invest in money market funds managed or underwritten by Alex. Brown or Alex. Brown affiliates; (j) purchase short-term instruments from, or sell such instruments to, Alex. Brown or Alex. Brown affiliates at market value; and (k) enter into repurchase transactions with Alex. Brown or Alex. Brown affiliates.

5. Any assets of a Partnership invested in a money market fund managed by an Alex. Brown affiliate will be invested in only those money market funds that do not impose sales loads or redemption fees, and will be subject only to those fees charged to and paid by persons unaffiliated with Alex. Brown investing in that fund. Furthermore, a Partnership purchasing any other short-term instrument from Alex. Brown or an Alex. Brown affiliate will pay no fee in connection with that purchase. No Partnership will acquire more than 3% of the total outstanding voting stock of any investment company.

6. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 was promulgated pursuant to section 17(d) and prohibits most joint transactions unless approved by order of the SEC. An exemption is requested pursuant to section 17(d) and rule 17d–1 to permit the Partnerships to participate in joint transactions, including the following: (a) An investment by one or more Partnerships in a non-Alex. Brown Sponsored Vehicle, (i) in which Alex. Brown, an Alex. Brown affiliate or an affiliated person thereof, an Alex. Brown Sponsored Vehicle, an employee, officer, or director of the General Partner, or certain transferees of the aforementioned (collectively, "Affiliates") is a participant or plans to become a participant, and/or (ii) with respect to which Alex. Brown or an Alex. Brown affiliate is entitled to receive placement fees, investment banking fees, brokerage commissions, or other economic benefits or interests; (b) an investment by one or more Partnerships in an Alex. Brown Sponsored Vehicle; and (c) an investment by one or more Partnerships in an Alex. Brown Sponsored Vehicle in which an Affiliate is a participant or plans to become a participant, including situations in which an Affiliate has a partnership or other interest in, or compensation arrangement with, the Alex. Brown Sponsored Vehicle.

7. Section 17(f) permits a registered investment company to maintain self-custody of its securities and similar investments subject to such rules and regulations as the SEC prescribes for the protection of investors. An exemption is requested from section 17(f) and rule 17f–1 to the extent necessary to permit Alex. Brown to act as custodian for the Partnerships without a written contract.

8. Section 17(g) and rule 17g–1 generally require that a majority of the board of directors of an investment company who are not interested persons take certain actions and make certain approvals concerning bonding. An exemption is requested to the extent necessary to permit the Partnerships to comply with rule 17g–1 without the necessity of having a majority of the board of directors of the General Partner who are not "interested persons" take such action and make such approvals as set forth in rule 17g–1. Except for the

requirements of approval by non-interested directors, the Partnerships will comply with rule 17g–1.

9. Section 17(j) and rule 17j–1 require that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report transactions in any security in which the access person has, or by reason of the transaction acquires, any direct or indirect beneficial ownership. Applicants request an exemption from the requirements of rule 17j–1, with the exception of rule 17j–1(a), because they are burdensome and unnecessary in light of the community of interest among the partners of the Partnerships.

10. Section 30 of the Act generally requires a registered investment company to file quarterly and annual reports with the SEC and make semi-annual reports to its stockholders. An exemption is requested from sections 30(a) and 30(b) to the extent necessary to exempt the Partnerships from filing annual and quarterly reports with the SEC. The pertinent information that would be contained in such filings must, pursuant to the terms of the partnership agreements, be sent to the limited partners of the Partnerships. Exemptive relief from section 30(d) is necessary to permit the Partnerships to report annually, rather than semi-annually, to the limited partners. Exemptive relief from section 30(f) is necessary to exempt the General Partner and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16 of the Securities Exchange Act of 1934.

Applicants' Conditions

An order granting the requested exemptions will be subject to the following conditions set forth in the application:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "section 17 Transactions") will be effected only if the General Partner, or in the case of any Subsequent Partnership, its general partner, determines that:

(a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the limited partners and do not involve overreaching of the Partnership or its limited partners on the part of any person concerned; and

(b) The transaction is consistent with the interests of the limited partners, the Partnership's organizational documents and the Partnership's reports to its limited partners.

In addition, the General Partner, and any general partner of any Subsequent Partnership, will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. In any case where purchases or sales are made from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a director, officer or employee of the general partner of that Partnership, such individual will not participate in the general partner's determination of whether or not to effect such purchase or sale.

3. The General Partner, and any general partner of any Subsequent Partnership, will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated person of such a person, promoter, or principal underwriter.

4. No general partner of any Partnership will invest the funds of that Partnership in any investment in which a "Co-Investor" has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives that general partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor" means any person who is: (a) An "affiliated person" (as such term is defined in the Act) of the Partnership; (b) Alex. Brown Incorporated, its subsidiaries and controlled entities ("Alex. Brown Incorporated"); (c) an employee, officer, or director of Alex. Brown Incorporated; (d) Alex. Brown Sponsored Vehicles; (e) any entity with respect to which Alex. Brown Incorporated provides management, investment management or similar services as manager, investment manager, or general partner or in a similar capacity, and for which it may receive compensation, including without limitation, management fees, performance fees, carried interests entitling it to share disproportionately in income and capital gains or similar compensation; or (f) a company in which an officer or director of the General Partner (or of any other general partner of a Partnership) acts as an officer, director, or general partner, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any such family member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (the "1934 Act"); or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2–1 thereunder.

5. The general partner of each Partnership will send to each limited partner who had an interest in the Partnership, at any time during the fiscal year then ended, Partnership financial statements. Such financial statements will be unaudited in the case of the Venture Partnership and each Subsequent Partnership with a similar investment strategy, but in the case of all other Partnerships will be audited by the Partnerships' independent accountants. At the end of each fiscal year, the general partner of each Partnership, other than the Venture Partnership and each Subsequent Partnership with a similar investment strategy, will make an appraisal or have an appraisal made of all of the assets of the Partnership as of such fiscal year end. The appraisal of the Partnership assets may be by independent third parties appointed by the general partner and deemed qualified by the general partner to render an opinion as to the value of Partnership assets, using such methods and considering such

information relating to the investments, assets and liabilities of the Partnership as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year materially affecting the value of any Partnership asset or investment, the general partner may revise the appraisal as it, in its good faith and sole discretion, deems appropriate. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, its general partner shall send a report to each person who was a limited partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the limited partner of his or her federal and state income tax returns and a report of the investment activities of the Partnership during such year.

6. Each Partnership and its general partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Partnership to be provided to the limited partners, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13961 Filed 6–8–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–26060]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 3, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Indiana Michigan Power Company (70–6458)

Indiana Michigan Power Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration under Sections 9(a), 10 and 12(d) of the Act.

By orders dated June 11, 1980 and June 25, 1980 (HCAR Nos. 21618 and 21642, respectively), I&M was authorized to enter into an agreement of sale ("Agreement") with the City of Rockport, Indiana ("City") concerning the construction, installation, financing and sale of pollution control facilities ("Facilities") at I&M's Rockport Plant. Under the Agreement, the City may issue and sell its pollution control revenue bonds ("Revenue Bonds") or pollution control refunding bonds ("Refunding Bonds"), in one or more series, and deposit the proceeds with the trustee ("Trustee") under an indenture ("Indenture") entered into between the City and the Trustee. The proceeds are applied by the Trustee to the payment of the costs of construction of the Facilities, or, in the case of proceeds from the sale of Refunding Bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded.

I&M was also authorized to convey an undivided interest in a portion of the Facilities to the City, and to reacquire that interest under an installment sales arrangement requiring I&M to pay as the purchase price semiannual installments in such an amount, together with other monies held by the Trustee under the Indenture for that purpose, as to enable the City to pay, when due, the interest and principal on the Revenue Bonds. The City issued and sold its Revenue Bonds, in one series, in the aggregate principal amount of $40 million.

By subsequent orders dated December 4, 1984 and December 12, 1984 (HCAR Nos. 23514 and 23528, respectively), the Commission authorized I&M to enter into amendments to the Agreement with the City providing for the disposition and acquisition of the Project in connection with the issuance by the City of $110 million principal amount of pollution control bonds ("Series 1984 A Bonds"), also in one series, to finance the construction of the remainder of the Project.

Then, by order dated August 2, 1985 (HCAR No. 23781), the Commission authorized I&M to enter into further amendments to the Agreement with the City providing for the issuance and sale of an aggregate principal amount of $150 million, in three additional series, of pollution control bonds ("Series 1985 A Bonds"), each in the principal amount of $50 million with a maturity of August 1, 2014. The third series of the Series 1985 A Bonds were fixed rate bonds bearing interest at 9¼% per annum, payable semiannually, and subject to optional redemption following an initial period not to exceed ten years ("Fixed Rate Bonds"). The proceeds of the Series 1985 A Bonds were used to cover a portion of the cost of construction of the Project and to refund the outstanding short-term Series 1984 A Bonds in the principal amount of $110 million.

I&M now proposes to have the City issue and sell, no later than December 31, 1995, an additional series of Refunding Bonds in the aggregate principal amount of up to $50 million ("Refunding Fixed Rate Bonds"). The proceeds of the sale of the Refunding Fixed Rate Bonds will be deposited with the Trustee and applied by the Trustee, and used together with other funds supplied by I&M, to provide for the early redemption of the Fixed Rate Bonds at a price of 102% of their principal amount.

It is contemplated that the Refunding Fixed Rate Bonds will be sold by the City pursuant to arrangements with Goldman, Sachs & Co. While I&M will not be a party to the underwriting arrangements for the Refunding Fixed Rate Bonds, the Agreement provides that the Refunding Fixed Rate Bonds shall have such terms as shall be specified by I&M.

I&M is advised that the Refunding Fixed Rate Bonds will bear interest semi-annually. It is expected that the Refunding Fixed Rate Bonds will mature at a date or dates not more than 40 years from the date of their issuance. The Refunding Fixed Rate Bonds may be subject to mandatory or optional redemption under circumstances and

terms specified at the time of pricing, and, if it is deemed advisable, may also include a sinking fund provision. In addition, the Refunding Fixed Rate Bonds may not be redeemable at the option of the City in whole or in part at any time for a period to be determined a the time of pricing the Refunding Fixed Rate Bonds. Finally, I&M may provide some form of credit enhancement for the Refunding Fixed Rate Bonds, such as a letter of credit, surety bond or bond insurance, and I&M may pay a fee in connection therewith. Any letter of credit would not exceed a face amount of $50 million and would be for a term of from one to five years. Drawings will bear interest at a rate not exceeding 1% above the bank's prime rate and annual fees will not exceed 1.25% of the face amount of the letter of credit.

It is not possible to predict precisely the interest rate which may be obtained in connection with the issuance of the Refunding Fixed Rate Bonds. However, I&M has been advised that, depending on maturity and other factors, the annual interest rate on obligations, interest on which is so excludable from gross income, historically has been, and can be expected at the time of issuance of the Refunding Fixed Rate Bonds to be, 1½% to 2½% or more lower than the rates of obligations of like terms and comparable quality, interest on which is fully subject to Federal income tax.

Moreover, I&M will not agree, without further order of this Commission, to the issuance of any Refunding Fixed Rate Bond by the City if: (1) The stated maturity of any such bond shall be more than forty years; (2) the rate of interest to be borne by any such bond shall exceed 8% per annum; (3) the discount from the initial public offering price of any such bond shall exceed 5% of the principal amount thereof; or (4) the initial public offering price shall be less than 95% of the principal amount thereof. Further, I&M will not enter into the proposed refunding transaction unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and on the securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate on the Refunding Fixed Rate Bonds to be issued.

WPS Resources Corporation, (70–8379)

WPS Resources Corporation ("WPS Resources"), a Wisconsin corporation not currently subject to the Act, 700 North Adams Street, Green Bay, Wisconsin 54307, has filed an application requesting an order: (1) Approving the direct acquisition by WPS Resources, under sections 9(a)(2) and 10 of the Act, of all the outstanding shares of common stock of Wisconsin Public Service Corporation ("Wisconsin Public Service"), and, through such acquisition, the indirect acquisition of 33.1% of the outstanding shares of Wisconsin River Power Company ("Wisconsin River Power"), and (2) granting WPS Resources and its subsidiary companies, upon consummation of the proposed transaction, an exemption under section 3(a)(1) of the Act from all of the provisions of the Act, except section 9(a)(2).

Wisconsin Public Service, a public-utility company and a public-utility holding company exempt from registration by order of the Commission under section 3(a)(2) of the Act,[1] is principally engaged in the production, transmission, distribution and sale of electricity to approximately 347,000 customers in northeastern Wisconsin and upper Michigan. Wisconsin Public Service also engages in the purchase, distribution, transportation and sale of natural gas to approximately 190,000 customers in northeastern Wisconsin and upper Michigan. Total operating revenues for 1993 were $680.6 million, of which $493.2 million (72%) was from electric service and $187.4 million (28%) was from gas service. In 1993, Wisconsin Public Service derived 97.8% of its operating revenues and 98.6% of its net income from operations in Wisconsin, and 2.2% of its operating revenues and 1.4% of its net income from operations in Michigan.

Wisconsin River Power, a Wisconsin corporation, owns and operates two dams and related hydroelectric plants on the Wisconsin River with an aggregate installed capacity of about 35 megawatts. The output of the plants is sold, at the sites of the plants, to the three companies which own the outstanding capital stock of Wisconsin River Power, substantially in proportion to their stock ownership interests.[2] Total assets of Wisconsin River Power at December 31, 1993 were $6.06 million, representing 0.51% of Wisconsin Public Service's total assets of $1.2 billion. Wisconsin Public Service's share of Wisconsin River Power's net income for 1993 was $310,000, representing 0.50% of Wisconsin Public Service's total net income of $62 million.

Wisconsin Public Service proposes to reorganize by forming a holding company over itself. Under an Agreement and Plan of Share Exchange ("Plan"), one share of common stock, $1 par value, of WPS Resources, a corporation organized to facilitate the reorganization, will be exchanged for each share of common stock, $4 par value, or Wisconsin Public Service outstanding ("Exchange") at the effective time of the Plan, and the outstanding shares of WPS Resources common stock held by Wisconsin Public Service prior to the effective time of the Plan will be canceled. Following the Exchange, all of the outstanding common stock of WPS Resources will be owned by the former Wisconsin Public Service common shareholders, and WPS Resources will own all of the outstanding common stock of Wisconsin Public Service. Wisconsin River Power will remain a subsidiary of Wisconsin Public Service.[3] There will be no exchange of the outstanding preferred stock or first mortgage bonds of Wisconsin Public Service in connection with the exchange.

The holders of the common stock of Wisconsin Public Service approved the Plan at the annual meeting of shareholders held on May 5, 1994. The Wisconsin Public Service Commission approved the formation of a holding company by order dated May 31, 1994.

The principal reasons for the proposed restructuring are: (1) To create a structure which can more effectively address the growing national competition in the energy industry; (2) to facilitate selective diversification into nonutility businesses which are related to the utility business of Wisconsin Public Service or energy conservation or energy resources or which otherwise benefit the service territory of the utility; (3) to separate the utility and nonutility businesses; and (4) to provide additional flexibility for financing and for maintaining appropriate utility capital ratios.

The application states that following the restructuring, WPS Resources and its subsidiaries will meet the requirements for an exemption under section 3(a)(1). WPS Resources, Wisconsin Public Service and River Power are and will continue to be predominantly intrastate in character and will continue to carry on their

[1] *Wisconsin Public Service Corporation*, 1 S.E.C. 512 (1936).

[2] See *Wisconsin Public Service Corporation*, 27 S.E.C. 539 (1948) (approving the acquisition by the utility of the capital stock of transmission or distribution facilities.

[3] Wisconsin Public Service, by means of a non-cash dividend, will transfer to WPS Resources all the outstanding stock of its nonutility subsidiary companies, WPS Communications, Inc. and Packerland Energy Services, Inc.

business substantially in Wisconsin, the state in which they are organized.

Southern Indiana Gas and Electric Company (70–8407)

Southern Indiana Gas and Electric Company ("SIGECO"), 20 N.W. Fourth Street, Evansville, Indiana 47741–0001, an Indiana public-utility holding company exempt from registration under sections 3(a)(1) and 3(a)(2) of the Public Utility Holding Company Act of 1935 ("Act") by order and pursuant to rule 2, has filed an application under sections 9(a)(2) and 10 of the Act in connection with the proposed acquisition of all of the outstanding common stock ("Lincoln Common Stock") of Lincoln Natural Gas Company, Inc. ("Lincoln"), an Indiana public utility corporation engaged in the gas utility business.[4]

A wholly-owned subsidiary of SIGECO, Spencer Energy Corp., an Indiana corporation ("Spencer"), will be merged with and into Lincoln (the "Merger") pursuant to an Agreement and Plan of Merger among SIGECO, Spencer and Lincoln ("Agreement"), with Spencer ceasing to exist and Lincoln the surviving corporation. Spencer was incorporated for the sole purpose of effecting SIGECO's acquisition of the Lincoln Common Stock and consummating the transactions described herein and is not engaged in any business.

SIGECO is a publicly held operating public utility engaged in the generation, transmission, distribution and sale of electricity and the purchase of natural gas and its transportation, distribution and sale in a service area which covers ten counties in southwestern Indiana.[5] At December 31, 1993, SIGECO served 118,163 electric customers and supplied gas service to 100,398 customers in Evansville and 63 other nearby communities and their environs.[6]

Lincoln is a closely held public utility corporation which owns and operates a gas distribution system in the City of Rockport, Spencer County, Indiana, and surrounding territory. Lincoln serves approximately 1,330 customers in Spencer County in southwestern Indiana and owns, operates, maintains and manages plant, property, equipment and facilities used and useful for the transmission, transportation, distribution and sale of natural gas to the public. Lincoln's gas service territory is adjacent to SIGECO's gas service territory.

In the Merger, the holders of Lincoln Common Stock issued and outstanding immediately prior to the Merger would be entitled to receive shares of common stock, without par value, of SIGECO ("SIGECO Common Stock") having a market value of approximately $1,350,000 in accordance with the formula contained in the Agreement, and each share of common stock, no par value ("Spencer Common Stock"), of Spencer issued and outstanding immediately prior to the Merger would be converted into one share of Lincoln Common Stock. Any shares of Lincoln Common Stock held in treasury by Lincoln at the effective time of the Merger will be canceled.

The number of shares of SIGECO Common Stock to be exchanged in the transactions will be determined by their average closing market price over a five-day period before the relevant closing date. After the consummation of the Merger, Lincoln will operate as a gas utility subsidiary company of SIGECO but, if appropriate, SIGECO may eventually merge Lincoln into itself.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[4] SIGECO is a holding company as defined under section 2(a)(7)(A) of the Act by virtue of SIGECO's ownership of 33% of the capital stock of Community Natural Gas Company, Inc., an Indiana corporation, which is a gas utility company serving customers in southwestern Indiana.

[5] The only property SIGECO owns outside of Indiana is approximately eight miles of electric transmission line which is located in Kentucky. SIGECO does not distribute any electric energy in Kentucky.

[6] For the twelve months ended December 31, 1993, approximately 79% of SIGECO's total utility operating revenues were derived from its electric operations and approximately 21% from its gas operations.

DEPARTMENT OF STATE

[Public Notice 2017]

International Telecommunications Advisory Committee (ITAC) Standardization Sector; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector Study Group A will meet on June 28, 1994, in room 1406 from 9:30 a.m. to 1:00 p.m., and the Standardization Sector Group, on June 29, 1994, in room 1105 from 9:30 to 3, at the U.S. Department of State, 2201 "C" Street NW., Washington, DC 20520.

The agenda for Study Group A will include a debrief of the recent ITU–T Study Group 3 meeting and continue preparations for the September 27-October 7, Geneva ITU–T Study Group 1 meeting, and discuss issues related to ITU–T Study Group 2 activities.

The agenda for the Standardization Sector meeting (formerly the CCITT USNC) will include a debrief of the April meeting of TSAG, the ITU council-related activities covering strategic planning, etc.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you are not presently named on the mailing list of the Telecommunications Sector C Group, and wish to attend please call 202–647–0201 no later than 5 days before the meeting. Enter from the C Street Main lobby. A picture ID will be required for admittance.

Dated: June 1, 1994.

Earl S. Barbely,

Chairman, U.S., ITAC for ITU-Telecommunication Standardization Sector

[FR Doc. 94–14041 Filed 6–8–94; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 1994, there were eight applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.

Application Number: 94–02–U–00–DCA.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $166,739,071.

Charge Effective Date: November 1, 1993.

Estimated Charge Expiration Date: November 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: No change from previously approved application of August 16, 1993.

Brief Description of Project Approved for Use Only: Thirty-five gate north passenger terminal complex.

Decision Date: April 6, 1994.

For Further Information Contact: Robert Mendez, Washington Airports District Office, (703) 285–2570.

Public Agency: City of La Crosse, La Crosse, Wisconsin.

Application Number: 94–01–C–00–LSE.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $795,299.

Earliest Charge Effective Date: July 1, 1994.

Estimated Charge Expiration Date: August 1, 1997.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Planning studies, Runway safety equipment, Security access system, Taxiway safety improvements, Runway safety improvements, Land acquisition, New aircraft rescue and firefighting (ARFF) building and associated safety items.

Decision Date: April 6, 1994.

For Further information Contact: Franklin Benson, Minneapolis Airports District Office, (612) 725–4221.

Public Agency: County of Marquette, Marquette, Michigan.

Application Number: 94–02–U–00–MQT.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $459,700.

Charge Effective Date: December 1, 1992.

Estimated Charge Expiration Date: April 1, 1996.

Class of Air Carriers Not Required to Collect PFC's: No change from previously approved application of October 1, 1992.

Brief Description of Projects Approved for Use Only: Perimeter deer fencing, Terminal security.

Decision Date: April 6, 1994.

For Further Information Contact: Dean Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: City of Midland, Midland, Texas.

Application Number: 94–02–U–00–MAF.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $30,372,250.

Charge Effective Date: January 1, 1993.

Estimated Charge Expiration Date: January 1, 2010.

Class of Air Carriers Not Required to Collect PFC's: No change from previously approved application of December 16, 1993.

Brief Description of Projects Approved for Use Only: Rehabilitate airfield taxiways, Reconstruct runway 4/22, Rehabilitate runway 16L/34R, Construct new terminal complex.

Decision Date: April 14, 1994.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Bert Mooney Airport Authority, Butte, Montana.

Application Number: 94–01–C–00–BTM.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $410,202.

Earliest Charge Effective Date: July 1, 1994.

Estimated Charge Expiration Date: May 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled air taxi/commercial operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Bert Mooney Airport.

Brief Description of Projects Approved for Collection and Use: Airport layout plan update, Runway 11/29 rehabilitation, Taxiway C extension, Taxiway D widening, Taxiways B and E rehabilitation, Americans with Disabilities Act terminal compliance, Modify loading bridge, Rehabilitate taxiway A lighting.

Brief Description of Projects Approved for Collection Only: Purchase new ARFF vehicle, Expand ARFF garage and update maintenance building, Air carrier apron reconstruction, Runway 15/33 rehabilitation.

Decision Date: April 17, 1994.

For Further Information Contact: David B. Gabbert, Helena Airports District Office, (406) 449–52171.

Public Agency: Clark County Department of Aviation, Las Vegas, Nevada.

Application Number: 94–03–U–00–LAS.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $944,028,500.

Charge Effective Date: June 1, 1992.

Estimated Charge Expiration Date: September 1, 2014.

Class of Air Carriers Not Required to Collect PFC's: No change from previously approved applications of February 24, 1992, August 21, 1992, and June 7, 1993.

Brief Description of Projects Approved for Use Only: Railroad track relocation, Runway 7L/25R extension—design and construction.

Decision Date: April 20, 1994.

For Further Information Contact: Joseph Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Outagamie County, Appleton, Wisconsin.

Application Number: 94–01–C–00–ATW.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,233,645.

Earliest Charge Effective Date: July 1, 1994.

Estimated Charge Expiration Date: September 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Land acquisition—parcel 42, Security fencing, Runway 11/29 grooving and airfield signage, Land acquisition—Doell property, Taxiway D and G reconstruction, ARFF building expansion, Snow removal vehicle, Terminal apron reconstruction and expansion, General aviation apron, PFC administration.

Brief Description of Projects Approved-in-Part for Collection and Use: Terminal water line.

Determination: Approved-in-part. Certain portions of facilities in the terminal are not Airport Improvement Program (AIP) eligible, and, accordingly, are not PFC eligible. Airport safety and snow removal vehicles.

Determination: Approved-in-part. The safety (security) vehicle is not AIP eligible, and therefore, not PFC eligible

Brief Description of Projects Approved for Collection Only: Stormwater drainage improvements—phase I, Terminal baggage claim expansion, Install emergency generator, Acquire friction testing vehicle, Stormwater drainage improvements—phase II, Taxiway B reconstruction.

Brief Description of Project Withdrawn: Land acquisition—parcel 57.

Determination: Outagamie County requested that the land acquisition, parcel 57, be withdrawn from the PFC application by letter dated April 8, 1994.

Decision Date: April 25, 1994.

For Further Information Contact: Franklin Benson, Minneapolis Airports District Office, (612) 725–4221.

Public Agency: Chattanooga Metropolitan Airport Authority, Chattanooga, Tennessee.

Application Number: 93–01–C–00–CHA.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $7,177,253.

Earliest Charge Effective Date: July 1, 1994.

Estimated Charge Expiration Date: October 1, 2002.

Class of Air Carriers Not Required to Collect PFC's: Air carriers operating under Part 135 or Part 298 of the Federal Aviation Regulations, on an on-demand, non-scheduling basis, and not selling tickets to individual passengers.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Chattanooga Metropolitan Airport.

Brief Description of Projects Approved for Collection and Use: Bag claim devices, Loading bridges, Security system, Miscellaneous terminal improvements, General project (terminal building), Master plan/Part 150 update, Airfield signage, Ramp security system, PFC administration.

Brief Description of Project Disapproved: Widen/strengthen Taxiway A.

Determination: Disapproved. The FAA determined that the public agency did not provide justification that this project met the objectives of section 158.15(a) as required under section 158.25(b)(7).

Brief Description of Projects Withdrawn: Concourse seating, Airfield fill and drainage.

Determination: These projects were withdrawn by the Chattanooga Metropolitan Airport Authority by letter dated December 27, 1993.

Decision Date: April 26, 1994.

For Further Information Contact: Charles Harris, Memphis Airports District Office, (901) 544–3495.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
92–01–C–01–PDX, Portland, OR	04/12/94	$17,961,850	$22,000,000	07/01/94	10/31/94

Issued in Washington, DC, on May 20, 1994.

Donna Taylor,

Manager, Passenger Facility Charge Branch.

Cumulative List of PFC Applications Previously Approved

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
92–01–I–00–Hsv., Huntsville Intl-Carl T. Jones Field, Huntsville	03/06/1992	$3	$36,472,657	06/01/1992	11/01/2008
93–02–U–00–Hsv., Huntsville Intl-Carl T. Jones Field, Huntsville	06/03/1993	3	0	09/01/1993	11/01/2008
92–01–C–00–Msl., Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	100,000	06/01/1992	02/01/1995
Arizona:					
92–01–C–00–Flg., Flagstaff, Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–Yum., Yuma Mcas/Yuma International, Yuma	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
California:					
92–01–C–00–Acv., Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
93–01–C–00–Cic., Chico Municipal, Chico	09/29/1993	3	137,043	01/01/1994	06/01/1997
92–01–C–00–Iyk., Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
93–01–C–00–Lgb., Long Beach-Daugherty Field, Long Beach	12/30/1993	3	3,533,766	03/01/1994	03/01/1998
93–01–C–00–Lax., Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
93–01–C–00–Mry., Monterey Peninsula, Monterey	10/08/1993	3	3,960,855	01/01/1994	06/01/2000
92–01–C–00–Oak., Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
94–02–C–00–Oak., Metropolitan Oakland International, Oakland	02/23/1994	3	8,999,000	05/01/1994	04/01/1995
93–01–I–00–Ont., Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–Psp., Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–00–Smf., Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92-01-C-00-Sjc., San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
93-02-U-00-Sjc., San Jose International, San Jose	02/22/1993	3	0	05/01/1993	08/01/1995
93-03-C-00-Sjc., San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92-01-C-00-Sbp., San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92-01-C-00-Sts., Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
91-01-I-00-Tvl., Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
92-01-C-00-Cos., Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92-01-C-00-Dvx., Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93-01-C-00-Ege., Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93-01-C-00-Fnl., Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92-01-C-00-Gjt., Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
93-01-C-00-Guc., Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93-01-C-00-Hdn., Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93-01-C-00-Mtj., Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93-01-C-00-Pub., Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92-01-C-00-Sbs., Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92-01-C-00-Tex., Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut:					
93-01-C-00-Hvn., Tweed-New Haven, New Haven	09/10/1993	3	2,490,450	12/01/1993	06/01/1999
93-02-I-00-Bdl., Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
94-03-U-00-Bdl., Bradley International, Windsor Locks	02/22/1994	3	0	05/01/1994	09/01/1995
Florida:					
93-01-C-00-Dab., Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92-01-C-00-Rsw., Southwest Florida International, Fort Myers	03/31/1992	3	253,858,512	11/01/1992	06/01/2014
93-02-U-00-Rsw., Southwest Florida International, Fort Myers	05/10/1993	3	0	11/01/1992	06/01/2014
93-01-C-00-Jax., Jacksonville International, Jacksonville	01/28/1994	3	12,258,255	05/01/1994	07/01/1997
92-01-C-00-Eyw., Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92-01-C-00-Mth., Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
92-01-C-00-Mco., Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
93-02-C-00-Mco., Orlando International, Orlando	09/24/1993	3	12,957,000	12/01/1993	02/01/1998
93-01-I-00-Pfn., Panama City-Bay County International, Panama City.,	12/01/1993	3	8,238,499	02/01/1994	10/01/2007
92-01-C-00-Pns., Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92-01-I-00-Srq., Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92-01-I-00-Tlh., Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
93-02-U-00-Tlh., Tallahassee Regional, Tallahassee	12/30/1993	3	0	02/01/1993	06/01/1998
93-01-C-00-Tpa., Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999
93-01-C-00-Pbi., Palm Beach International, West Palm Beach	01/26/1994	3	38,801,036	04/01/1994	04/01/1999
Georgia:					
93-01-C-00-Csg., Columbus Metropolitan, Columbus	10/01/1993	3	534,633	12/01/1993	06/01/1995
91-01-C-00-Sav., Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92-01-I-00-Vld., Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
93-01-C-00-Sun., Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
92-01-C-00-Ida., Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
94-01-I-00-Lws., Lewiston-Nez Perce County, Lewiston	02/03/1994	3	229,610	05/01/1994	03/01/1997
92-01-C-00-Twf., Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
93-01-C-00-Mdw., Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
93-01-C-00-Ord., Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
93-01-I-00-Rfd., Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93-02-I-00-Rfd., Greater Rockford, Rockford	09/02/1993	3	0	12/01/1993	10/01/1996
92-01-I-00-Spi., Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93-02-U-00-Spi., Capital, Springfield	04/28/1993	3	0	06/01/1992	02/01/1994
93-03-I-00-Spi., Capital, Springfield	11/24/1993	3	4,585,443	06/01/1992	02/01/2006
Indiana:					
92-01-C-00-Fwa., Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93–01–C–00–Ind., Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
93–01–C–00–Dsm., Des Moines Municipal, Des Moines	11/29/1993	3	6,446,507	03/01/1994	04/01/1997
92–01–I–00–Dbq., Dubuque Regional, Dubuque	10/06/1992	3	148,500	01/01/1993	05/01/1994
94–02–C–00–Dbq., Dubuque Regional, Dubuque	02/09/1994	3	203,420	05/01/1994	02/01/1996
93–01–C–00–Sux., Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
94–01–C–00–Alo., Waterloo Municipal, Waterloo	03/29/1994	3	637,000	06/01/1994	06/01/1998
Kentucky:					
94–01–C–00–Cvg., Cincinnati/Northern Kentucky International, Covington	03/30/1994	3	20,737,000	06/01/1994	09/01/1995
93–01–C–00–Lex., Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
93–01–C–00–Pah., Barkley Regional, Paducah	12/02/1993	3	386,550	03/01/1994	12/01/1998
Louisiana:					
92–01–I–00–Btr., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93–02–U–00–Btr., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	0	12/01/1992	12/01/1998
93–01–C–00–Msy., New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
93–02–U–00–Msy., New Orleans International/Moisant Field, New Orleans	11/16/1993	3	0	06/01/1993	04/01/2000
93–01–I–00–Shv., Shreveport Regional, Shreveport	11/19/1993	3	33,050,278	02/01/1994	02/01/2019
Maine:					
93–01–C–00–Pwm., Portland International Jetport, Portland	10/29/1993	3	12,233,751	02/01/1994	05/01/2001
Maryland:					
92–01–I–00–BWI., Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
94–01–I–00–Cbe., Greater Cumberland Regional, Cumberland	03/30/1994	3	150,000	07/01/1994	07/01/1999
Massachusetts:					
93–01–C–00–Bos., General Edward L. Logan International, Boston	08/24/1993	3	604,794,000	11/01/1993	10/01/2011
92–01–C–00–Orh., Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
92–01–C–00–Dtw., Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92–01–I–00–Esc., Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93–01–C–00–Flt., Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92–01–I–00–Grr., Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92–01–C–00–Cmx., Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
93–01–C–00–Iwd., Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93–01–C–00–Lan., Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92–01–I–00–Mqt., Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
94–01–C–00–Mkg., Muskegon County, Muskegon	02/24/1994	3	5,013,088	05/01/1994	05/01/2019
92–01–C–00–Pln., Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Minnesota:					
93–01–C–00–Brd., Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
92–01–C–00–Msp., Minneapolis-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi:					
91–01–C–00–Gtr., Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2005
92–01–C–00–Gpt., Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	390,595	07/01/1992	12/01/1993
93–02–C–00–Gpt., Gulfport-Biloxi Regional, Gulfport-Biloxi	11/02/1993	3	607,817	07/01/1992	12/01/1995
92–01–C–00–Pib., Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1993
93–01–C–00–Jan., Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92–01–C–00–Mei., Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
93–02–C–00–Mei., Key Field, Meridian	10/19/1993	3	155,223	11/01/1992	08/01/1996
Missouri:					
93–01–C–00–Sgf., Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–C–00–Stl., Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana:					
93–01–C–00–Bil., Billings-Logan International, Billings	01/26/1994	3	5,672,136	04/01/1994	05/31/2002
93–01–C–00–Bzn., Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
92–01–C–00–Gtf., Great Falls International, Great Falls	09/28/1992	3	3,010,900	11/01/1992	07/01/2002
93–02–U–00–Gtf., Great Falls International, Great Falls	05/25/1993	3	0	11/01/1992	07/01/2002
92–01–C–00–Hln., Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93–01–C–00–Fca. Glacier Park International, Kalispell	09/29/1993	3	1,211,000	12/01/1993	11/01/1999
92–01–C–00–Mso., Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91–01–C–00–Las., McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93–02–C–00–Las., McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
93–01–C–00–Rno., Reno Cannon International, Reno	10/29/1993	3	34,263,607	01/01/1994	05/01/1999
New Hampshire:					
92–01–C–00–Mht., Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
92–01–C–00–Ewr., Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
93–01–I–00–Alb., Albany County, Albany	12/03/1993	3	40,726,364	03/01/1994	04/01/2005
93–01–C–00–Bgm., Binghamton Regional/Edwin A. Link Field, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92–01–I–00–Buf., Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
92–01–I–00–Ith., Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92–01–C–00–Jhw., Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92–01–C–00–JFK., John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92–01–C–00–Lga., Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
93–01–C–00–Plb., Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
92–01–C–00–Hpn., Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Carolina:					
93–01–C–00–Ilm., New Hanover International, Wilmington	11/02/1993	3	1,505,000	02/01/1994	08/01/1997
North Dakota:					
92–01–C–00–Gfk., Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
93–01–C–00–Mot., Minot International, Minot	12/15/1993	3	1,569,483	03/01/1994	03/01/1999
Ohio:					
92–01–C–00–Cak., Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92–01–C–00–Cle., Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
94–02–U–00–Cle., Cleveland-Hopkins International, Cleveland	02/02/1994	3	0	05/01/1994	11/01/1995
92–01–I–00–Cmh., Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93–02–I–00–Cmh., Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93–03–U–00–Cmh., Port Columbus International, Columbus	10/27/1993	3	0	10/01/1992	09/01/1996
93–01–C–00–Tol., Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
94–01–C–00–Yng., Youngstown—Warren Regional, Youngstown	02/22/1994	3	351,180	05/01/1994	07/01/1996
Oklahoma:					
92–01–C–00–Law., Lawton Municipal, Lawton	05/08/1992	3	482,135	08/01/1992	04/01/1996
92–01–I–00–Tul., Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995
93–02–U–00–Tul., Tulsa International, Tulsa	10/18/1993	3	0	02/01/1994	08/01/1995
Oregon:					
93–01–C–00–Eug., Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93–01–C–00–Mfr., Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
93–01–C–00–Oth., North Bend Municipal, North Bend	11/24/1993	3	182,044	02/01/1994	01/01/1998
92–01–C–00–Pdx., Portland International, Portland	04/08/1992	3	17,961,650	07/01/1992	07/01/1994
93–01–C–00–Rdm., Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania:					
92–01–I–00–Abe., Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92–01–C–00–Aoo., Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92–01–C–00–Eri., Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93–01–C–00–Jst., Johnstown-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–I–00–Phl., Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93–02–U–00–Phl., Philadelphia International, Philadelphia	05/14/1993	3	0	08/01/1993	07/01/1995
92–01–C–00–Unv., University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
93–01–C–00–Avp., Wilkes-Barre/Scranton International, Wilkes-Barre/Scranton	09/24/1993	3	2,369,566	10/01/1993	06/01/1997
Rhode Island:					
93–01–C–00–Pvd., Theodore F. Green State, Providence	11/30/1993	3	103,885,286	02/01/1994	08/01/2013
South Carolina:					
93–01–C–00–Cae., Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
93–01–C–00–49J., Hilton Head, Hilton Head Island	11/19/1993	3	1,542,300	02/01/1994	03/01/1999
Tennessee:					
93–01–C–00–Tys., McGhee Tyson, Knoxville	10/06/1993	3	5,681,615	01/01/1994	01/01/1997
92–01–I–00–Mem., Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
93–02–C–00–Mem., Memphis International, Memphis	01/14/1994	3	24,026,000	04/01/1994	10/01/1999
92–01–C–00–Bna., Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93–02–C–00–Aus., Robert Mueller Municipal, Austin	06/04/1993	3	6,181,800	11/01/1993	01/01/1995
93–01–C–00–Crp., Corpus Christi International, Corpus Christi	12/29/1993	3	5,540,745	03/01/1994	01/01/1998
94–01–C–00–Dfw., Dallas/Fort Worth International, Dallas/Fort Worth	02/17/1994	3	115,000,000	07/01/1994	02/01/1996
92–01–C–00–Ile., Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
93–01–I–00–Lrd., Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93–01–C–00–Lbb., Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
94–02–U–00–Lbb., Lubbock International, Lubbock	02/15/1994	3	0	05/01/1994	02/01/2000
92–01–I–00–Maf., Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
93–01–C–00–Sjt., Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
93–01–C–00–Tyr. Tyler Pounds Field, Tyler	12/20/1993	3	819,733	03/01/1994	07/01/1998
Virginia:					
92–01–I–00–Cho., Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
92–02–U–00–Cho., Charlottesville, Charlottesville	12/21/1992	2	0	09/01/1992	11/01/1993
93–03–U–00–Cho., Charlottesville-Albemarle, Charlottesville	10/20/1993	2	0	01/01/1994	11/01/1993
94–01–C–00–Ric., Richmond International (Byrd Field), Richmond	02/04/1994	3	30,976,072	05/01/1994	08/01/2005
93–01–C–00–Iad., Washington Dulles International, Washington, DC	10/18/1993	3	199,752,390	01/01/1994	11/01/2003
93–01–C–00–Dca., Washington National, Washington, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
Washington:					
93–01–C–00–Bli., Bellingham International, Billingham	04/29/1993	3	366,000	07/01/1993	01/01/1995
93–01–C–00–Psc., Tri-Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93–01–C–00–Clm., William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
94–01–C–00–Puw., Pullman-Moscow Regional, Pullman	03/22/1994	1	169,288	06/01/1994	01/01/1998
92–01–C–00–Sea., Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93–02–C–00–Sea., Seattle-Tacoma International, Seattle	10/25/1993	3	47,500,500	01/01/1994	01/01/1996
93–01–C–00–Geg., Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93–01–I–00–Alw., Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93–01–C–00–Eat., Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92–01–C–00–Ykm., Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
93–01–C–00–Crw., Yeager, Charleston	05/28/1993	3	3,254,126	08/01/1993	04/01/1998
93–01–C–00–Ckb., Benedum, Clarksburg	12/29/1993	3	105,256	04/01/1994	04/01/1996
92–01–C–00–Mgw., Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wiscosin:					
92–01–C–00–Grb., Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
93–01–C–00–Msn., Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93–01–I–00–Cwa., Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93–01–C–00–Rhi., Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93–01–C–00–Cpr., Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93–01–C–00–Cys., Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93–01–I–00–Gcc., Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999
93–01–C–00–Jac., Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
92–01–C–00–Ngm., Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
93–02–C–00–Ngm., Agana Nas, Agana	02/25/1994	3	258,408,107	05/01/1994	06/01/2021
Puerto Rico:					
92–01–C–00–Bgn., Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92–01–C–00–Pse., Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
92–01–C–00–Sju., Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
93–02–U–00–Sju., Luis Munoz Marin International, San Juan	12/14/1993	3	0	03/01/1994	02/01/1997
Virgin Islands:					
92–01–I–00–Stt., Cyril E. King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92–01–I–00–Stx., Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

* The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 94–13919 Filed 6–8–94; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Belknap, Merrimack, Rockingham, and Strafford Counties, NH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement *will not* be prepared for a proposed highway project in Belknap, Merrimack, Rockingham and Strafford Counties, New Hampshire. A "Notice of Intent" to prepare an EIS was published in the **Federal Register** on June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas D. Myers, Assistant Division Administrator, Federal Highway Administration, 279 Pleasant Street, suite 204, Concord, New Hampshire 03301–2509, Telephone: (603) 225–1606, or William R. Hauser, Administrator, Bureau of Environment, New Hampshire Department of Transportation, P.O. Box 483, J.O. Morton Building, Concord, New Hampshire 03302–0483, Telephone (603) 271–3226.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the New Hampshire Department of Transportation (NHDOT), has determined that it will not prepare an environmental impact statement as previously intended for a proposed highway project to serve transportation needs from the Concord area to the Dover, Somersworth and Rochester (Tri-Cities) area, a distance of about 50 kilometers (30 miles). Portions of twenty-one communities, primarily in Strafford and Merrimack Counties were included in the study. As consensus was being reached on which alternatives would be carried into the DEIS for full evaluation it became apparent based upon public input, agency coordination, constraint evaluation and funding-availability that a full new location alternative highway was not feasible. Consensus was reached that upgrading of the existing US Routes 4 and 202 and NH Route 9 corridors would serve the bulk of the transportation needs supplemented with possible short bypasses of portions of the Towns of Epsom and Northwood.

Further improvements to these corridors will be considered on a case-by-case basis, consistent with this consensus, in future development of New Hampshire's Transportation Plan, as financial feasibility and local commitment are demonstrated. The National Environmental Policy Act process will be continued as required for such proposed actions that may emerge from the above procedure. However, this overall environmental impact statement process for a new 50-kilometer (30-mile) facility has been terminated.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 31, 1994.

Thomas D. Myers,

Assistant Division Administrator, Concord, New Hampshire.

[FR Doc. 94–14044 Filed 6–8–94; 8:45 am]
BILLING CODE 4910–22–M

Environmental Impact Statement: County of Los Angeles, California

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 project in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, Chief, District Operations, Federal Highway Administration, California Division, 980 9th Street, suite 400, Sacramento, California 95814–2724, Telephone: (916) 551–1310.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans) will prepare an environmental impact statement (EIS) on a proposal to improve Interstate Route 10 in Los Angeles County,

California. The proposed improvement would involve adding one High Occupancy Vehicle (HOV) lane in each direction on the route, between Interstate Route 605 and Interstate Route 210/State Route 57 for a distance of 18.0 kilometers (11.2 miles). To construct the two new HOV lanes, this proposed project would include pavement rehabilitation, widening of existing freeway bridges and necessary roadside improvements such as guardrails and soundwalls.

Improvements to the corridor are considered necessary to improve the level of service by increasing the person carrying capacity of this section of I–10, relieving existing and anticipated increase peak period traffic congestion. The proposed project is also an integral element of the I–10 portion of the proposed regional freeway-based HOV system in Los Angeles County.

At this time two alternatives are being considered, Alternative 1, widening the half-width of the section to a total of 24.7 meters (81 feet) and Alternative 4, the no-build alternative. Two other build alternatives with wider half-sections were considered during the scoping process, but removed from further consideration due to the minimal benefits to be derived versus the impacts of the acquisition of significantly more right of way than Alternative 1.

The scoping process was initiated in 1993 by contacting, by letter and newspaper notices, elected officials, federal, state, regional and local agencies as well as corridor residents. The scoping process is tentatively completed with a scoping summary report prepared.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. 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 on Federal programs and activities apply to this program)

Issued on: June 2, 1994.

Douglas Bennett,

Acting Chief, District Operations "B", Federal Highway Administration.

[FR Doc. 94–14045 Filed 6–8–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 94–48; Notice 1]

John Russo Industrial, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

John Russo Industrial, Inc. (Russo) of San Jose, California, has determined that some of its trucks fail to comply with requirements of several Federal motor vehicle safety standards (FMVSS) in 49 CFR part 571. These are FMVSS No. 113, "Hood Latch Systems," FMVSS No. 120, "Tire Selection and Rims for Motor Vehicles other than Passenger Cars," FMVSS No. 205, "Glazing Materials," and FMVSS No. 207, "Seating Systems." Russo has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Russo has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance are inconsequential as they relate to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

All noncompliances covered by this petition were discovered on July 13, 1993 during inspection of vehicles by NHTSA's Office of Vehicle Safety Compliance (File NCI 3288).

1. FMVSS No. 113, "Hood Latch Systems"

In April 1991, Russo completed one Command/Communications van (Gillig chassis) and, in July 1991, one Hazardous Materials van (Spartan chassis). These vehicles do not comply with the hood latching requirements in S4.2 of FMVSS No. 113, in that their front opening hoods, which in any open position partially or completely obstruct a driver's forward view through the windshield, are not provided with a second latch position on the hood latch system or with a second hood latch system.

Russo supports its petition for inconsequential noncompliance with the following:

[49 CFR 571.113 S3] definition, "Hood means any movable exterior body panel forward of the windshield that is used to cover [an] engine, luggage, storage, or battery compartment." The forward face panels on our vehicles are below the windshield, and are not used as compartment, storage, or any criteria to classify it as a hood.

Paragraph S4.2 of standard 113 states "A front opening hood which, in any open position partially or completely obstructs a driver's forward view through the windshield must be provided with a second latch position on the hood latch system or with a second hood latch system."

The access panels in question are not classified as a hood mechanism, therefore [they] do not need to follow these guidelines. If the panel were left open it would not obstruct the driver's view enough to cause a driving hazard.

Our testing of this design consisted of the air flow testing of up to 78 mph with a head wind of 14 mph that brought the total air speed to 92 mph. Air flow only holds the access panel down more securely. The panel cannot fly up as a result of the air flow

Panels of similar design are easily found on hundreds of thousands of on-road vehicles including GMC Astro 9500, Chevrolet Titan 90, Ford CLT 9000, Freight Liner cab overs, and many other vehicles I have found in researching my response.

The Hazmat and Command vehicles are built with windshields which are much larger than those of typical van or cab over engine type vehicles. This large windshield is provided partially as a styling feature and partly to provide exceptional visibility in low speed maneuvering situations. The small area of windshield which would be blocked if the access panel could physically be lifted up by air flow, would not even be in the field of view on typical vehicles in this class.

2. FMVSS No. 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars"

From 1989 through 1991, Russo completed one Command/Communications van (Gillig chassis) and one Hazardous Materials van (Spartan chassis) and modified six Ford F350 and nine F800 trucks. These vehicles do not have the label required by S5.3 of FMVSS No. 120, which includes the size designation of the tires, the size designation of the rims, and the cold inflation pressure of the tires. Russo states that the noncompliances are due to removal of labels after the purchaser took delivery of the vehicles.

Russo supports its petition for inconsequential noncompliance with the following:

The Act states that the labels must be installed by us. NHTSA * * * says that the customer can do whatever they want to the vehicle once they get it, "they can even cut seatbelts * * *" Then we respectively state that no manufacturer whether Chevrolet or John Russo should be made to do anything anytime anyone decides to remove a sticker We are not Chevrolet, we are a small minority family business across the street that [was] asked to install bodies on [the San Jose Fire Department's] chassis under their total supervision.

* * * * *

The rim width missing will not affect the safety of the vehicle. All vehicles involved ...

the petition belong to one user. The user has redundant data and all information available, plus all the resources to possess the information. The vehicle has this information. The user has all the incomplete vehicle manuals. The customer has a whole city fleet and its own service department and had ordered cab and chassis to match their tire and rim fleet specifications before we even got the contract to build the bodies.

When these vehicles were first delivered, engraved labels were requested in place of the white labels that we normally install. This was done.

When the new person took over, yellow NTEA labels were requested. This was complied with.

* * * * *

No safety benefit to anyone has come out of this.

* * * * *

Without waving this petition for exemption due to inconsequential non-compliance, we will notify the Deputy Chief of the San Jose Fire Dept. of our offer to supply and install new decals if they wish in a coordinated verifiable supervised manner. We shall document it for NHTSA and send NHTSA all copies of the labels.

* * * * *

There has to be fairness and a limit to a manufacturers' accountability especially in view of the circumstances and the years of service we have rendered to the user in the former administration. We cannot be held accountable for situations beyond our control. Those Labels Were There and They Had Been Removed (emphasis original).

3. FMVAA No. 205, "Glazing Materials"

In April 1991, Russo completed one Command/Communications van (Gilling chassis) and, in July 1991, one Hazardous Materials van (Spartan chassis). These vehicles do not comply with the glazing materials marking requirements in section 6 of FMVSS No. 205, which state that windshields must be marked AS–1 and windows to the right and left of the driver's position must be marked AS–2. The subject vehicles had no marking on the windshields, and the markings on the windows to the right and left of the driver's position were AS–3, not AS–2. Russo provided a photocopy of a purchase order for AS–1 windshield glass which it claims were used for the windshields. Russo further provided a copy of a letter from the supplier of the cockpit side windows stating that the windows in question were marked AS–3. These materials are available in the NHTSA Docket Section.

Russo supports its petition for inconsequential noncompliance with the following:

The windshields that were installed in these vehicles were labeled AS–1.

The [installers] had shown us the windshield label on the windshield stock plate before the installation and fitting process. The San Jose Fire Dept.'s Battalion Chief Master Mechanic was also shown the label at this time and he said this to Mr. Shifflet [of NHTSA's Office of Vehicle Safety Compliance] during his visit.

We have a sample of the label that the glass company that supplies the Fire Dept. [a]nd all of California had supplied to show DOT.

The windshield that was supplied to us by San Jose Glass contained this label:

Laminated

16 CFR 1201 M550

CATT II AS–1

DOT 273

* * * * *

The labeling on the driver's and passenger's window is also inconsequential to vehicle safety as shown by supporting data that the glass manufacturer uses all the same AS–2 glass except for a very slight insignificant light transmission in AS-certified configuration.

4. FMVSS No. 207, "Seating Systems"

In April 1991, Russo produced a Command/Communications van (1989 Gillig chassis) with an 18,000 pound gross vehicle weight rating. The vehicle is a specially configured portable meeting room for use at the scene of disasters. It is a closed, straight body van-type vehicle consisting essentially of a cab for vehicle operation and a cargo area which Russo converted into a conference room.

Section 4.4 of FMVSS No. 207 requires that all seats not designed to be occupied while the vehicle is in motion are to be conspicuously labeled to that effect. The seats located in the meeting room area of this vehicle are not designed to be occupied while the vehicle is being operated, but are not labeled as such.

Russo supports its petition for inconsequential noncompliance with the following:

A sign in the cab states that only two people are to be seated in the cab. This is a specially configured portable meeting room for disasters. The vehicle was configured for a specific purpose by the user and the construction of the body layout was very closely supervised by the fire department to the detail. The user (as mentioned to NHTSA) * * * stated that [the vehicle] is only used for meetings at the disaster scene. Many command centers are trailers, only for use as scene command.

There is a very big sign on the vehicle stating that it is a command and communications center. This is an official vehicle in case of a disaster, designed to only be occupied by a driver and one passenger while in motion.

We were contracted to build a vehicle for the user for [a] specific purpose. In the case of a severe emergency, where a command station is required, this vehicle is called in to act as the meeting and communications center. This vehicle is not a response vehicle, and is only brought to the scene after the situation has been evaluated by the on scene command team as critical. The vehicle is then used as a center and checkpoint to all incoming and outgoing personnel at the scene.

This vehicle was built to the strict specification of the City of San Jose Fire Department. It was ordered with seat belts for the driver and one passenger only as the back communications and meeting areas [were] not to be occupied when the vehicle was in motion. The fire department is aware of the vehicle configuration and is fully capable of instructing its employees that the back sections are not to be occupied when the vehicle is in motion.

Interested persons are invited to submit written data, views, and arguments on the petitions of Russo, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 11, 1994.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on June 3, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–13970 Filed 6–8–94; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on June 15 at the Voice of America facilities, Wilbur J. Cohen Federal Building, 330 Independence Avenue, SW., Washington, DC from 9:30 a.m.–12:30 p.m. The Commission will meet with the following from the United States Information Agency's Bureau of

Broadcasting to discuss policies and programs: Messrs. Goeffrey Cowan, Director, Voice of America; Charles Fox, Director, Worldnet Television and Film Service; Richard Lobo, Director, Office of Cuba Broadcasting; Robert Komosa, Director, VOA Engineering; and Richard Caldwell, director, Telecommunications.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: June 6, 1994.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 94–14061 Filed 6–8–94; 8:45 am]

BILLING CODE 6230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment: Possible Barriers to the Access for U.S. Agricultural Products to the Korean Market

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment concerning possible barriers to the access for U.S. agricultural products to the Korean market.

SUMMARY: The United States Trade Representative (USTR) is seeking public comment on problems exporters of U.S. agricultural products may be having with respect to access to the Korean market. In particular, USTR seeks comments with respect to 77 products covered by a 1989 Agreement between the United States and the Republic of Korea.

DATES: Written comments from interested persons are due on or before July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Deputy Assistant USTR for Asia and the Pacific (202) 395–6813; Len Condon, Deputy Assistant USTR for Agricultural Affairs (202) 395–5006; or Thomas Robertson, Assistant General Counsel (202) 395–6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION:

Background

Certain U.S. exporters of agricultural products have informed USTR that their access to the Korean market has been limited by unjustifiable regulatory barriers imposed by the Korean Government. They claim that these regulatory barriers lack scientific basis and have a discriminatory effect on U.S. agricultural products. In particular, they point to what they consider to be inappropriate food safety regulations (such as shelf life limitations that lack scientific basis and unnecessarily burdensome "self specification" requirements); inappropriate human, animal, and plant health and safety regulations; and customs misclassification problems. USTR requests all interested persons to provide additional information concerning these and other alleged barriers that may be imposed by the Korean government.

In a 1989 exchange of letters, the governments of the Republic of Korea and the United States agreed, among other things, that Korea would liberalize import restrictions on 62 agricultural products, implement tariff reductions for seven products, and subject eight products to automatic import approval. The two governments also agreed that these commitments would remain unimpaired by restrictions or requirements directly or indirectly affecting importation of the agricultural products. USTR therefore is particularly interested in any restrictions or requirements directly or indirectly affecting importation of the 77 products covered by the 1989 Agreement, each of which is listed in the Annex to this notice.

Requirements for Submissions

Comments must be in writing, state clearly the information and claims presented, filed with 20 copies by July 8, 1994, and addressed to: Deputy General Counsel, Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506. Interested persons may, upon advanced request, inspect at the USTR public reading room any written submissions, except that confidential business information will not be made available in this manner if: (1) the person furnishing such information certifies in writing that such information is business confidential, the disclosure of such information would endanger trade secrets or profitability, and such information is not generally available; and (2) the information submitted is clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each copy, and shall be accompanied by a nonconfidential summary of the confidential information. USTR retains the right to deny confidential treatment of information if such information is not entitled to protection under the law. The public file will be available for inspection in the USTR Reading Room, room 101, which is open to the public from 10 to 12 noon, and from 1 pm to 4 pm, Monday thru Friday. An appointment to review the file may be made by calling Brenda Webb at (20^) 395–6186.

Irving Williamson,

Deputy General Counsel.

ANNEX

HS. No.	Product description
0206.220000	Livers of bovine animals, frozen.
0206.300000	Edible offals of swine, fresh/chilled.
0206.410000	Livers of swine, frozen.
0206.490000	Edible offals of swine (excluding liver), frozen.
0206.800000	Other edible offal, fresh/chilled.
0206.900000	Other animal offal, frozen.
0207.100000	Poultry (ducks), not in pieces, fresh/chilled.
0207.230000	Duck, whole, frozen.
0207.391000	Poultry cuts (duck), fresh/chilled.
0207.431000	Poultry cuts (duck), frozen.
0504.001000	Guts of animals.
0713.100000	Peas.
0713.200000	Chickpeas.
0713.330000	Kidney beans.
0713.390000	Other beans.
0713.400000	Lentils.
0713.500000	Broad beans.
0713.900000	Other dried leguminous vegetables.
0802.120000	Almonds, shelled.
0802.210000	Filberts, in shell.
0802.220000	Filberts, shelled.
0802.310000	Walnuts, in shell.
0802.320000	Walnuts, shelled.
0802.500000	Pistachios.
0802.909000	Pecans and macadamia nuts.
0804.400000	Avocados.
0806.200000	Raisins.
0807.100000	Melons.
0807.200000	Papayas.
0809.200000	Cherries, fresh.
0810.100000	Strawberries, fresh.
0810.400000	Cranberries, bilberries and other fruits of the genus vaccinium, fresh.
0810.909000	Kiwifruit, fresh.
1001.100000	Durum wheat.
1001.901000	Meslin wheat.
1001.909000	Other wheat.
1002.000000	Rye.
1004.000000	Oats.
1208.100000	Flour and meals of soybeans.
1214.100000	Alfalfa products.
1507.100000	Soybean oil, crude.
1507.901000	Soybean oil, refined.
1507.909000	Soybean oil, other.
1512.111000	Sunflower seed oil, crude.
1512.191010	Sunflower seed oil, refined.

ANNEX—Continued

HS. No.	Product description
1515.210000	Corn oil, crude.
1515.290000	Corn oil, other.
1601.001000	Sausages.
1602.311000	Canned turkey.
1602.391000	Canned poultry.
1602.411000	Canned pork.
2007.100000	Homogenized preparations.
2007.911000	Jams, fruit jellies and marmalades of citrus.
2007.991000	Jams, fruit jellies and marmalades of other.
2007.999000	Puree and pastes of other.
2008.111000	Peanut butter.

ANNEX—Continued

HS. No.	Product description
2008.200000	Pineapple, in airtight containers.
2008.400000	Pears, prepared/preserved.
2008.700000	Peaches, in airtight containers.
2009.500000	Tomato juice.
2106.109000	Other protein concentrates and textured protein substances (over 48% protein content).
2106.909010	Coffee creamer.
2106.909090ex	Popcorn.
2301.102000	Greaves.
2302.100000	Corn gluten feed.
2304.000000	Soybean cake.

ANNEX—Continued

HS. No.	Product description
2309.100000	Dog and cat food.
2309.901010	Mixed feed for pigs.
2309.901030	Mixed feeds for fish.
2309.901090	Mixed animal feeds, other.
2309.903020	Feed additives (chiefly on the basis of vitamins).
2309.903030	Feed additives (chiefly on the basis of micro minerals).
3502.100000	Egg albumin.
3504.002030	Protein isolates.
4410.100000	Wood particleboard.

[FR Doc. 94–13941 Filed 6–8–94; 8:45 am]
BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 110
Thursday, June 9, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–13590.

PREVIOUSLY ANNOUNCED DATE AND TIME:
Tuesday, June 7, 1994, 10:00 a.m.
Meeting Closed to the Public.

The following item was erroneously noted on the agenda:

Briefing on Allocation Regulations.

PREVIOUSLY ANNOUNCED DATE AND TIME:
Thursday, June 9, 1994, 10:00 a.m.
Meeting Open to the Public.

The following item was deleted from the agenda:

Advisory Opinion 1994–14: Scott Lehman of Tsakanikas for U.S. Congress

The following item was added to the agenda:

Advisory Opinion 1994–10: Robert F. Bauer on behalf of Franklin National Bank

DATE AND TIME: Tuesday, June 14, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, June 16, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Convention Regulations: Final Rules and Explanation and Justification
Advisory Opinion 1994–12: James S. Todd for the American Medical Association
Advisory Opinion 1994–14: Scott Lehman of Tsakanikas for U.S. Congress
Administrative Matters

PERSON TO CONTACT FOR INFORMATION:
Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 94–14152 Filed 6–7–94; 11:55 am]
BILLING CODE 6715–01–M

Corrections

Federal Register

Vol. 59, No. 110

Thursday, June 9, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AB06

Recreation Residence Authorization

Correction

In notice document 94-13323 beginning on page 28713 in the issue of Thursday, June 2, 1994, make the following corrections:

On page 28738, in the "Terms and Conditions" portion of the "Forest Service Handbook 2709.11--Special Uses, Chapter 50," the revised permit clauses were not printed in italics. For the convenience of the reader, Exhibit 01 appearing on page 28737 is set forth below along with the "Terms and Conditions" text appearing on pages 28738 through 28741 with the text of the revised permit clauses indicated in italics.

BILLING CODE 1505-01-D

EXHIBIT 01, SEC. 54.1--TERM SPECIAL USE PERMIT

FS-2700-5a (01/94)
OMB No. 0596-0082
Expires 06/30/96

USDA - Forest Service	Holder No.	Type Site	Authority
	* /	*	*
TERM SPECIAL USE PERMIT For Recreation Residences	Auth. Type	Issue Date	Expir. Date
	*	* / /	* / /
	Location Sequence No.		Stat. Ref.
Act of March 4, 1915, As Amended (Ref. FSM 2710)	*		*
	Latitude	Longitude	LOS Case
	* - -	* - -	*

* _____ of * _____
(Holder Name) (Billing Address - 1)

* _____ * _____ * _____ * _____
(Billing Address - 2) (City) (State) (Zip Code)

(hereafter called the holder) is hereby authorized to use National Forest lands, for a recreation residence for personal recreational use on the * _____ National Forest, subject to the provisions of this permit including items * _____ through * _____, on page(s) * _____ through * _____. This permit covers * _____ acres.

Described as: (1) Lot * _____ of the * _____ tract.
(A plat of which is on file in the office of the Forest Supervisor.)

OR (2) * _____ as shown on the attached map.
(Legal Description)

The following improvements, whether on or off the lot, are authorized in addition to the residence structure:

*

This use shall be exercised at least 15 days each year, unless otherwise authorized in writing. It shall not be used as a full-time residence to the exclusion of a home elsewhere.

THIS PERMIT IS NOT TRANSFERABLE
PURCHASERS OF IMPROVEMENTS ON SITES AUTHORIZED BY THIS PERMIT MUST SECURE A NEW PERMIT FROM THE FOREST SERVICE.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS.

ACCEPTED: * _____ * _____
HOLDER'S NAME AND SIGNATURE DATE

APPROVED: * _____ * _____
AUTHORIZED OFFICER'S NAME AND SIGNATURE TITLE DATE

BILLING CODE 1505-01-C

Note: Permit clauses revised as a result of the reformulation of the recreation residence policy as described in this notice are printed in italics.

Terms and Conditions

I. Authority And Use And Term Authorized

A. This permit is issued under the authority of the Act of March 4, 1915, as amended (16 U.S.C. 497), and title 36, Code of Federal Regulations, sections 251.50–251.64. Implementing Forest Service policies are found in the Forest Service Directives System (FSM 1920, 1950, 2340, 2720; FSH 2709.11, chap. 10–50). Copies of the applicable regulations and policies will be made available to the holder at no charge upon request made to the office of the Forest Supervisor.

B. The authorized officer under this permit is the Forest Supervisor, or a delegated subordinate officer.

C. This permit authorizes only personal recreation use of a noncommercial nature by the holder, members of the holder's immediate family, and guests. Use of the permitted improvements as a principal place of residence is prohibited and shall be grounds for *revocation* of this permit.

D. Unless specifically provided as an added provision to this permit, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such service by a Government agency, utility association, or individual.

E. *Termination* at End of Term: This authorization will *terminate* on *_____. (insert date)

II. Operation and Maintenance

A. The authorized officer, after consulting with the holder, will prepare an operation and maintenance plan which shall be deemed a part of this permit. The plan will be reviewed annually and updated as deemed necessary by the authorized officer and will cover requirements for at least the following subjects:

1. Maintenance of vegetation, tree planting, and removal of dangerous trees and other unsafe conditions.
2. Maintenance of the facilities.
3. Size, placement and descriptions of signs.
4. Removal of garbage or trash.
5. Fire protection.
6. Identification of the person responsible for implementing the provisions of the plan, if other than the holder, and a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.

Note: Forest Supervisors may include other provisions relating to fencing, road maintenance, boat docks, piers, boat launching ramp, water system, sewage system, incidental rental, and the Tract Association. Regional Foresters may add specific provisions that Forest Supervisors should include in the plan.

III. Improvements

A. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named on the face of this permit or approved in writing by the authorized officer in the operation and maintenance plan. Improvements requiring specific approval shall include, but are not limited to: Signs, fences, name plates, mailboxes, newspaper boxes, boathouses, docks, pipelines, antennas, and storage sheds.

B. All plans for development, layout, construction, reconstruction or alteration of improvements on the *lot*, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be approved by the authorized officer before the commencement of any work.

IV. Responsibilities of Holder

A. The holder, in exercising the privileges granted by this permit, shall comply with all present and future regulations of the Secretary of Agriculture and all present and future federal, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. However, the Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

B. The holder shall exercise diligence in preventing damage to the land and property of the United States. The holder shall abide by all restrictions on fires which may be in effect within the forest at any time and take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during a closed fire season established by law or regulation without written permission from the authorized officer.

C. The holder shall protect the scenic and esthetic values of the National Forest System lands as far as possible consistent with the authorized use, during construction, operation, and maintenance of the improvements.

D. No soil, trees, or other vegetation may be removed from the National Forest System lands without prior permission from the authorized officer. Permission shall be granted specifically, or in the context of the operations and maintenance plan for the permit.

E. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damage, other than ordinary wear and tear, to National Forest lands, roads and trails caused by the holder's activities.

F. The holder assumes all risk of loss to the improvements resulting from acts of God or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees and other hazardous natural events. In the event the improvements authorized by this permit are destroyed or substantially damaged by acts of God or catastrophic events, the authorized officer will conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis will be provided to the holder within 6 months of the event.

G. The holder has the responsibility of inspecting the site, authorized rights-of-way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.

H. In case of change of permanent address or change in ownership of the recreation residence, the holder shall immediately notify the authorized officer.

V. Liabilities

A. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

B. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of National Forest lands under this permit.

C. The holder shall be liable for any damage suffered by the United States resulting from or related to use of this permit, including damages to National Forest resources and costs of fire suppression. Without limiting available civil and criminal remedies which may be available to the United States, all timber cut, destroyed, or injured without authorization shall be paid for at stumpage rates which apply to the

unauthorized cutting of timber in the State wherein the timber is located.

VI. Fees

A. Fee Requirement: This special use authorization shall require payment in advance of an annual rental fee.

B. Appraisals:

1. Appraisals to ascertain the fair market value of the *lot* will be conducted by the Forest Service at least every 20 years. The next appraisal will be implemented in *_____ (insert year).

2. Appraisals will be conducted and reviewed in a manner consistent with the Uniform Standards of Professional Appraisal Practice, from which the appraisal standards have been developed, giving accurate and careful consideration to all market forces and factors which tend to influence the value of the *lot*.

3. If dissatisfied with an appraisal utilized by the Forest Service in ascertaining the permit fee, the holder may employ another qualified appraiser at the holder's expense. The authorized officer will give full and complete consideration to both appraisals provided the holder's appraisal meets Forest Service standards. If the two appraisals disagree in value by more than 10 percent, the two appraisers will be asked to try and reconcile or reduce their differences. If the appraisers cannot agree, the Authorized Officer will utilize either or both appraisals to determine the fee. When requested by the holder, a third appraisal may be obtained with the cost shared equally by the holder and the Forest Service. This third appraisal must meet the same standards of the first and second appraisals and may or may not be accepted by the authorized officer.

C. Fee Determination:

1. The annual rental fee shall be determined by appraisal and other sound business management principles. (36 CFR 251.57(a)). The fee shall be 5 percent of the appraised fair market fee simple value of the *lot* for recreation residence use.

Fees will be predicated on an appraisal of the *lot* as a base value, and that value will be adjusted in following years by utilizing the percent of change in the Implicit Price Deflator-Gross National Product (IPD–GNP) index as of the previous June 30. A fee from a prior year will be adjusted upward or downward, as the case may be, by the percentage change in the IPD–GNP, except that the maximum annual fee adjustment shall be 10 percent when the IPD–GNP index exceeds 10 percent in any one year with the amount in excess of 10 percent carried forward to the next succeeding year where the IPD–GNP index is less than 10 percent. The base rate from which the fee is adjusted will be changed with each new appraisal of the lot, at least every 20 years.

2. If the holder has received notification that a new permit will not be issued following expiration of this permit, the annual fee in the tenth year will be taken as the base, and the fee each year during the last 10-year period will be one-tenth of the base multiplied by the number of years then remaining on the permit. If a new term permit should later be issued, the holder shall pay the United States *the total amount of fees forgone*, for the most recent 10-year period in which the holder has been advised that a new permit will not be issued. This amount may be paid in equal annual installments over a 10-year period in addition to those fees for existing permits. Such amounts owing will run with the property and will be charged to any subsequent purchaser of the improvements.

D. Initial Fee: The initial fee may be based on an approved Forest Service appraisal existing at the time of this permit, with the present day value calculated by applying the IPD–GNP index to the intervening years.

E. Payment Schedule: Based on the criteria stated herein, the initial payment is set at $*_____ per year and the fee is due and payable annually on *_____ (insert date). Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments or fee calculation statements fall on a nonworkday, the charges shall not apply until the close of business of the next workday. Any payments not received within 30 days of the due date shall be delinquent.

F. Interest and Penalties:

1. A fee owed the United States which is delinquent will be assessed interest based on the most current rate prescribed by the United States Department of Treasury Financial Manual (TFM–6–8020). Interest shall accrue on the delinquent fee from the date the fee payment was due and shall remain fixed during the duration of the indebtedness.

2. In addition to interest, certain processing, handling, and administrative costs will be assessed on delinquent accounts and added to the amounts due.

3. A penalty of 6 percent per year shall be assessed on any indebtedness owing for more than 90 days. This penalty charge will not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

4. When a delinquent account is partially paid or made in installments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

G. Nonpayment Constitutes Breach: Failure of the holder to make the annual payment, penalty, interest, or any other charges when due shall be grounds for termination of this authorization. However, no permit will be terminated for nonpayment of any monies owed the United States unless payment of such monies is more than 90 days in arrears.

H. Applicable Law: Delinquent fees and other charges shall be subject to all the rights and remedies afforded the United States pursuant to federal law and implementing regulations. (31 U.S.C. 3711 *et seq.*)

VII. Transfer, Sale, and Rental

A. Nontransferability: Except as provided in this section, this permit is not transferable.

B. Transferability Upon Death of the Holder:

1. If the holder of this permit is a married couple and one spouse dies, this permit will continue in force, without amendment or revision, in the name of the surviving spouse.

2. If the holder of this permit is an individual who dies during the term of this permit and there is no surviving spouse, an annual renewable permit will be issued, upon request, to the executor or administrator of the holder's estate. Upon settlement of the estate, a new permit incorporating current Forest Service policies and procedures will be issued for the remainder of the deceased holder's term to the properly designated heir(s) as shown by an order of a court, bill of sale, or other evidence to be the owner of the improvements.

C. Divestiture of Ownership: If the holder through voluntary sale, transfer, enforcement of contract, foreclosure, or other legal proceeding shall cease to be the owner of the physical improvements, this permit shall be terminated. If the person to whom title to said improvements is transferred is deemed by the authorizing officer to be qualified as a holder, then such person to whom title has been transferred will be granted a new permit. Such new permit will be for the remainder of the term of the original holder.

D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit to the prospective purchaser.

before finalizing the sale. The holder cannot make binding representations to the purchasers as to whether the Forest Service will reauthorize the occupancy.

E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

VIII. Revocation

A. *Revocation* for Cause: This permit may be *revoked* for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such *revocation* for cause, the holder shall be given notice and provided a reasonable time—not to exceed ninety (90) days—within which to correct the breach.

B. *Revocation* in the Public Interest During the Permit Term:

1. This permit *may be revoked during its term* at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b.) In the event of such *revocation* in the public interest, the holder shall be given one hundred and eighty (180) days' prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the *lot* in a shorter period of time.

2. The Forest Service and the holder agree that in the event of a *revocation* in the public interest, the holder shall be paid damages. *Revocation* in the public interest and payment of damages is subject to the availability of funds or appropriations.

a. Damages in the event of a public interest *revocation* shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another *lot* which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of *revocation*. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of *revocation*. If *revocation* in the public interest occurs after the holder has received notification that a new permit will not be issued following expiration of the current permit, then the amount of damages shall be adjusted as of the date of *revocation* by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to *revocation* (measured from the date of the notice of *revocation*) and as the denominator, the total number of months in the original term of the permit.

b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: *Provided*, That if mutual agreement is not reached, the authorized officer shall determine the amount and if the holder is dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR *251.80*) and the amount as determined on appeal shall be final and conclusive on the parties hereto: *Provided further*, That upon the payment to the holder of the amount fixed by the authorized officer, the right of the Forest Service to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

IX. Issuance of a New Permit

A. Decisions to issue a new permit or convert the *permitted area* to an alternative public use *upon termination of this permit* require a determination of consistency with the Forest Land and Resource Management Plan (Forest plan).

1. Where continued use is consistent with the Forest plan, the authorized officer *shall issue a new permit, in accordance with applicable requirements for environmental documentation.*

2. If, as a result of an amendment or revision of the Forest plan, the *permitted area* is within an area allocated to an alternative public use, the authorized officer *shall conduct a site specific project analysis* to determine the range and intensity of the alternative public use.

a. If the project analysis results in a finding that the use of the *lot* for a recreation residence may continue, the holder shall be notified in writing, this permit shall be modified as necessary, and a new term permit shall be issued following expiration of the current permit.

b. If the project analysis results in a decision that the *lot* shall be converted to an alternative public use, the holder shall be notified in writing and given at least 10 years continued occupancy. The holder shall be given a copy of the project analysis, environmental documentation, and decision document.

c. A decision resulting from a project analysis shall be reviewed two years prior to permit expiration, *when that decision and supporting environmental documentation is more than 5 years old.* If this review indicates that the conditions resulting in the decision are unchanged, then the decision *may be implemented.* If this review indicates that conditions have changed, a new project analysis shall be made to determine the proper action.

B. In issuing a new permit, the authorized officer *shall* include terms, conditions, and special stipulations that reflect new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. (36 CFR 251.64)

C. If the 10-year continued occupancy given a holder who receives notification that a new permit will not be issued would extend beyond the expiration date of the current permit, a new term permit shall be issued for the remaining portion of the 10-year period.

X. Rights and Responsibilities Upon Revocation or Notification That a New Permit Will Not Be Issued Following *Termination* of This Permit

A. Removal of Improvements Upon *Revocation* or Notification That A New Permit Will Not Be Issued Following *Termination* Of This Permit: At the end of the term of occupancy authorized by this permit, or upon abandonment, or *revocation* for cause, Act of God, catastrophic event, or in the public interest, the holder shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall return the *lot* to a condition approved by the authorized officer unless otherwise agreed to in writing or in this permit. If the holder fails to remove all such structures or improvements within a reasonable period—not to exceed one hundred and eighty (180) days from the date the authorization of occupancy is ended—the improvements shall become the property of the United States, but in such event, the holder remains obligated and liable for the cost of their removal and the restoration of the *lot*.

B. In case of *revocation* or notification that a new permit will not be issued following *termination* of this permit,

except if *revocation* is for cause, the authorized officer may offer an *in-lieu lot* to the permit holder for building or relocation of improvements. *Such lots* will be nonconflicting locations within the National Forest containing the residence being terminated or under notification that a new permit will not be issued or *at nonconflicting locations* in adjacent National Forests. Any *in-lieu lot* offered the holder must be accepted within 90 days of the offer or within 90 days of the final disposition of an appeal on the *revocation* or notification that a new permit will not be issued under the Secretary of Agriculture's administrative appeal regulations, whichever is later, or this opportunity will terminate.

XI. Miscellaneous Provisions

A. This permit replaces a special use permit issued to: *_____ (Holder Name) on *_____ (Date), 19* __.

B. The Forest Service reserves the right to enter upon the property to inspect for compliance with the terms of this permit. Reports on inspection for compliance will be furnished to the holder.

C. Issuance of this permit shall not be construed as an admission by the Government as to the title to any improvements. The Government disclaims any liability for the issuance of any permit in the event of disputed title.

D. If there is a conflict between the foregoing standard printed clauses and any special clauses added to the permit, the standard printed clauses shall control.

Note: Additional provisions may be added by the authorized officer to reflect local conditions.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB control number 0596–0082), Washington, DC 20503.

federal register

Thursday
June 9, 1994

Part II

Department of Transportation

Federal Aviation Administration

Proposed Policy Regarding Airport Rates and Charges; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 27782]

Proposed Policy Regarding Airport Rates and Charges

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice of proposed policy.

SUMMARY: The Department of Transportation (DOT) and Federal Aviation Administration (FAA) are publishing for comment a proposed policy statement with respect to fair and reasonable, and nondiscriminatory airport rates and charges. Specifically, the proposed policy statement sets forth FAA policy regarding airport practices that DOT/FAA would consider to be consistent with Federal requirements for airport rates and charges for aeronautical uses. The proposed policy statement would assist airport proprietors and users in negotiating rates and charges and would be the basis for FAA to evaluate complaints of non-compliance with applicable law governing airport rates and charges.

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments on this notice should be mailed in quadruplicate to: Federal Aviation Administration, Office of Chief Counsel, Attn.: Rules Docket (AGC–10), Docket No. 27782, 800 Independence Ave. SW., Washington, DC 20591. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27782." The postcard will be date stamped and mailed to the commenter.

FOR FURTHER INFORMATION CONTACT: John Rodgers, Director, Officer of Aviation Policy, Plans and Management Analysis, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–3274; Barry L. Molar, Manager, Airports Law Branch, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 (202) 267–3473.

SUPPLEMENTARY INFORMATION:

Request for Comments

Commenters are requested to identify recommended changes to the proposed policy statement and to identify legal, policy, financial or administrative principles or practices relied on to support each modification. Commenters are also requested to describe how each such modification will better comport with governing legal requirements and with the objectives of managing and developing the nation's air transportation system effectively to promote safety and efficiency and better serve aeronautical users, the traveling public and their communities than would the proposed policy statement. Further, comment is requested on the consistency of the proposed policy statement with practices now prevailing in the industry.

The proposed policy statement would have airports use historical costs as the basis for the aeronautical rate base, unless the airport and aeronautical users agree to a different methodology. This proposal is consistent with the prevalent practice in the airport industry. Because historical costs provide a reliable and verifiable valuation methodology on which to base rates and charges, they are consistent with the policy statement's goal of encouraging local resolution of disputes. Historic costs are also the generally used methodology in public utility regulation. Historic cost valuation assures that airport users will pay for the facilities currently in use, rather than for replacement facilities.

Nevertheless, we recognize that there are alternative approaches to historic cost valuation, including replacement costs and other methodologies. We solicit comment on how other valuation methods would comport with applicable legal requirements and promote efficient use of airport resources. To facilitate analysis of any recommended alternatives, the agency is particularly interested in examples in which the proposed methodology has been used in comparable circumstances to establish a rate base.

All comments received on or before the closing date for comments will be considered before adoption and publication of a final policy statement. The proposed policy statement may be changed in light of comments received. All comments will be available in the Rules Docket for examination by interested persons.

Public Meeting

A public discussion will be held in Washington, DC at which views may be expressed orally. A notice setting forth the location, date and time of the discussion and procedures for participation will be published in the **Federal Register.**

The Secretary of Transportation and the FAA are charged with promoting and maintaining a national aviation system that operates safely and efficiently. The Federal government pursues this objective by investing Federal funds, via grants-in-aid, in modern airport facilities sufficient to handle current and future air traffic and by facilitating local investment in such facilities. Transportation goals are also advanced when airport rates and charges are reasonable and consistent with airport development needs, and airport revenues are employed in the aviation system.

Traditionally, these goals have been pursued effectively at the local airport level through negotiation regarding operating costs, capital investment needs and financing strategies. Airlines, airport management and investors in airport securities have proven adept at striking a reasonable balance. As a result, the public interest has been served in the establishment of a safe air transportation system, airport rates and charges that have broad acceptance, continued growth of the national aviation system, and affordable air travel.

In publishing this proposed policy statement and associated administrative procedures for review of airport compliance, DOT/FAA continue to encourage negotiations between airport proprietors and aeronautical users as the primary means of setting airport rates and charges. Adversarial proceedings are no substitute for prompt and productive negotiations between directly interested local parties.

Nonetheless, where needed to ensure the interests of airports, their users and the traveling public, the Secretary and the Administrator are prepared to take a more active role in airport-airline disputes. Normally, the Federal role will be to assist parties unable to resolve fee disputes locally to conclude their own agreements successfully. In appropriate circumstances, the Secretary and the Administrator have broad legal authority to review the legality of proposed airport rates and to take all necessary investigatory and enforcement actions in aid of that authority. Where an impasse could have a significant adverse impact on air transportation, or otherwise involves a significant policy issue, parties directly affected will have the opportunity, through a streamlined procedural process being proposed concurrently, to seek a determination as to compliance with the principles set forth in this proposed policy statement. In these proceedings, DOT/FAA would not determine a specific level of legally acceptable rate, but rather would determine whether a rate was or was not in compliance with requirements that

rates be fair and reasonable and not unjustly discriminatory.

To provide guidance to parties engaged in their own negotiations and to make clear the criteria to which DOT/FAA would refer in addressing disputes over airport rates and charges, DOT/FAA have assembled, in a single policy statement, guidelines whose elements are based on various statutes, judicial and administrative decisions and historic industry practice. The fundamental requirement is that airport rates and charges imposed on aeronautical users be fair, reasonable and not unjustly discriminatory. This requirement is based on statutory mandates and obligations assumed by airport owners or operators (sponsors) as a condition for receiving Federal financial assistance. In addition, in accordance with relevant federal statutory provisions, airport sponsors are required to use airport revenue for the benefit of the airport system.

While the proposed policy statement would provide guidance for many airport charging practices, it cannot address each issue that may arise in this complex and fact-specific area. DOT/FAA does expect that the proposed policy statement would reduce uncertainty and, accordingly, the need to bring matters to the FAA for resolution through the administrative process. DOT/FAA intend that publication of the policy statement would help focus airport-airline rate negotiations on solutions that benefit airports and airlines alike. The FAA will consider the challenged rate after consideration of all the circumstances of the particular case in light of the basic principles articulated in the proposed policy statement.

DOT/FAA do not intend the policy statement to limit unduly the flexibility of airport proprietors to respond to a wide range of local conditions. In addition, this proposed policy statement is intended to preserve the credit ratings of airport revenue bonds by assuring capital markets that the Federal framework maintains the flexibility necessary for airport practices to meet local needs and changing conditions on a timely basis. High credit ratings can reduce the cost of airport infrastructure and ultimately of air transportation by lowering the financing costs of airport capital projects. Conversely, lower credit ratings can increase the financing costs of airport infrastructure development.

The proposed policy statement is intended to assist in maintaining a balance between airport infrastructure development and the preservation of safe and efficient transportation. Airlines should benefit from assurances that airport-related costs will be fair and reasonable. Airport operators should benefit from being afforded the flexibility necessary to tailor financial management, pricing, and investment strategies to meet local needs and conditions. DOT/FAA recognize that there is no single procedure or fixed methodology for establishing rates and charges in use in the industry and that the standard of reasonableness does not compel a single approach or a single fee. Airport proprietors may adopt procedures and methdologies that serve their objectives so long as they comply with applicable Federal requirements, including the requirement to keep airport revenues employed in the airport system.

This proposed policy statement is based on existing statutes, regulations, policies and judicial and administrative precedent. These sources are described below. The requirement that airport user charges be fair and reasonable and not unjustly discriminatory is based in two statutes, the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. App. 2201 *et seq.* (AAIA) and the Anti-Head Tax Act, 49 U.S.C. App. 1513(a)–(d) (AHTA).

a. Airport and Airway Improvement Act

The AAIA authorizes the Secretary of Transportation to make grants-in-aid to airport sponsors to finance airport development in the interests of safety, efficiency and capacity. In exchange for grant funds, airport sponsors agree to follow Federal requirements for the implementation of airport development projects and for operation of the airport. The Secretary has delegated the authority to administer the grant-in-aid program to the FAA.

Section 511(a) of the AAIA, 49 U.S.C. App. 2210(a), requires airport sponsors to the give various assurances satisfactory to the Secretary as a condition for receipt of grants. Under the authority of section 512 of the AAIA, 49 U.S.C. App. 2211, the FAA incorporates these assurances as part of the grant agreement between the sponsor and the FAA.

Of central importance to airport rates and charges is the requirement in section 511(a)(1) that airports be made available on fair and reasonable terms and without unjust discrimination. DOT/FAA construe this provision to include a requirement that rates and charges imposed on aeronautical users be fair and reasonable and without unjust discrimination. Also relevant is section 511(a)(9), which obligates the airport sponsor to maintain a fee and rental structure that will make the airport as self-sustaining as possible, but to exclude the Federal share of airport development from the airport's rate-base. In addition, section 511(a)(12) obligates the airport sponsor, with certain exceptions, to use airport revenue on the capital and operating costs of the airport or closely related transportation facilities. Section 519 of the AAIA grants general authority to the FAA to conduct investigations and hearings and to issue orders and regulations to carry out its provisions. Under section 519(b), the FAA may withhold approval of new entitlement grants and payments of funds under all existing grants for up to 180 days before issuing a final determination regarding compliance.

b. Anti-Head Tax Act

The requirement of reasonableness is also incorporated in the AHTA, which is part of the FAAct. Section 1113(a), 49 U.S.C. App. 1513(a), generally prohibits State and local taxation of air commerce and passengers traveling in air commerce. Section 1113(b) excludes from the prohibition reasonable landing fees and other charges to aircraft operators using the airport. Based on these provisions, the courts have consistently interpreted the AHTA to bar unreasonable landing fees as prohibited taxation. These provisions must also be implemented consistent with U.S. international obligations regarding airline user charges, pursuant to section 1102(a) of the FAAct, 49 U.S.C. App. 1502(a).

Section 1113(e) contains another exception to the AHTA's general prohibition. Section 1113(e) authorizes airport operators to impose a passenger facility charge approved by the FAA on paying passengers enplaned at the airport. Subsection 1113(e)(7)(B) generally prohibits inclusion of the cost of capital projects paid for with PFC revenue in the airport's rate base.

c. Other Sources

In addition to these statutory mandates, many airports have assumed the obligation to charge fair and reasonable and not unjustly discriminatory rates in connection with transfers of Federal property. Under the authority of the Surplus Property Act of 1944, 50 U.S.C. 1622(g), the Federal government has transferred for airport use title to real property to numerous airport operators around the country.

Judicial decisions and administrative decisions reviewing the reasonableness of airport rates and charges, though relatively few in number, have also provided guidance. The most recent is the decision in *Northwest Airlines* v.

Kent County, _____ U.S. _ _ _, 114 S.Ct 855(1994).

FAA statements of policy regarding the administration of the airport grant program, principally FAA Order 5190.6A, Airport Compliance Requirements (October 1989) provide an additional basis for some of the matters addressed. Finally, prevailing practices regarding cost allocation, economic and financial modeling and generally accepted accounting practices have been considered, as they apply specifically to airport rates.

Additional FAA Actions Relating to Airport Rates and Charges

In addition to this proposed policy statement, DOT/FAA are taking a variety of other actions to assure that airports comply with Federal requirements relating to airport rates and charges and the use of airport revenues.

First, DOT/FAA are concurrently publishing in the **Federal Register** a Notice of Proposed Rulemaking proposing new procedural regulations for review of complaints regarding airport proprietor compliance with Federal obligations. The proposal regulation includes special expedited procedures for review of carrier complaints about an increase in airport rates and charges. Second, under the authority of section 518 of the AAIA, 49 U.S.C. App. 2217, the FAA is notifying airport sponsors to make available to the public full financial statements and audit reports maintained by the airport sponsor. Third, under the authority of section 507(c)(3) of the AAIA, 49 U.S.C. App. 2206(c)(3), the FAA will consider the availability of accumulated surplus from nonaeronautical activities and the use of such surplus in selecting projects for funding with AIP discretionary funds. In addition, the FAA will continue to scrutinize the capital improvement plans submitted with applications for passenger facility charges to assure that the amount and duration of the PFC will not result in revenues that exceed amounts necessary to finance the specific projects.

With respect to the requirements for the use of airport revenues, the FAA is strengthening the audit procedures set forth in the compliance supplement to the single audits of state and local governments under the Single Audit Act. Additionally, the FAA is developing and implementing an action plan to counsel those airports identified as potentially in noncompliance and initiating enforcement actions where continuing noncompliance is found. Enforcement actions may include suspension or reduction of any AIP discretionary or entitlement funds. In addition, the FAA is working closely with the Office of Inspector General to address issues of unlawful revenue diversion.

The Proposed Policy Statement

Accordingly, DOT/FAA propose to adopt a new policy statement regarding the establishment of airport rates and charges as follows:

POLICY REGARDING THE ESTABLISHMENT OF AIRPORT RATES AND CHARGES

Introduction

DOT/FAA reiterate here the fundamental position that the issue of rates and charges is best addressed at the local level by agreement between users and airports. By providing guidance on standards applicable to airport rates and charges imposed for aeronautical use of the airport, DOT/FAA intend to facilitate direct negotiation between the proprietor and aeronautical users and to minimize the need to seek direct Federal intervention to resolve differences over airport rates and charges. Because DOT/FAA encourage direct resolution of airport fee issues, the FAA does not generally monitor practices established by agreement, except with respect to requirements for the use of airport revenue.

Principles Applicable to Airport Rates and Charges

1. In general, DOT/FAA rely upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.

2. Rates, fees, rentals and other charges ("rates and charges") imposed on aeronautical users must be fair and reasonable.

3. Airport rates and charges may not unjustly discriminate against aeronautical users or user groups.

4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors must keep airport revenue employed in the local airport system.

Local Negotiation and Resolution

1. In general, DOT/FAA rely upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.

1.1 DOT/FAA encourage direct resolution of differences at the local level between aeronautical users and the airport proprietor. Such resolution is best achieved through adequate and timely consultation between the airport proprietor and the aeronautical users. Airport proprietors should engage in adequate and timely consultation with aeronautical users about airport rates and charges.

1.1.1 Airport proprietors should consult with aeronautical users well in advance of introducing significant changes in charging systems and procedures or in the level of charges. The proprietor should provide adequate information to permit aeronautical users to evaluate the airport proprietor's justification for the change and to assess the reasonableness of the proposal. For consultations to be effective, airport proprietors should give due regard to the views of aeronautical users and to the effect upon them of changes in rates and charges. Likewise, aeronautical users should give due regard to the views of the airport proprietor and the financial needs of the airport.

1.1.2 Airport proprietors and aeronautical users should consider the public interest in establishing airport rates and charges.

1.1.3 Airport proprietors and aeronautical users should make a good-faith effort to reach agreement. Absent agreement, airport proprietors are free to act in accordance with their proposals, subject to review by the FAA upon complaint by the user or, in unusual circumstances, on DOT/FAA's initiative.

1.2 Where airport sponsors and aeronautical users have been unable, despite all reasonable efforts, to resolve disputes between them, DOT/FAA will act to resolve the issues raised in the dispute.

1.2.1 First, DOT/FAA will offer its good offices to facilitate parties' reaching a successful outcome in a timely manner. Prompt resolution of these disputes is always desirable since extensive delay can lead to uncertainty for the public and a hardening of the parties' positions.

1.2.2 Second, where negotiations between the parties are unsuccessful and a complaint is filed alleging that airport rates and charges violate an airport sponsor's federal grant obligations, DOT/FAA will, where warranted, exercise the broad statutory authority to investigate and review the

legality of those rates and charges. Where an impasse could have a significant adverse impact on air transportation, or otherwise involves a significant policy issue, parties directly affected will have the opportunity, through a streamlined procedural process, to seek DOT/FAA's determination as to compliance with the principles set forth in this proposed policy statement.

1.3 Airport proprietors must retain the ability to respond to local conditions with flexibility and innovation. However, an airport proprietor is encouraged to achieve consensus and agreement with its airline tenants before implementing a practice that would represent a major departure from this guidance. However, the requirements of any law, including the requirements for the use of airport revenue, may not be waived, even by agreement with the aeronautical users.

Fair and Reasonable Rates and Charges

2. Rates, fees, rentals and other charges ("rates and charges") imposed on aeronautical users must be fair and reasonable.

DOT/FAA consider the aeronautical use of an airport to be any activity that involves, makes possible, is required for the safety of the operations of, or is otherwise directly related to, the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo.

2.1 Revenues from rates and charges for aeronautical uses (aeronautical revenues) may not exceed the costs to the airport proprietor of providing airport services and facilities currently in aeronautical use (aeronautical costs) unless otherwise agreed to by the affected aeronautical users.

2.1.1 Aeronautical users may receive a cross-credit of non-aeronautical revenues only if the airport proprietor agrees. Agreements providing for such cross-crediting are commonly referred to as "residual agreements" and generally provide a sharing of non-aeronautical revenues with aeronautical users. The aeronautical users in turn agree to assume part or all of the liability for non-aeronautical costs. An airport proprietor may not require aeronautical users to cover losses generated by non-aeronautical facilities except by agreement.

2.1.2 In other situations, an airport proprietor assumes all liability for non-aeronautical costs and retains all non-aeronautical profits for its own use in accordance with Federal requirements. This approach to airport financing is generally referred to as the compensatory approach.

2.1.3 Airports frequently adopt charging systems that employ elements of both approaches. Federal law does not require a single approach to airport financing.

2.2 The "rate base" is the total of all aeronautical costs that may be recovered from aeronautical users through rates and charges. Airport proprietors must employ a reasonable, consistent and "transparent" (i.e., clear and fully justified) method of establishing the rate base and adjusting the rate base on a timely and predictable schedule.

2.3 Costs that may be included in the rate base (allowable costs) are limited to all operating and maintenance expenses directly and indirectly associated with the provision of aeronautical facilities and services; all capital costs directly associated with the provision of aeronautical facilities and services currently in use; and current costs of planning future aeronautical facilities and services.

2.3.1 Where airport proprietors have expended funds from non-aeronautical sources to finance capital investments for aeronautical use, the implicit capital cost of these funds may be included in the aeronautical rate base in addition to the cost of the asset. DOT/FAA consider it reasonable to use, as a measure of the implicit capital cost, the average rate of interest on airport revenue bonds prevailing of similarly-sized airports at the time the funds were spent for the capital projects.

2.3.2 Airport proprietors may include reasonable environmental costs in the rate base to the extent that the airport proprietor incurs a corresponding actual expense (an example of an actual expense is the cost of providing acoustical insulation for homes). All revenues received based on the inclusion of these costs in the rate base are subject to Federal requirements on the use of airport revenue.

2.3.3 Airport proprietors are encouraged to establish rates and charges with due regard for economy and efficiency.

2.3.4 The airport proprietor may include in the rate base amounts needed to fund short-term cash reserves to protect against the risks of cash-flow fluctuations associated with normal airport operations.

2.4 Airport proprietors must comply with the following practices in establishing the rate base, provided, however, that one or more aeronautical users may agree to a rate base that deviates from these practices in the establishment of those users' rates and charges.

2.4.1 Airport assets must be valued according to their historic cost to the original airport proprietor. Subsequent airport proprietors shall acquire the cost basis of the original airport proprietor. An airport proprietor may not employ current cost and replacement cost methods to value airport assets.

2.4.2 The costs of facilities not yet built and operating may not be included in the rate base. The airport proprietor may include in the rate base the costs of land that facilitates the current operations of the airport.

2.4.3 The rate base of an airport cannot include costs associated with another airport unless (1) the proprietor of the first airport is also the proprietor of the second airport; (2) the second airport is currently in use; and (3) the costs of the second airport to be included in the first airport's rate base reflect the aviation benefits that the second airport provides or is expected to provide to the aeronautical users of the first airport.

2.5 At all times, airport proprietors must comply with the following practices:

2.5.1 Indirect costs may not be included in the rate base unless they are based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government.

2.5.2 The value of airport development or planning projects paid for with government grants and contributions and passenger facility charges (PFCs) may not be included in the rate base.

2.5.2(a) Exception: In the case of gates and related areas, or another terminal facility that is occupied by one or more carriers on an exclusive or preferential use basis, the rates and charges paid to use those facilities shall be no less than the fees charged for similar facilities that were not financed with PFC revenue.

Prohibition on Unjust Discrimination

3. Airport rates and charges may not unjustly discriminate against aeronautical users or user groups.

3.1 Unless aeronautical users agree, the rates and charges imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group under the cost allocation methodology adopted by the airport proprietor that is consistent with this guidance.

3.2 A properly structured peak pricing system that allocates limited resources using price during periods of congestion will not be considered to be unjustly discriminatory. An airport proprietor may, consistent with the

policies expressed in this policy statement, establish rates and charges that maximize the efficient utilization of the airport.

3.3 Relevant provisions of the Convention on International Civil Aviation (Chicago Convention) and many bilateral aviation agreements specify, inter alia, that charges imposed on foreign airlines must not be unjustly discriminatory, must not be higher than those imposed on domestic airlines engaged in similar international air services and equitably apportioned among categories of users. Charges that are inconsistent with these principles will be considered unjustly discriminatory or unfair and unreasonable.

3.5 Allowable costs—costs properly included in the rate base—must be allocated to aeronautical users by a transparent, reasonable and not unjustly discriminatory rate-setting methodology. The methodology must be applied consistently and cost differences must be determined quantitatively.

3.5.1 Common costs (costs not directly attributable to a specific user group or cost center) must be allocated according to a reasonable, transparent and not unjustly discriminatory cost allocation formula that is applied consistently.

Requirement of Financial Self-Sufficiency

4. Airport proprietors will maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

4.1 If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport financially self-sustaining.

4.2 The federal obligation to make the airport as financially self-sustaining as possible does not justify the inclusion of environmental costs in the rate base unless an airport proprietor incurs actual costs.

Requirements Governing Revenue Application and Use

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors must keep airport revenue employed in the local airport system.

5.1 Whether or not total airport revenues exceed full current airport costs—

(a) aeronautical revenues may not exceed aeronautical costs; and

(b) the airport proprietor must keep all airport revenue and assets (aeronautical and non-aeronautical) employed in the local airport system in accordance with relevant Federal statutory provisions governing the use of airport revenue.

5.2 The progressive accumulation of substantial amounts of airport revenues may warrant an FAA inquiry into the airport proprietor's application of revenues to the local airport system.

5.3 The airport proprietor should consider the conversion of a reasonable amount of surplus airport revenues into airport improvements, which may include types of development that are not eligible for grants of funds under the Airport Improvement Program.

5.4 Indirect costs may not be included in the rate base unless they are based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government.

5.5 If an airport proprietor generates a surplus from non-aeronautical sources, such revenue shall be expended in accordance with relevant Federal statutory provisions governing the use of airport revenue for the capital or operating costs of the airport, the local airport system, or other local facilities directly and substantially related to air transportation.

Issued in Washington, DC, on June 3, 1994

Federico Peña,

Secretary of Transportation.

David R. Hinson,

Administrator, Federal Aviation Administration.

[FR Doc. 94–13943 Filed 6–3–94; 4:22 pm]

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Federal Register

Thursday
June 9, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 13 and 16
Rules of Practice for Federally Assisted Airport Proceedings; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13 and 16

[Docket No. 27783; Notice No. 94–18]

RIN 2120–AF–43

Rules of Practice for Federally Assisted Airport Proceedings

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of proposed rule (NPRM).

SUMMARY: This NPRM proposes to establish rules of practice for the filing of complaints and adjudication of compliance matters involving Federally assisted airports. The proposed rule would address exclusively airport compliance matters arising under the Airport and Airway Improvement Act (AAIA) of 1982, as amended; certain airport-related provisions of the Federal Aviation Act of 1958, as amended; the Surplus Property Act; as amended; predecessors to those acts; and regulations, grant agreements, and documents of conveyance issued or made under those acts. The proposed rule is intended to expedite substantially the handling and disposition of airport-related complaints, and to provide an efficient process for the agency to resolve disputes between air carriers and airport proprietors regarding whether airport fees and charges comply with Federal requirements. The NPRM would also amend the FAA's existing complaint and adjudication procedures, 14 CFR Part 13, "Investigative and Enforcement Procedures," to remove from the coverage of part 13 the airport-related matters that would be handled under the new part 16.

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments on this notice may be mailed, in duplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC–10), Docket No. 27783, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27783. Comments may be examined in room 915F weekdays between 8:30 a.m. and 5 p.m. except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barry Molar, Airport Law Branch (AGC–610), Office of the Chief Counsel, (202) 267–3473, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Comments relating to the economic effects that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate 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 Docket No. 27783." The postcard will be dated and time stamped and returned to the commenter.

All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in the notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with DOT/FAA personnel concerning this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3464. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's also should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Background

In addition to its plenary responsibility for aviation safety, the Federal Aviation Administration (FAA) is responsible for administering Federal laws that impose certain economic requirements on the operation of airports in the National Aviation System. These laws include the Airport and Airway Improvement Act of 1982, as amended, (AAIA) which provides for Federal grants to airport sponsors and imposes conditions on the grants in the form of assurances by those sponsors; the Surplus Property Act, which provides for the transfer of Federal property to local governments for airport use and, like the AAIA, requires specific assurances from the sponsor for the use of the property; section 308(a) of the Federal Aviation Act of 1958, as amended (FAAct), which prohibits an airport operator from granting an exclusive operating right at an airport that has received Federal funds; and the Anti-Head Tax Act, section 1113(a)–(d) of the FAAct, which prohibits local taxes on air travel but expressly permits the imposition of reasonable fees.

The FAA, concurrently with the publication of this NPRM, has published for public comment a notice of proposed policy on the standards for determining whether airport rates and charges are "fair and reasonable" within the meaning of the above statutes. The FAA will refer to that policy statement, as revised after review of the comments received, in the implementation of these laws and in adjudicating complaints brought before the agency involving airport rates and charges.

The Secretary of Transportation and the FAA Administrator have the authority and responsibility to receive complaints and adjudicate matters of compliance with these statutes. Typically, complaints received by the FAA involve an allegation of economic discrimination toward an airport tenant or a claim that an exclusive right has been granted by the airport operator. However, two recent disputes between airlines serving a major airport and the airport operator indicate that the FAA may soon receive cases involving more complex rates and charges issues. In both cases, the airlines filed suit in court but did not file an administrative complaint with the FAA. In *Northwest Airlines, Inc., et al.* v. *County of Kent, Michigan*, the airline tenants at the Grand Rapids Airport challenged various aspects of a new rate structure at the airport. The Supreme Court issued a decision substantially in favor of the airport operator in January 1994. _____ U.S. _____, 62 U.S.L.W. 4103 (1994). In 1993, the Air Transport Association and tenant airlines at Los Angeles International Airport filed suit in U.S. District Court to challenge a substantial increase in landing fees at the airport. The District Court for the Central District of California dismissed the airline complaint in February 1994, citing among other things the lack of a private right of action for complaints under the Anti-Head Tax Act.

Even though no administrative complaint was filed in the Los Angeles case, the Department of Transportation

became involved after the City announced that airlines that did not pay the new fees would be barred from operation at the airport. In November 1993, Secretary of Transportation Federico Peña convened the parties to the dispute in Washington, DC, to assist in a settlement of the controversy. The product of the ensuing discussions was an agreement by the parties that permitted continued litigation of the issues without the threat of interruption of air service to the traveling public.

Shortly after the Los Angeles discussions, Secretary Peña issued a letter, dated December 10, 1993, outlining the Department's prospective policy on involvement in airport-airline fee disputes. The Secretary noted the significant potential impact on air travelers and on the national air transportation system of unresolved airport-airline disputes. While reaffirming the Department's historic reliance on good faith negotiations and agreement by the local parties, the Secretary announced a more active and engaged approach to disputes that could not be resolved at the local level. The letter included the Secretary's direction to the FAA to streamline the procedural rules for handling airport-airline fee disputes. In keeping with the approach announced by the Secretary, and the expressed need for a more effective, streamlined enforcement and adjudication procedure, the FAA proposes the adoption of a revised and updated procedural rule adapted specifically to the investigation and adjudication of airport-related complaints within the jurisdiction of the FAA.

Existing FAR Part 13

At present, enforcement of the requirements imposed on airport proprietors as a condition of the acceptance of Federal grant funds or property is accomplished through the administrative procedures set forth in 14 CFR part 13. Requirements include, without limitation: (a) The obligation to provide access to the airport on fair and reasonable terms without unjust discrimination; (b) the prohibition on grants of exclusive rights; (c) the obligation to use all airport revenue on capital or operating costs of the airport, the sponsor's airport system or other transportation projects directly related to air transportation, consistent with 49 U.S.C. App. 2210(a)(12); (d) the obligation to make the airport as self-sustaining as possible; (e) the obligation to ensure that, to the maximum extent practicable, at least 10 percent of concession businesses are small business concerns owned and operated by socially and economically disadvantaged businesses (DBE's); and (f) the obligations pursuant to section 505(d) of the AAIA that at least 10 percent of AIP funds shall be expended with DBE's.

The application of part 13 procedures to enforcement of airport grant agreements began in 1979, largely as the result of the enactment of a civil rights statute, Section 30 of the Airport and Airway Development Act, as amended (ADAP). Section 30, reenacted as section 520 in the AAIA, as amended, is similar to Title VI of the Civil Rights Act (CRA), but is not an amendment to the CRA. For this reason, the Title VI administrative process provided in 49 CFR part 21 does not cover section 520 cases, and it was necessary to provide another avenue of administrative process for compliance matters.

Accordingly, the FAA added ADAP to the list of statutes in part 13 under which the Administrator conducts investigations. In 1988, the FAA amended the applicability provisions of part 13 to refer to the Airport and Airway Improvement Act of 1982 (AAIA) and to the Airport and Airway Safety and Capacity Expansion Act of 1987.

While the scope of part 13 was thereby enlarged to accommodate a range of airport enforcement matters, no attempt was made to revise the complaint or hearing procedures to address the particular requirements of airport cases. In the late 1980's, the number and complexity of complaints from aeronautical users regarding airport sponsor compliance with grant assurances and other Federal obligations began to increase. In 1987, an amendment to the AAIA compressed the time available to the agency to reach a final decision in a case in which grant funds could be withheld. In effect, section 519 of the AAIA, as amended in 1987, prohibits the Secretary from denying a grant of entitlement funds or from withholding payments under a grant for more than 180 days without providing opportunity for a hearing and issuing a determination of a violation. Using the complex formal hearing procedures of subpart D of part 13, it would be practically impossible to meet the 180-day deadline in the statute for completion of the entire hearing and final decision process. The difficulty of meeting the 180-day deadline arises from a number of characteristics of part 13:

- There are no explicit deadlines for completion of the investigative phase of a complaint.
- There is no guidance or direction on the processing of complaints that are treated as reports of violations under § 13.1. The absence of procedures for processing such cases has led to delays in disposition of cases, confusion as to the status of regional determinations under § 13.1 as judicially appealable final agency orders, and confusion over the procedures and standards for obtaining FAA headquarters review of regional determinations under § 13.1.
- The lack of more streamline adjudicatory procedures has tended to encourage the practice of submitting out-of-channel appeals and pleas for action directly to the Administrator and Secretary of Transportation. The submission of these requests diverts agency resources from investigations and leads to confusion regarding the contents of the administrative record.
- Some elements of part 13 today do not facilitate an expedited and definitive finding on compliance. For example, multiple, potentially duplicative an drawn-out hearings and the current administrative review process for hearing officer's decisions under subpart D make timely decisionmaking exceedingly difficult.
- FAA experience with part 13 indicates that some provisions permit parties to prolong litigation once the FAA has initiated formal proceedings. Subpart D of part 13 includes, for example, open-ended subpoena provisions, and permits discovery and motions practice without time limit if the hearing officer chooses to allow it. Also, part 13 places no clear limits upon the successive filing of dispositive motions under § 13.49 by all parties.

Part 13, in short, does not provide a structure that regularly facilitates the final administrative disposition of airports-related cases within prescribed time limits, and cannot be relied upon to afford expedited resolution of disputes that may be needed in major airline-airport cases. For these purposes, and consistent with the Secretary's direction for a more streamlined process, a new procedural rule is necessary to focus exclusively on airport matters; to avoid duplicative and unnecessary steps; and to offer expeditious treatment, especially in cases with substantial potential impact on air transportation. In support of these objectives, the rules proposed here would:

1. Require parties to undertake serious attempts at informal resolution of their dispute prior to the filing of a complaint.

2. Focus administrative resources as a priority on resolving complaints which,

if not expeditiously resolved, may result in substantial adverse impact on air transportation.

3. Provide for a single complaint procedure, rather than for formal and "informal" complaints as in part 13. This will avoid duplicate complaints and investigations on the same subject.

4. Limit "standing" to persons directly and substantially affected by the specific dispute at issue, i.e. persons with a substantial actual and present interest in the outcome of an issue that is ripe for decision. Part 16 could not be used to obtain advisory opinions on speculative actions or academic questions.

5. Set clear time limits on the actions of all parties, including the agency, from the time a complaint is filed through final agency decision.

6. Provide procedural flexibility, e.g., to shorten time limits and eliminate procedural steps in a particular proceeding, consistent with fairness to those affected, where circumstances require special expedition.

7. Promote the likelihood of informal resolution of cases by the affected air carrier and airport parties without expensive formal hearings, by rendering a public initial agency determination of compliance in a short time frame.

8. Limit the number of formal pleadings and require that the documentary evidence relied upon by the parties be submitted promptly with the pleadings.

9. Require that parties serve all pleadings and documents on each other and the FAA, and use overnight or hand-delivery when the need for expeditious resolution of the matter is particularly acute.

10. Provide for an expedited process for investigatory hearings that will provide a full record, without undue complexity, regarding proposed increases in airport rates and charges in cases of particular significance.

11. Provide hearing procedures that permit the scope of each hearing to be tailored to the complexity and circumstances of the particular case, and rely on briefing and oral argument where there are no genuine issues of material fact in dispute.

12. Clearly establish the burden that each party must carry to make its case.

13. Limit *amicus* participation to the filing of briefs.

14. Prohibit interlocutory appeals and requests for reconsideration, and focus instead on an effective appeals process.

Subparts A through I of the proposed rule set forth a comprehensive procedure for the filing, investigation, and adjudication of complaints filed with the FAA against airports, and for appeal of agency decisions regarding such complaints. Subpart J of the proposed rule includes a special procedure for the receipt and investigation of complaints by airlines against an airport alleging that an airport fee increase is unreasonable or unjustly discriminatory.

The normal complaint procedure would result in an initial determination by the agency, within approximately six months of the filing of a complaint, whether the airport was in violation of its Federal obligations. This time period would include two round of responsive pleadings by the complainant and respondent, and a reasonably expeditious investigation and preparation of decision by the FAA.

The special subpart J procedure would result in an initial determination within 120 days of the complaint. Typically, this determination would be whether the challenged rate was fair and reasonable within the meaning of the relevant statutes. Under subpart J, the agency would appoint a presiding officer who will act independently to conduct an expedited investigatory hearing on the complaint. The presiding officer would then prepare a report of investigation for transmittal to the Assistant Administrator for Airports, who would consider the hearing record and report in issuing the initial determination of compliance.

Both the investigatory hearing under subpart J and the adjudicatory hearing under subpart F would provide an open and fair process for efficient and expedited consideration of complaints involving Federally funded airports. In both procedures, the time allowed for issuance of a compliance decision represents a considered balance between the interest in expedited resolution of disputes and the need for adequate time for investigation and deliberation before issuing agency decisions in these potentially complex cases. In subpart J, for example, the relatively short time provided for an interim determination on a complaint is sufficient to allow for oral investigatory hearing.

Within the constraints imposed by the effort achieve expedition, the investigatory hearing would provide complainants and airports the opportunity to develop the record before the FAA through streamlined procedures that permit cross-examination, adversary process, and limited discovery. In the atypical case in which an adjudicatory hearing would be held (under section 519 of the AAIA or section 1002 of the FAAct), the proposed hearing procedures are intended to permit the FAA to complete compliance hearings within 180 days, while assuring that a sponsor receives a fair hearing and opportunity to present evidence and argument to support its position. That process would provide substantial procedural safeguards, although it would not conform in every respect to the provisions of the Administrative Procedure Act (APA). The hearings mandated by section 519 of the AAIA and section 1002 of the FAAct are not an "agency adjudication required by statute to be determined on the record after opportunity for an agency hearing" within the meaning of section 554 of the APA. Accordingly, provisions of section 554 of the APA do not apply to the adjudicatory hearing proposed in this rule.

Description of the Proposed Rule

Subpart A—General Provisions

Subpart A would include provisions of general applicability to proceedings brought under part 16, definitions of terms used in the regulation, and a provision on separation of functions.

The regulation would apply to complaints, investigations and adjudications regarding compliance by airports with the following:

(a) Sections 308 and 1113 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. 1347 and 1513;

(b) Obligations contained in grant-in-aid agreements (grant assurances) issued under airport financial assistance legislation enacted over the years, and obligations directly imposed by that legislation (including obligations relating to use of disadvantaged business enterprises); and

(c) Obligations contained in deeds of transfer for property transferred from the United States to airport proprietors (proposed section 16.1(a)).

The proposed regulation would also specify that if a grant assurance concerns a requirement that is within the authority of another Federal agency, that agency's administrative processes should be used and that the FAA would defer to the other Federal agency's authority (proposed § 16.1(b)). For example, the grant assurances require compliance with the Davis-Bacon Act relating to the payment of union-scale wages on Federally funded construction projects. Allegations of violation of the Davis-Bacon Act would continue to be adjudicated by the Department of Labor, not by the FAA under proposed part 16.

The proposed definitions (proposed section 16.3) are for the most part derived from the definitions of like or similar terms in 14 CFR part 13. The proposed definition of agency attorney

would specify the FAA attorneys who can be responsible for investigating and prosecuting complaints. To assure compliance with the proposed rules on separation of functions in cases that go on to hearings under proposed subpart F, attorneys holding certain positions and working in certain offices of the FAA would be precluded from functioning as agency attorneys at any stage of the proceedings. Such attorneys would be available to advise the FAA decisionmaker or to serve as a hearing officer.

The proposed definition of hearing officer would require the hearing officer to be an attorney. FAA attorneys holding certain positions and working in specific offices would be precluded from functioning as hearing officers to assure compliance with the proposed rule on separation of functions.

Proposed § 16.5, requiring the separation of prosecutorial and adjudicatory functions in hearings, is based on FAR § 13.203, relating to civil penalty adjudications. Separation of functions is not required by statute because hearings under part 16 would not be subject to APA hearing requirements; however, the separation is provided to promote confidence in the impartiality and integrity of decisions under the new procedures. Separation of prosecutorial and adjudicatory functions would be provided from the time of the issuance of an initial determination in all cases in which an opportunity for hearing is provided, including cases in which the respondent waives hearing and appeals the initial determination in writing to the Administrator. When separation applies, the Assistant Administrator for Airports would be considered as performing the investigatory and prosecutorial function and would not participate in the decision of the Administrator or hearing officer.

Subpart B—General Rules Applicable to Complaints, Proceedings, and Appeals Initiated by the FAA

This subpart would apply to all phases of the investigations and adjudications under this part.

Proposed § 16.11 would provide for expediting any portion of an investigation or adjudication. While the normal procedures in this proposal are designed to be completed efficiently, in some circumstances there is a need to resolve an issue even more quickly. The section would authorize the Assistant Administrator for Airports to take a variety of steps appropriate to the particulars of any given case. The section is intended to provide flexibility to adopt such special procedures to assure sufficiently rapid decisionmaking and procedural fairness in the circumstances of the individual case.

The proposed rules on filing and service of documents, computation of time, and motions (proposed §§ 16.13, 16.15, 16.17, and 16.19), are based on similar provisions in the Federal Rules of Civil Procedure, the Department's Rules of Practice in Proceedings (14 CFR part 302), the Rules of Practice in Civil Penalty Actions (14 CFR part 13 subpart G), and the National Transportation Safety Board's Rules of Practice in Air Safety Proceedings (49 CFR part 821). These rules have been used for many years, are well-know to the aviation bar, and have proven to be effective.

Subpart C—Special Rules Applicable to Complaints.

Under proposed § 16.21, a potential complainant, *i.e.*, a person directly affected by the alleged noncompliance, would be required to engage in good faith efforts to resolve the disputed matter informally with potentially responsible respondents before filing a complaint with the FAA under part 16. Informal resolution may include mediation, arbitration, use of a dispute resolution board, or other form of third-party assistance. The Department's preference for informal resolution in lieu of formal complaint to the FAA is clearly stated in the notice of proposed policy statement published concurrently with this proposed rule.

Under this section, it would be necessary for the potential complainant or his representative to certify that good faith efforts had been made to achieve informal resolution. To protect the parties, and for consistency with Rule 408 of the Federal Rules of Evidence, the certification would not include information on monetary or other settlement offers made but not agreed upon in writing.

Section 16.23 Complaints, Answers, and Other Documents

Section 16.23 would specify the information to be included in a complaint, the additional pleadings allowed and the information to be contained therein, and the method for filing a motion to dismiss. In addition, it would shift to the complainant and the respondent the burden of providing all available supporting documents on which they rely and serving them upon all parties as specified in § 16.15.

Finally, it would provide that the FAA will have 20 days to docket and review the complaint. In the event that the complaint is not dismissed, the FAA will notify both the complainant and named respondent in writing within 20 days after the complaint is received that an answer shall be filed within 20 days of the date of service of the notification. The complainant's reply is due within 15 days of the answer, and the respondent's rebuttal, if any, is due within 15 days of the reply.

Section 16.25 Dismissals

Complaints that clearly do not state a cause of action that warrants investigation by the jurisdiction of the Administrator, as well as those that do not come within the jurisdiction of the Administrator under the authorities set forth in this part, would be dismissed with prejudice, within 20 days after receipt of the complaint. As a final order of the agency, a dismissal would be appealable to a United States Court of Appeals.

Section 16.27 Incomplete Complaints

Section 16.27 deals with a second category of complaint—one which states a *prima facie* cause of action and falls within the jurisdiction of the Administrator but is deficient as to one or more of the filing requirements set forth in § 16.23(b). Incomplete complaints would be dismissed within 20 days after the receipt of the complaint, without prejudice. Since the complainant would be able to refile, this dismissal would not be appealable to the FAA decision-maker or to a United States Court of Appeals.

Section 16.29 Investigations

Under § 16.29, where the FAA finds reasonable grounds to investigate the matters described in a complaint, it would conduct an investigation. Where there is little dispute about factual matters, or where documentary submissions alone are deemed sufficient to make a record for decision, the investigation may consist entirely of a review of the arguments and materials submitted by the parties in pleadings, *i.e.*, the complaint, answer, reply, and rebuttal. The FAA may rely on this review for its initial determination on compliance. Because the FAA could rely exclusively on information and documentary evidence filed with the pleadings, parties would be expected to provide thorough submissions in order to protect their interests.

Alternatively, the FAA could supplement the submissions by requesting additional information from a party or by field investigation if appropriate. Further, if necessary information is not furnished voluntarily the FAA could use its authority under the FAAct and the AAIA to subpoena witnesses for deposition and production of documents. By permitting the FAA to

render its initial determination based on the pleadings and material submitted therein, this section in effect permits the grant of initial summary judgment.

Section 16.31 Initial Determinations After Investigations

Section 16.31 provides procedures for issuance of the FAA's initial determinations and orders, and for issuance of the final decision on appeal of the initial determination in cases that do not involve a hearing. The Assistant Administrator for Airports, or a designee, would issue an initial determination in every case in which the FAA investigates a complaint. The agency would be required to issue an initial determination in 120 days from the due date of the last pleading (*i.e.*, reply or rebuttal), but the date could be extended for up to 60 days for good cause, or due to delay caused by the complainant. If there is no appeal of the initial determination, it would become the final decision of the Administrator. If a party adversely affected by the initial determination does not file an administrative appeal, the FAA proposes that the final decision would not be judicially reviewable.

The initial determination is intended to provide a prompt and authoritative indication of the agency position on a complaint. Consistent with the view that local parties are best positioned to resolve disputes, the initial determination should provide guidance to airport proprietors and airport users in resolving the matter without further process. While the initial determination can be appealed, the FAA expects that in many instances the initial decision would resolve the issues raised in the complaint to the satisfaction of the parties. In such cases, the parties may find it more beneficial to negotiate a solution based on the FAA's initial position than to continue to litigate the matter.

Section 16.33 Final Decision Without Hearing

If the initial determination finds the sponsor in compliance and dismisses the complaint, the complainant could appeal the determination by a written appeal to the Administrator within 30 days. Reply briefs could be filed within 20 days, and the Administrator would be required to issue a final agency decision on appeal within 30 days of the due date for the reply briefs. The FAA would not provide opportunity for a hearing on the dismissal of a complaint.

If the initial determination contains a finding of noncompliance and the respondent is entitled to a hearing, the determination would provide the sponsor the opportunity elect an oral evidentiary hearing under subpart F. The procedure for electing or waiving a hearing is set forth in Subpart E. If the respondent waives hearing and instead elects to file a written appeal to the Administrator, a final decision would be issued by the Administrator or a designee under § 16.33.

Subpart D—Special Rules Applicable to Proceedings Initiated by the FAA

Section 16.101 would make clear the FAA's continuing authority to initiate its own investigation of any matter within the applicability of this part without having received a complaint, as authorized by section 313 and section 1002 of the Federal Aviation Act and section 519 of the Airport and Airway Improvement Act.

Section 16.103 serves three purposes: (1) To require a notice setting forth the specific areas of concern to the FAA, following the initiation of an investigation; (2) to establish the time limit for a response; and (3) to encourage and provide time for informal resolution. In the event the issues raised are not resolved informally, the FAA could proceed to issue an initial determination under § 16.31.

Subpart E—Proposed Orders of Compliance

Subpart E is similar to § 13.20 of part 13, but provides a more streamlined and expedited procedure for the sponsor to elect to exercise the option of requesting a hearing, in keeping with the purpose of proposed part 16. If the initial determination proposes a sanction against the sponsor subject to section 519(b) of the AAIA or section 1002 of the FAAct, the respondent could file a request for hearing within 30 days after service of the determination. If the respondent elects a hearing, the agency will issue a hearing order.

Alternatively, if the respondent waives hearing and instead files a written appeal (within 30 days), the Administrator would issue a final decision in accordance with the procedures set forth in § 16.33.

During the 30-day period before an election of hearing or written appeal is due, the respondent and complainant would be encouraged to negotiate a resolution of the dispute based on the initial determination.

If the respondent fails to respond, the initial determination becomes final.

Subpart F—Hearings

Proposed subpart F would state the procedures for initiating and conducting adjudicative hearings. The hearing order, issued by the Deputy Chief Counsel under proposed § 16.201, would set the scope of the hearing by identifying the issues to be resolved, as well as assigning the hearing officer.

If no material facts that require oral examination of witnesses are in dispute, the hearing could be limited to submission of briefs and oral argument. If the hearing follows an investigatory hearing under subpart J, the record from the subpart J proceeding would be made part of the adjudicative hearing record, and the hearing officer could limit the submission of evidence to avoid duplication of the prior proceeding.

In the hearing, the agency attorney would represent the agency's position before the hearing officer, and would have the same status as any other representative of a party.

The proposed rules include commonly used adjudicatory procedures such as representation of the parties by attorneys, intervention, participation by non-parties, pretrial procedures and discovery, the availability of compulsory process to obtain evidence, and procedures for use at the hearing. They are based on similar provisions in the Federal Rules of Civil Procedure, the Department's Rules of Practice in Proceedings (14 CFR Part 302), the Rules of Practice in Civil Penalty Actions (14 CFR part 13 subpart G), and the National Transportation Safety Board's Rules of Practice in Air Safety Proceedings (49 CFR part 821). These provisions are intended to provide the parties with a reasonable opportunity to prepare their cases, while allowing the process to be completed expeditiously.

Subpart G—Initial Decisions, Orders and Appeals

Proposed subpart G provides procedures for issuance of initial decisions and orders by hearing officers, appeals of the initial decision to the FAA decisionmaker and for the issuance of consent orders. Proposed § 16.241 governing initial decisions and administrative appeals is based on 14 CFR 13.20(g)–(i). However, shorter time periods are provided to accommodate the time limits of section 519 of the AAIA. In addition, the proposed rule would include a provision for *sua sponte* review of an initial decision by the FAA decisionmaker, consistent with the practice under 14 CFR 302.28(d).

Proposed § 16.243 governing disposal of cases by consent orders is derived from 14 CFR 13.13.

Subpart H—Judicial Review

Proposed Subpart H would contain rules applicable to judicial review of final agency orders. Proposed

§ 16.247(a) would set forth the basic authority to seek judicial review. The provision is based on 14 CFR 13.235. Specific reference to section 519(b)(4) of the AAIA has been added. Proposed § 16.247(b) would identify FAA decisions and actions under part 16 that the FAA does not consider to be judicially reviewable final agency orders.

Subpart I—Ex Parte Communications

The proposed rule on *ex parte* communications is based on subpart J of the Rules of Practice in Air Safety Proceedings of the NTSB, 49 CFR Part 821, subpart J.

Subpart J—Alternate Procedure for Certain Complaints Concerning Airport Rates and Charges

Proposed subpart J would provide a special procedure for the expedited resolution of certain significant disputes involving the fees that airport operators charge airlines. The procedure would involve a formal investigation, including an evidentiary investigative hearing. The concept of the investigatory hearing derives from subpart F of part 13. However, special provisions governing the conduct of discovery, hearing, and initial determination in the subpart J proceeding are intended to assure that the investigative process can be completed within the time frame provided in the rule. If the conditions for the use of subpart J are met, the airline filing the complaint could request either the subpart J procedure or the investigatory procedures under § 16.29.

Proposed § 16.401 sets forth the conditions necessary to request the special procedure. A subpart J proceeding would be available only to carriers holding authority under sections 401, 402, or 418 of the FAAct or operating under an exemption for scheduled service under 14 CFR part 298.

A complaint requesting subpart J procedures would have to meet the general requirements of Part 16 and the complainant would have to request the use of subpart J procedures. In addition, subpart J would only be available for a complaint alleging that an increase in an airport rate or charge is unreasonable or unjustly discriminatory. The request would be granted if the Assistant Administrator for Airports determines that the complaint involves an issue that if not resolved in an expedited manner could have a significant adverse impact on air transportation. The FAA also proposes that subpart J could be used when the Assistant Administrator for Airports determines that a complaint raises a significant policy issue, without regard to the significance of the potential impacts of the case.

The subpart J proceeding would be more than usually resource-intensive for the agency, because of the expedited schedule and the formal investigatory hearing. The limitation of complainants under subpart J to scheduled air carriers and the limitation of the subject matter to significant disputes over airport fees is intended, therefore, to limit use of agency resources for an expedited hearing procedure to those cases that have the greatest potential effect on the traveling public.

Section 16.403 would establish requirements for the filing of complaints and would establish procedures for ruling on the request for use of subpart J procedures. The Administrator would rule on the request for use of subpart J procedures within seven days. If the complaint did not meet the requirements for use of subpart J but otherwise satisfied part 16, the complaint would be processed under subparts B and C exclusively.

If the Assistant Administrator for Airports determined to employ subpart J procedures, the respondents would be required to file an answer within 21 days of the Administrator's notice.

Under § 16.405, the Assistant Administrator for Airports would issue a notice and order of investigation within seven days after the answer is served. The notice and order of investigation would identify the presiding officer for the investigation, the allegations and scope of investigation and the date by which the presiding officer is directed to issue a report of investigation. The report will generally be due 60 days after the answer was filed. Under § 16.407, the presiding officer may not be an agency attorney, as defined in subpart A, or a person otherwise involved in the investigation of airport compliance matters. Accordingly, while the presiding officer could be an FAA or other DOT attorney, or another FAA employee with experience relevant to the issue, the presiding officer would not be a person with any prior involvement in the case at hand or a person whose regular duties involved enforcement of airport compliance.

Proposed § 16.411 sets forth procedures for a subpart J investigation, including an expedited investigatory hearing. The procedures are derived from existing part 13 and the hearing procedures in proposed part 16, subpart F.

Proposed § 16.413 would require the preparation of a report of investigation which would be provided to the Assistant Administrator and served on the parties. Under proposed § 16.415, the Assistant Administrator would issue an initial determination after review of the record developed in the investigation, including the presiding officer's report. The initial determination would be appealable to the Administrator or his designee under the provisions of § 16.31.

Proposed § 16.415 would provide for automatic suspension, 30 days after the initial determination, of eligibility to receive new Airport Improvement Program grants or payments under existing grants if the initial determination finds that the challenged rate or charge is unreasonable or unjustly discriminatory. However, the suspension would be deferred if the respondent issued an appropriate rescission of the disputed rate or charge pending completion of the proceeding under part 16.

Request for Comments

Interested persons are invited to comment on any aspect of the proposed rules. The FAA is particularly interested in comment on the following issues:

1. Whether the proposed rule strikes the right balance between providing an opportunity to be heard, on the one hand, and producing an expeditious agency decision, on the other.
2. Whether the overall time frames provided from complaint to initial agency determination and from appeal to final agency decision are practical.
3. Whether the particular time limits provided for each procedural step are adequate.
4. The placement of responsibility for investigation, hearing, and adjudication of complaints received by the FAA.

Regulatory Evaluation Summary

This notice proposes to adopt a new procedure for the filing, investigation, and adjudication of complaints against airports for violation of certain statutes administered by the FAA. The new procedures would be substituted for existing procedures under 14 CFR part 13. While the proposed rule differs in many details from the existing rule, the costs to a complainant and respondent involved in the complaint process would be virtually identical to the costs involved under the existing rule. Accordingly, the expected economic impact of this proposed amendment would be so minimal that a full Regulatory Evaluation is not warranted.

International Trade Impact Statement

This rule is not anticipated to affect the import of foreign products or

services into the United States or the export of U.S. products or services to foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the potential relief that the rule will provide and the criteria of implementing FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Federalism Implications

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

Paperwork Reduction Act

This proposed rule contains no information collection requirements that require approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*)

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Analysis, the FAA has determined that this proposed regulation is not economically significant under Executive Order 12866. However, due to the public interest in this rulemaking, this proposed rule is considered significant under the Executive Order. The FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1978).

List of Subjects

14 CFR Part 13

Enforcement procedures, Investigations, Penalties.

14 CFR Part 16

Enforcement procedures, Investigations.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend part 13 and adopt new part 16 of the Federal Aviation Regulations (14 CFR parts 13 and 16) as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 49 U.S.C. 106(g) and 322; 49 U.S.C. App. 1354(a) and (c), 1374(d), 1401–1406, 1421–1432, 1471–1473, 1481, 1482, 1484–1489, 1523, 1655(c), 1808–1810, 2157(e) and (f), 2218, 2219; 16 U.S.C. 6002, 6004; 49 CFR 1.47.

2. Section 13.3 is amended by adding paragraph (d), to read as follows:

§ 13.3 Investigations (general).

* * * * *

(d) A complaint against the sponsor, proprietor, or operator of a Federally-assisted airport shall be filed in accordance with the provisions of part 16 of this chapter. Notwithstanding other provisions of this part, complaints, investigations, and agency decisions involving violations of the legal authorities listed in § 16.1 of this chapter are governed exclusively by the provisions of part 16 of this chapter.

3. A new part 16 is added to read as follows:

PART 16—RULES OF PRACTICE FOR FEDERALLY ASSISTED AIRPORT ENFORCEMENT PROCEEDINGS

Subpart A—General Provisions

Sec.

16.1 Applicability and description of part.
16.3 Definitions.
16.5 Separation of functions.

Subpart B—General Rules Applicable to Complaints, Proceedings Initiated by the FAA, and Appeals

16.11 Expedition and other modification of process.
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Subpart G—Initial Decisions, Orders and Appeals

16.241 Initial decisions, orders, and appeals.
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16.301 Definitions.
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16.401 Availability of alternate complaint procedure
16.403 Answer and other documents.
16.405 Notice and order of investigation
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16.409 Parties.
16.411 Investigation procedures.
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16.415 Initial determination.
16.417 Eligibility for grants pending final agency decision.

Authority: 49 U.S.C. 106(g), 322; 49 U.S.C. 1110, 1111, and 1115; 49 U.S.C. App. 1349

(a) and (c), 1354 (a) and (c), 1482 (a), (b) and (c), 1486, and 1513 (a) through (d) and (f); 49 U.S.C. 1718 (a) and (b), 1719, 1723, 1726 and 1727; 49 U.S.C. App. 2204 (a), (b), (c), (d) and (h), 2210(a), 2211(a), 2215, 2218, 2219, and 2222(c); 50 U.S.C. App. 1622(g); 49 U.S.C. App. 1655(c); 49 CFR 1.47.

Subpart A—General Provisions

§ 16.1 Applicability and description of part.

(a) *General.* The provisions of this part govern all proceedings involving Federally-assisted airports, whether the proceedings are instituted by order of the FAA or by filing with the FAA of a complaint, under the following authorities:

(1) Section 308 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. 1349, prohibiting the grant of exclusive rights for the use of any landing area or air navigation facility on which Federal funds have been expended.

(2) Requirements of the Anti-Head Tax Act, section 1113 (a) through (d) of the Federal Aviation Act, 49 U.S.C. App. 1513 (a)–(d).

(3) The assurances contained in grant-in-aid agreements issued under the Federal Airport Act of 1946, 49 U.S.C. 1101 *et seq.*

(4) The assurances contained in grant-in-aid agreements issued under the Airport and Airway Development Act of 1970, as amended, 49 U.S.C. 1701, *et seq.*

(5) The assurances contained in grant-in-aid agreements issued under the Airport and Airway Improvement Act of 1982, as amended, (AAIA) 49 U.S.C. App. 2201 *et seq.*, specifically section 511(a), 49 U.S.C. App. 2210(a).

(6) Section 505(d) of the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. App. 2214(d).

(7) Obligations contained in property deeds for property transferred under to section 16 of the Federal Airport Act (49 U.S.C. 1115), section 23 of the Airport and Airway Development Act (49 U.S.C. 1723), or section 516 of the Airport and Airway Improvement Act (49 U.S.C. App. 2215).

(8) Obligations contained in property deeds for property transferred under the Surplus Property Act (50 U.S.C. 1622(g)).

(b) *Other agencies.* Where a grant assurance concerns a statute, executive order, regulation, or other authority that provides an administrative process for the investigation or adjudication of complaints by a Federal agency other than the FAA, complaints shall use the administrative process established by those authorities. Where a grant assurance concerns a statute, executive order, regulation, or other authority that enables a Federal agency other than the FAA to investigate, adjudicate, and enforce compliance under those authorities on its own initiative, the FAA may defer to that Federal agency.

(c) *Other enforcement.* If a complaint or action initiated by the FAA involves a violation of the Federal Aviation Act or FAA regulations, except as specified in paragraphs (a)(1) and (a)(7) of this section, the FAA may take investigative and enforcement action under 14 CFR part 13, "Investigative and Enforcement Procedures."

(d) *Effective date:* This part applies to a complaint filed with the FAA on or after [effective date of final rule].

§ 16.3 Definitions.

Terms defined in the Acts are used as so defined. As used in this part:

Act means a statute listed in § 16.1 of this part or any regulation, agreement, or document of conveyance issued or made under that statute.

Administrator means the Administrator or his designee.

Agency attorney means the Deputy Chief Counsel; the Assistant Chief Counsel and attorneys in the Airports/Environmental Law Division of the Office of the Chief Counsel; the Assistant Chief Counsel and attorneys in an FAA region or center who represent the FAA during the investigation of a complaint or at a hearing on a complaint, and who prosecute on behalf of the FAA, as appropriate. An agency attorney shall not include the Chief Counsel, the Assistant Chief Counsel for Litigation, or any attorney on the staff of the Assistant Chief Counsel for Litigation who advises the FAA decisionmaker regarding an initial decision of the hearing officer or any appeal to the decisionmaker or who is supervised in that action by a person who provides such advice in an action covered by this part.

Assistant Administrator means the Assistant Administrator for Airports.

Complainant means the person submitting a complaint.

Complaint means a written document meeting the requirements of this part filed with the FAA by a person directly and substantially affected by anything allegedly done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator.

FAA decisionmaker means the Administrator of the FAA or any person to whom the Administrator has delegated the authority to issue a final decision and order of the Administrator on appeal from the initial decision of a hearing officer.

File means to submit written documents to the FAA for inclusion in the Enforcement Docket or to a hearing officer or presiding officer as appropriate.

Final decision and order means a final agency decision on the disposition of a complaint or on a respondent's compliance with any Act, as defined in this section, and directs appropriate action. A final decision and order that finds noncompliance may direct any sanction authorized by applicable laws.

Hearing officer means an attorney designated by the FAA in a hearing order to serve as a hearing officer in a hearing under this part. The following are not designated as hearing officers: the Chief Counsel and Deputy Chief Counsel; the Assistant Chief Counsel and attorneys in the FAA region or center in which the noncompliance has allegedly occurred or is occurring; and the Assistant Chief Counsel and attorneys in the Airports and Environmental Law Division of the FAA Office of the Chief Counsel.

Initial decision means a decision made by the hearing officer in a hearing under subpart F of this part.

Initial determination means a non-final agency decision following an investigation, including an investigation by investigative hearing under subpart J of this part.

Mail means U.S. first class mail; U.S. certified mail; and U.S. Express mail.

Noncompliance means anything done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator.

Party means the complainant(s) and the respondent(s) named in the complaint and, when an initial determination providing an opportunity for hearing is issued under § 16.31 and subpart E of this part, the agency.

Person means an individual, professional or other association, business or other private organization, including a sole proprietorship, partnership, or corporation, or a State or any agency of a State, such as a municipality or other political subdivision of a State, a tax-supported organization, or an Indian tribe or pueblo.

Personal delivery means hand delivery or overnight express delivery service.

Presiding officer means a person designated by the Assistant Administrator to preside over the investigation provided in subpart J of this part, who is neither an agency attorney as defined in this section or a

person otherwise engaged in the investigation of airport compliance.

Respondent means any person named in a complaint as a person responsible for things done or omitted to be done in contravention of any provision of any Act as to matters within the jurisdiction of the Administrator.

Sponsor means:

(1) Any public agency which, either individually or jointly with one or more other public agencies, has received Federal financial assistance for airport development or planning under the Federal Airport Act, Airport and Airway Development Act or Airport and Airway Improvement Act.

(2) Any private owner of a public-use airport who has received financial assistance from the FAA for such airport; and

(3) Any person to whom the Federal government has conveyed property for airport purposes under section 13(g) of the Surplus Property Act of 1944, as amended.

§ 16.5 Separation of functions.

(a) Proceedings under this part, including hearings under subpart F of this part, will be prosecuted by an agency attorney.

(b) After issuance of an initial determination in which the FAA provides the opportunity for a hearing, an agency employee engaged in the performance of investigative or prosecutorial functions in a proceeding under this part will not, in that case or a factually related case, participate or give advice in an initial decision by the hearing officer, a final decision by the Administrator or designee on written appeal, or final decision by the FAA decisionmaker, and will not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the hearing officer, the Administrator on written appeal, the FAA decisionmaker, or agency employees advising those officials in that capacity.

(c) The Chief Counsel, the Assistant Chief Counsel for Litigation, or an attorney on the staff of the Assistant Chief Counsel for Litigation advises the FAA decisionmaker regarding an initial decision, an appeal, or a final decision regarding any case brought under this part.

Subpart B—General Rules Applicable to Complaints, Proceedings Initiated by the FAA, and Appeals

§ 16.11 Expedition and other modification of process.

Under the authority of 49 U.S.C. 1354(a) and 2218(a), the Assistant Administrator may conduct investigations, issue orders, and take such other actions as are necessary to fulfill the purposes of this part, including the extension of any time period prescribed where necessary or appropriate for a fair and complete hearing of matters before the agency. Notwithstanding any other provision of this part, upon finding that circumstances require expedited handling of a particular case or controversy, the Assistant Administrator may issue an order directing any of the following prior to the issuance of an initial determination:

(a) Shortening the time period for any action under this part consistent with due process;

(b) If other adequate opportunity to respond to pleadings is available, eliminating the reply, rebuttal, or other actions prescribed by this part;

(c) Authorizing a presiding officer to adopt expedited procedures;

(d) Designating alternative methods of service; or

(e) Directing such other measures as may be required.

§ 16.13 Filing of documents.

Except as otherwise provided in this part, documents shall be filed with the FAA during a proceeding under this part as follows:

(a) *Filing address.* Documents to be filed with the FAA shall be filed with the Office of the Chief Counsel, Attention: FAA Enforcement Docket (AGC–10), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591. Documents to be filed with a hearing officer shall be filed at the address stated in the hearing order. Documents to be filed with a presiding officer shall be filed at the address stated in the notice of investigation.

(b) *Date and method of filing.* Filing of any document shall be by personal delivery or mail as defined in this part, or by facsimile (when confirmed by filing on the same date by one of the foregoing methods). Unless the date is shown to be inaccurate documents to be filed with the FAA shall be deemed to be filed on the date of personal delivery, on the mailing date shown on the certificate of service, on the date shown on the postmark if there is no certificate of service, on the send date shown on the facsimile (provided filing has been confirmed through one of the foregoing methods), or on the mailing date shown by other evidence if there is no certificate of service and no postmark.

(c) *Number of copies.* Unless otherwise specified, an executed original and three copies of each document shall be filed with the FAA Enforcement Docket. Copies need not be signed, but the name of the persons signing the original shall be shown. If a hearing order or notice and order of investigation has been issued in the case one of the three copies shall be filed with the hearing officer or presiding officer. If filing by facsimile, the facsimile copy does not constitute one of the copies required under this section.

(d) *Form.* Documents filed with the FAA shall be typewritten or legibly printed. In the case of docketed proceedings, the document shall include the docket number of the proceeding on the front page.

(e) *Signing of documents and other papers.* The original of every document filed shall be signed by the person filing it or the person's duly authorized representative. The signature shall serve as a certification that the signer has read the document and, based on reasonable inquiry and to the best of the signer's knowledge, information, and belief, the document is—

(1) Consistent with this part;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the administrative process.

(f) *Designation of person to receive service.* The initial document filed shall state on the first page the name, post office address, telephone number, and facsimile number, if any, of the person(s) to be served with documents in the proceeding. If any of these items change during the proceeding, the person shall promptly file notice of the change with the FAA Enforcement Docket and the hearing officer and shall serve the notice on all parties.

(g) *Docket numbers.* Each submission identified as a complaint under this part by the submitting person will be assigned a docket number.

§ 16.15 Service of documents on the parties and the agency.

Except as otherwise provided in this part, documents shall be served as follows:

(a) *Who must be served.* Copies of all documents filed with the FAA Enforcement Docket shall be served by the persons filing them on all parties to the proceeding. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on the FAA and all parties. Certificates of service

shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and facsimile numbers (if also served by facsimile) by [specify method of service]:

[list persons, addresses, facsimile numbers]

Dated this _____ day of _____, 19 _____.

[signature], for [party]

(b) *Method of service.* Except as otherwise agreed by the parties and the hearing officer, the method of service is the same as set forth in § 16.13(b) for filing documents.

(c) *Where service shall be made.* Service shall be made to the persons identified in accordance with § 16.13(f). If no such person has been designated, service shall be made on the party.

(d) *Presumption of service.* There shall be a presumption of lawful service—

(1) When acknowledgment of receipt is by a person who customarily or in the ordinary course of business receives mail at the address of the party or of the person designated under § 16.13(f).

(2) When a properly addressed envelope, sent to the most current address submitted under § 16.13(f), has been returned as undeliverable, unclaimed, or refused.

(e) *Date of service.* The date of service shall be determined in the same manner as the filing date under § 16.13(b).

§ 16.17 Computation of time.

This section applies to any period of time prescribed or allowed by this part, by notice or order of the hearing officer or presiding officer, or by an applicable statute.

(a) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this part.

(b) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, or legal holiday for the FAA, in which case, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(c) Whenever a party has the right or is required to do some act within a prescribed period after service of a document upon the party, and the document is served on the party by mail, 5 days shall be added to the prescribed period.

§ 16.19 Motions.

(a) *General.* An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Unless otherwise ordered by the agency, the filing of a motion will not stay the date that any action is permitted or required by this part.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing, shall state with particularity the relief sought and the grounds for the relief sought, and shall be accompanied by affidavits or other evidence relied upon. Motions introduced during hearings may be made orally on the record, unless the hearing officer or presiding officer directs otherwise.

(c) *Answers to motions.* Except as otherwise provided in this part, or except when a motion is made during a hearing, any party may file an answer in support of or in opposition to a motion, accompanied by affidavits or other evidence relied upon, provided that the answer to the motion is filed within 10 days after the motion has been served upon the person answering, or any other period set by the hearing officer. Where a motion is made during a hearing, the answer and the ruling thereon may be made at the hearing, or orally or in writing within the time set by the hearing officer or presiding officer.

Subpart C—Special Rules Applicable to Complaints

§ 16.21 Pre-complaint resolution.

(a) Prior to filing a complaint under this part, a person directly and substantially affected by the alleged noncompliance shall initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance. These efforts at informal resolution may include, without limitation, at the parties' expense, mediation, arbitration, use of a dispute resolution board.

(b) A complaint under this part will not be considered unless the person or authorized representative filing the complaint certifies that he or she has engaged in substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint and that there appears no reasonable prospect for timely resolution of the dispute. This certification shall include a brief description of the party's efforts to obtain informal resolution but shall not include information on monetary or other settlement offers made but not agreed upon in writing by all parties.

§ 16.23 Complaints, answers, replies, rebuttals, and other documents.

(a) A person directly and substantially affected by any alleged noncompliance may file a complaint with the Administrator.

(b) Complaints filed under this part shall—

(1) State the name and address of each person who is the subject of the complaint and, with respect to each person, the specific provisions of each Act that the complainant believes was violated;

(2) Be served, in accordance with § 16.15 of this part, along with all documents then available in the exercise of reasonable diligence, offered in support of the complaint, upon all persons named in the complaint as persons responsible for the alleged action(s) or omission(s) upon which the complaint is based;

(3) Provide a concise but complete statement of the facts relied upon to substantiate each allegation;

(4) Describe how the complainant was directly and substantially affected by the things done or omitted to be done by the respondents; and

(5) Comply with any additional or special requirements of subpart J of this part, if the complaint is brought under subpart J of this part.

(c) Unless the complaint is dismissed pursuant to § 16.25 or § 16.27, the FAA notifies the complainant and respondents in writing within 20 days after the date the FAA receives the complaint that the complaint has been docketed and that respondents are required to file an answer within 20 days of the date of service of the notification.

(d) The respondent shall file an answer within 20 days of the date of service of the FAA notification.

(e) The complainant may file a reply within 15 days of the date of service of the answer.

(f) The respondent may file a rebuttal within 15 days of the date of service of the complainant's rebuttal.

(g) The answer, reply, and rebuttal shall, like the complaint, be accompanied by supporting documentation upon which the parties rely.

(h) The answer shall deny or admit the allegations made in the complaint or state that the person filing the document is without sufficient knowledge or information to admit or deny any allegation, and shall assert any affirmative defense.

(i) The answer, reply, and rebuttal shall each contain a concise but complete statement of the facts relied upon to substantiate the answers, admissions, denials, or averments made.

(j) The respondent's answer may include a motion to dismiss the complaint, or any portion thereof, with a supporting memorandum of points and authorities. If a motion to dismiss

is filed, the complainant may respond as part of its rebuttal notwithstanding the 10-day time limit for answers to motions in § 16.19(c).

§ 16.25 Dismissals.

Within 20 days after the receipt of the complaint, the Assistant Administrator will dismiss a complaint, or any claim made in a complaint, with prejudice if it: Appears on its face to be outside the jurisdiction of the Administrator under the Acts listed in § 16.1; or on its face does not state a claim that warrants an investigation or further action by the FAA. The FAA will advise the person who filed the complaint or the person's duly authorized representative and the person(s) named in the complaint of the reasons for the dismissal.

§ 16.27 Incomplete complaints.

If a complaint is not dismissed pursuant to § 16.25, but is deficient as to one or more of the requirements set forth in § 16.21 or § 16.23(b), the Assistant Administrator will dismiss the complaint within 20 days after receiving it. Dismissal will be without prejudice to the refiling of the complaint after amendment to correct the deficiency. The FAA shall advise the person who filed the complaint or the person's duly authorized representative and the person(s) named in the complaint of the reasons for the dismissal.

§ 16.29 Investigations.

(a) If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA investigates the subject matter of the complaint.

(b) The investigation may include one or more of the following, at the sole discretion of the FAA:

(1) A review of the written submissions or pleadings of the parties, as supplemented by any informal investigation the FAA considers necessary and by additional information furnished by the parties at FAA request. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided under this subpart, and each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.

(2) Obtaining additional oral and documentary evidence by use of the agency's authority to compel production of such evidence under Section 313 of the Federal Aviation Act and Section 519 of the Airport and Airway Improvement Act. The Administrator's statutory authority to issue compulsory process has been delegated to the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Airports and Environmental Law, and each Assistant Chief Counsel for a region or center.

(3) Conducting, or requiring that a sponsor conduct, an audit of airport financial records and transactions, as provided in 49 U.S.C. 2210(a)(11) and 2217.

§ 16.31 Initial determinations after investigations.

(a) After consideration of the pleadings and other information obtained by the FAA after investigation, the Assistant Administrator will render an initial determination and provide it to each party by certified mail within 120 days of the date the last pleading specified in § 16.23 was due. The time for issuing an initial determination may be extended for a period of up to 60 days upon a written determination by the Assistant Administrator that:

(1) The additional time is necessary for investigation and analysis of the matters in the complaint; or

(2) The investigation has been delayed by actions of a complainant.

(b) The initial determination will set forth a concise explanation of the factual and legal basis for the Assistant Administrator's determination on each claim made by the complainant.

(c) A party adversely affected by the initial determination may appeal the initial determination to the Administrator as provided in § 16.33.

(d) If the initial determination finds the respondent in noncompliance and proposes the issuance of a compliance order, the initial determination will include notice of opportunity for a hearing under subpart F of this part. The respondent may elect or waive a hearing as provided in subpart E of this part.

§ 16.33 Final decisions without hearing.

(a) The Administrator will issue a final decision on appeal from an initial determination, without a hearing, where—

(1) The complaint is dismissed after investigation;

(2) A hearing is not required by statute and is not otherwise made available by the FAA; or

(3) The FAA provides opportunity for a hearing to the respondent and the respondent waives the opportunity for a hearing as provided in subpart E of this part.

(b) In the cases described in paragraph (a) of this section a party adversely affected by the initial determination may file an appeal with the Administrator within 30 days after the date of service of the initial determination.

(c) A reply to an appeal may be filed with the Administrator within 20 days after the date of service of the appeal.

(d) The Administrator will issue a final decision and order within 30 days after the due date of the reply.

(e) If no appeal is filed within the time period specified in paragraph (b) of this section, the initial determination becomes the final decision and order of the FAA without further action. An initial determination that becomes final because there is no administrative appeal is not judicially reviewable.

Subpart D—Special Rules Applicable to Proceedings Initiated by the FAA

§ 16.101 Basis for the initiation of agency action.

The FAA may initiate its own investigation of any matter within the applicability of this part without having received a complaint. The investigation may include, without limitation, any of the actions described in § 16.29(b).

§ 16.103 Notice of investigation.

Following the initiation of an investigation under § 16.101 of this part, the FAA sends a notice to the person(s) subject to investigation. The notice will set forth the areas of the agency's concern and the reasons therefor; request a response to the notice within 30 days of the date of service; and inform the respondent that the FAA will, in its discretion, invite good faith efforts to resolve the matter.

§ 16.105 Failure to resolve informally.

If the matters addressed in the FAA notices are not resolved informally, the FAA may issue an initial determination under § 16.31.

Subpart E—Proposed Orders of Compliance

§ 16.109 Orders terminating eligibility for grants, cease and desist orders, and other compliance orders.

This section applies to initial determinations issued under § 16.31 that provide the opportunity for a hearing.

(a) The agency will provide the opportunity for a hearing if, in the initial determination, the agency proposes to issue an order terminating eligibility for grants, an order suspending the payment of grant funds, a cease and desist order, an order directing the refund of fees unlawfully collected, or any other compliance order issued by the Administrator to carry out the provisions of the Acts. In cases in which a hearing is not required by statute, the FAA may provide

opportunity for a hearing at its discretion.

(b) In a case in which the agency provides the opportunity for a hearing, the initial determination issued under § 16.31 will include a statement of the availability of a hearing under subpart F of this part.

(c) Within 30 days after service of an initial determination under § 16.31 and paragraph (b) of this section, a person subject to the proposed compliance order may—

(1) Request a hearing under subpart F of this part;

(2) Waive hearing and appeal the notice in writing to the Administrator, as provided in § 16.33;

(3) File, jointly with the complainant, a motion to withdraw the complaint and to dismiss the proposed compliance action; or

(4) Submit, jointly with the agency attorney, a proposed consent order under § 16.243(e).

(d) If the respondent fails to request a hearing or to file an appeal in writing within the time periods provided in paragraph (c) of this section, the initial determination becomes final.

Subpart F—Hearings

§ 16.201 Notice and order of hearing.

(a) If a respondent is provided the opportunity for hearing in an initial determination and does not waive hearing, the Deputy Chief Counsel within 10 days after the respondent elects a hearing will issue and serve on the respondent a hearing order. The hearing order will set forth:

(1) The allegations in the complaint, and the chronology and results of the investigation preliminary to the hearing;

(2) The relevant statutory, judicial, regulatory, and other authorities;

(3) The issues to be decided;

(4) Such rules of procedure as may be necessary to supplement the provisions of this part;

(5) The name and address of the person designated as hearing officer, and the assignment of authority to the hearing officer to conduct the hearing in accordance with the procedures set forth in this part;

(6) The date by which the hearing officer is directed to issue an initial decision.

(b) Where there are no genuine issues of material fact requiring oral examination of witnesses, the hearing order may contain a direction to the hearing officer to conduct a hearing by submission of briefs and oral argument without the presentation of testimony or other evidence.

§ 16.202 Powers of a hearing officer.

In accordance with the rules of this subpart, a hearing officer may:

(a) Give notice of, and hold, prehearing conferences and hearings;

(b) Administer oaths and affirmations;

(c) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;

(d) Rule on offers of proof;

(e) Receive relevant and material evidence;

(f) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;

(g) Hold conferences to settle or to simplify the issues by consent of the parties;

(h) Dispose of procedural motions and requests;

(i) Examine witnesses; and

(j) Make findings of fact and conclusions of law, and issue an initial decision.

§ 16.203 Appearances, parties, and rights of parties.

(a) *Appearances.* Any party may appear and be heard in person.

(1) Any party may be accompanied, represented, or advised by an attorney licensed by a state, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that state or territory.

(2) An attorney who represents a party shall file a notice of appearance in accordance with § 16.15(f).

(b) *Parties and agency participation.*

(1) The parties to the hearing are the respondent(s) named in the hearing order, and the agency.

(2) Unless otherwise specified in the hearing order, the agency attorney will serve as prosecutor for the agency from the date of issuance of the initial determination providing an opportunity for hearing.

(3) As appropriate to the issues raised in a particular case, offices and services of the FAA and the Office of the Secretary may assist the FAA attorney consistent with the provisions of § 16.5.

§ 16.207 Intervention and other participation.

(a) A person may submit a motion for leave to intervene as a party. Except for good cause shown, a motion for leave to intervene shall be submitted not later than 10 days after the notice of hearing and hearing order.

(b) If the hearing officer finds that intervention will not unduly broaden the issues or delay the proceedings and, if the person has a property or financial interest that may not he addressed adequately by the parties, the hearing officer may grant a motion for leave to intervene. The hearing officer may determine the extent to which an intervenor may participate in the proceedings.

(c) Other persons may petition the hearing officer for leave to participate in the hearing. Participation is limited to the filing of post-hearing briefs and reply to the hearing officer and the decisionmaker. Such briefs shall be filed and served on all parties in the same manner as the parties' post hearing briefs are filed.

(d) Participation under this section is at the discretion of the FAA, and no decision permitting participation shall be deemed to constitute an expression by the FAA that the participant has such a substantial interest in the proceeding as would entitle it to judicial review of such decision.

§ 16.209 Extension of time.

(a) *Extension by oral agreement.* The parties may agree to extend for a reasonable period the time for filing a document under this part. If the parties agree, the hearing officer shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the hearing officer to be signed by the hearing officer and filed with the hearing docket. The hearing officer may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) *Extension by motion.* A party shall file a written motion for an extension of time with the hearing officer not later than 7 days before the document is due unless good cause for the late filing is shown. A party filing a written motion for an extension of time shall serve a copy of the motion on each party.

(c) *Failure to rule.* If the hearing officer fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed denied.

(d) *Effect on time limits.* If the hearing officer grants an extension of time as a result of oral agreement by the parties as specified in paragraph (a) of this section or, if the hearing officer grants an extension of time as a result of the sponsor's failure to adhere to the hearing schedule, the due date for the hearing officer's initial decision and for the final agency decision are extended by the length of the extension by the hearing officer, in accordance with section 519(b) of the AAIA, as amended in 1987.

§ 16.211. Prehearing conference.

(a) *Prehearing conference notice.* The hearing officer schedules a prehearing conference and serves a prehearing conference notice on the parties promptly after being designated as a hearing officer.

(1) The prehearing conference notice specifies the date, time, place, and manner (in person or by telephone) of the prehearing conference.

(2) The prehearing conference notice may direct the parties to exchange proposed witness lists, requests for evidence and the production of documents in the possession of another party, responses to interrogatories, admissions, proposed procedural schedules, and proposed stipulations before the date of the prehearing conference.

(b) *The prehearing conference.* The prehearing conference is conducted by telephone or in person, at the hearing officer's discretion. The prehearing conference addresses matters raised in the prehearing conference notice and such other matters as the hearing officer determines will assist in a prompt, full and fair hearing of the issues.

(c) *Prehearing conference report.* At the close of the prehearing conference, the hearing officer rules on any requests for evidence and the production of documents in the possession of other parties, responses to interrogatories, and admissions; on any requests for depositions; on any proposed stipulations; and on any pending applications for subpoenas as permitted by § 16.219. In addition, the hearing officer establishes the schedule, which shall provide for the issuance of an initial decision not later than 120 days after issuance of the initial determination order unless otherwise provided in the hearing order.

§ 16.213 Discovery.

Discovery is limited to requests for admissions, requests for production for documents, interrogatories, and depositions as authorized by § 16.215.

§ 16.215 Depositions.

(a) *General.* For good cause shown, the hearing officer may order that the testimony of a witness may be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Generally, an order to take the deposition of a witness is entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing; or

(2) The deposition is deemed necessary to perpetuate the testimony of the witness; or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue burden to other parties or in undue delay.

(b) *Application for deposition.* Any party desiring to take the deposition of a witness shall make application therefor to the hearing officer in writing, with a copy of the application served on each party. The application shall include:

(1) The name and residence of the witness;

(2) The time and place for the taking of the proposed deposition;

(3) The reasons why such deposition should be taken; and

(4) A general description of the matters concerning which the witness will be asked to testify.

(c) *Order authorizing deposition.* If good cause is shown, the hearing officer, in his or her discretion, issues an order authorizing the deposition and specifying the name of the witness to be deposed, the location and time of the deposition and the general scope and subject matter of the testimony to be taken.

(d) *Procedures for deposition.* (1) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers of the witness transcribed verbatim.

(2) Objections to questions or evidence shall be recorded in the transcript of the deposition. The interposing of an objection shall not relieve the witness of the obligation to answer questions, except where the answer would violate a privilege.

(3) The written transcript shall be subscribed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. The reporter shall note the reason for failure to sign.

§ 16.217 Witnesses.

(a) Each party may designate as a witness any person who is able and willing to give testimony that is relevant and material to the issues in the hearing case, subject to the limitation set forth in paragraph (b) of this section.

(b) The hearing officer may exclude testimony of witnesses that would be irrelevant, immaterial, or unduly repetitious.

(c) Any witness may be accompanied by counsel. Counsel representing a nonparty witness has no right to examine the witness or otherwise participate in the development of testimony.

§ 16.219 Subpoenas.

(a) *Request for subpoena.* A party may apply to the hearing officer, within the time specified for such applications in the prehearing conference report, for a subpoena to compel testimony at a hearing or to require the production of documents only from the following persons:

(1) Another party;

(2) An officer, employee or agent of another party;

(3) Any other person named in the complaint as participating in or benefiting from the actions of the respondent alleged to have violated any Act; or

(4) An officer, employee or agent of any other person named in the complaint as participating in or benefiting from the actions of the respondent alleged to have violated any Act.

(b) *Issuance and service of subpoena.* (1) The hearing officer issues the subpoena if the hearing officer determines that the evidence to be obtained by the subpoena is relevant and material to the resolution of the issues in the case.

(2) Subpoenas shall be served by personal service, or upon an agent designated in writing for the purpose, or by registered or certified mail addressed to such person or agent. Whenever service is made by registered or certified mail, the date of mailing shall be considered at the time when service is made.

(3) A subpoena issued under this part is effective throughout the United States or any territory or possession thereof.

(c) *Motions to quash or modify subpoena.* (1) A party or any person upon whom a subpoena has been served may file a motion to quash or modify the subpoena with the hearing officer at or before the time specified in the subpoena for the filing of such motions. The applicant shall describe in detail the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive.

(2) A motion to quash or modify the subpoena stays the effect of the subpoena pending a decision by the hearing officer on the motion.

§ 16.221 Witness fees.

(a) The party on whose behalf a witness appears is responsible for paying any witness fees and mileage expenses.

(b) Except for employees of the United States summoned to testify as to matters related to their public employment, witnesses summoned by subpoena shall be paid the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 16.223 Evidence.

(a) *General.* A party may submit direct and rebuttal evidence in accordance with this section.

(b) *Requirement for written testimony and evidence.* Except in the case of evidence obtained by subpoena, or in the case of a special ruling by the hearing officer to admit oral testimony, a party's direct and rebuttal evidence shall be submitted in written form, in advance of the oral hearing pursuant to the schedule established in the hearing officer's prehearing conference report. Written direct and rebuttal fact testimony shall be certified by the witness as true and correct. Subject to the same exception (for evidence obtained by subpoena or subject to a special ruling by the hearing officer), oral examination of a party's own witness is limited to certification of the accuracy of written evidence, including correction and updating, if necessary, and reexamination following cross-examination by other parties.

(c) *Subpoenaed testimony.* Testimony of witnesses appearing under subpoena may be obtained orally.

(d) *Cross-examination.* A party may conduct cross-examination that may be required for disclosure of the facts, subject to control by the hearing officer for fairness, expedition, and exclusion of extraneous matters.

(e) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this part. The fact that evidence is hearsay goes to the weight of evidence and does not affect its admissibility.

(f) *Admission of evidence.* The hearing officer admits evidence introduced by a party in support of its case in accordance with this section, but may exclude irrelevant, immaterial or unduly repetitious evidence.

(g) *Expert or opinion witnesses.* An employee of the FAA or DOT may not be called as an expert or opinion witness for any party other than the agency except as provided in Department of Transportation regulations at 49 CFR part 9.

(h) *Subpart J hearing.* If an investigative hearing under subpart J was held on the complaint, the hearing officer may limit fact testimony and evidence in the hearing under this part to genuine issues of material fact not adequately developed in the record of the initial determination or not addressed in the initial determination.

§ 16.225 Public disclosure of evidence.

(a) Except as provided in this section, the hearing shall be open to the public.

(b) The hearing officer may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the hearing officer. The person shall state specific grounds for nondisclosure in the motion.

(c) The hearing officer shall grant the motion to withhold information from public disclosure if the hearing officer determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial information, or is otherwise prohibited by law.

§ 16.227 Standard of proof.

The hearing officer shall issue an initial decision or shall rule in a party's favor only if the decision or ruling is supported by, and in accordance with, reliable, probative, and substantial evidence contained in the record and is in accordance with law.

§ 16.229 Burden of proof.

(a) The burden of proof of noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 16.231 Offer of proof.

A party whose evidence has been excluded by a ruling of the hearing officer may offer the evidence on the record when filing an appeal.

§ 16.233 Record.

(a) *Subpart J investigation.* If a special hearing was held on the complaint under subpart J of this part, the pleadings, transcript of hearing, all exhibits received into evidence, all motions, applications, requests, and rulings, and all documents included in the hearing record and the report of the investigation are entered into the record of the hearing under this subpart.

(b) *Exclusive record.* The transcript of all testimony in the hearing, all exhibits received into evidence, all motions, applications, requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(c) *Examination and copying of record.* Any interested person may examine the record at the Enforcement Docket, Federal Aviation Administration, 800 Independence Avenue, SW., room 924A, Washington, DC 20591. Any person may have a copy of the record after payment of reasonable costs for search and reproduction of the record.

§ 16.235. Argument before the hearing officer.

(a) *Argument during the hearing.* During the hearing, the hearing officer shall give the parties reasonable opportunity to present oral argument on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The hearing officer may direct written argument during the hearing if the hearing officer finds that submission of written arguments would not delay the hearing.

(b) *Posthearing briefs.* The hearing officer may request or permit the parties to submit posthearing briefs. The hearing officer may provide for the filing of simultaneous reply briefs as well, if such filing will not unduly delay the issuance of the hearing officer's initial decision. Posthearing briefs shall include proposed findings of fact and conclusions of law; exceptions to rulings of the hearing officer; references to the record in support of the findings of fact; and supporting arguments for the proposed findings, proposed conclusions, and exceptions.

§ 16.237 Waiver of procedures.

(a) The hearing officer shall waive such procedural steps as all parties to the hearing agree to waive before issuance of an initial decision.

(b) Consent to a waiver of any procedural step bars the raising of this issue on appeal.

(c) The parties may not by consent waive the obligation of the hearing officer to enter an initial decision on the record.

Subpart G—Initial Decisions, Orders and Appeals

§ 16.241 Initial decisions, orders, and appeals.

(a) The hearing officer shall issue an initial decision based on the record developed during the proceeding and shall send the initial decision to the parties not later than 120 days after the initial determination by the Assistant

Administrator unless otherwise provided in the hearing order.

(b) Each party adversely affected by the hearing officer's initial decision may file an appeal within 20 days of the date the initial decision is issued. Each party may file a reply to an appeal within 10 days after it is served on the party. Filing and service of appeals and replies shall be by personal delivery.

(c) If an appeal is filed, the FAA decisionmaker reviews the entire record and issues a final agency decision and order within 30 days after the due date for replies to the appeal(s). If no appeal is filed, the decisionmaker may take review of the case on his or her own motion. If the FAA decisionmaker finds that the respondent is not in compliance with any Act or any regulation, agreement, or document of conveyance issued or made under such Act, the final agency order includes a statement of corrective action, if appropriate, and identifies sanctions for continued noncompliance.

(d) If no appeal is filed, and the FAA decisionmaker does not take review of the initial decision on the FAA decisionmaker's own motion, the initial decision shall take effect as the final agency decision and order on the twenty-first day after the actual date the initial decision is issued.

(e) The failure to file an appeal is deemed a waiver of any rights to seek judicial review of an initial decision that becomes a final agency decision by operation of § 16.241(d).

(f) If the FAA decisionmaker takes review on the decisionmaker's own motion, the FAA decisionmaker issues a notice of review by the twenty-first day after the actual date the initial decision is issued.

(1) The notice sets forth the specific findings of fact and conclusions of law in the initial decision that are subject to review by the FAA decisionmaker.

(2) Parties may file briefs on review to the FAA decisionmaker or rely on their post-hearing briefs to the hearing officer. Briefs on review shall be filed not later than 15 days after service of the notice of review.

(3) The FAA decisionmaker issues a final agency decision and order within 30 days after the due date for briefs on review. If the FAA decisionmaker finds that the respondent is not in compliance with any Act or any regulation, agreement or document of conveyance issued under such Act, the final agency order includes a statement of corrective action, if appropriate, and identifies sanctions for continued noncompliance.

§ 16.243 Consent orders.

(a) The agency attorney and the respondents may agree at any time before the issuance of a final decision and order to dispose of the case by issuance of a consent order. Good faith efforts to resolve a complaint through issuance of a consent order may continue throughout the administrative process. Except as provided in § 16.209, such efforts may not serve as the basis for extensions of the times set forth in this part.

(b) A proposal for a consent order, specified in paragraph (a) of this section, shall include:

(1) A proposed consent order;

(2) An admission of all jurisdictional facts;

(3) An express waiver of the right to further procedural steps and of all rights to judicial review; and

(4) An incorporation by reference of the hearing order, if issued, and an acknowledgment that the hearing order may be used to construe the terms of the consent order.

(c) If the issuance of a consent order has been agreed upon by all parties to the hearing, the proposed consent order shall be filed with the hearing officer, along with a draft order adopting the consent decree and dismissing the case, for the hearing officer's adoption.

(d) The deadline for the hearing officer's initial decision and the final agency decision is extended by the amount of days elapsed between the filing of the proposed consent order with the hearing officer and the issuance of the hearing officer's order continuing the hearing.

(e) If the agency attorney and sponsor agree to dispose of a case by issuance of a consent order before the FAA issues a hearing order, the proposal for a consent order is submitted jointly to the official authorized to issue a hearing order, together with a request to adopt the consent order and dismiss the case. The official authorized to issue the hearing order issues the consent order as an order of the FAA and terminates the proceeding.

Subpart H—Judicial Review

§ 16.247 Judicial review of a final decision and order.

(a) A person may seek judicial review, in a United States Court of Appeals, of a final decision and order of the Administrator as provided in section 1006 of the Federal Aviation Act of 1958, as amended, or section 519(b)(4) of the Airport and Airway Improvement Act of 1982, as amended. A party seeking judicial review of a final decision and order shall file a petition for review with the Court not later than 60 days after a final decision and order under the AAIA has been served on the party or within 60 days after the entry of an order under the Federal Aviation Act.

(b) The following do not constitute final decisions and orders subject to judicial review:

(1) An FAA decision to dismiss a complaint without prejudice, as set forth in § 16.17;

(2) An initial determination issued by the Assistant Administrator;

(3) An initial decision issued by a hearing officer at the conclusion of a hearing;

(4) An initial determination or an initial decision of a hearing officer that becomes the final decision of the Administrator because it was not appealed within 30 days;

Subpart I—Ex Parte Communications

§ 16.301 Definitions.

As used in this subpart:

Decisional employee means the Administrator, Deputy Administrator, FAA decisionmaker, hearing officer, or other FAA employee who is or who may reasonably be expected to be involved in the decisional process of the proceeding;

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this part.

§ 16.303 Prohibited ex parte communications.

(a) The prohibitions of this section shall apply from the time a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply at the time of the acquisition of such knowledge.

(b) Except to the extent required for the disposition of ex parte matters as authorized by law:

(1) No interested person outside the FAA make or knowingly cause to be made to any decisional employee an ex parte communication relevant to the merits of the proceeding;

(2) No FAA employee shall make or knowingly cause to be made to any interested person outside the FAA an ex parte communication relevant to the merits of the proceeding; or

(3) Ex parte communications regarding solely matters of agency procedure or practice are not prohibited by this section.

§ 16.305 Procedures for handling ex parte communication

A decisional employee who receives or who makes or knowingly causes to be made a communication prohibited by § 16.303 shall place on the public record of the proceeding:

(a) All such written communications;

(b) Memoranda stating the substance of all such oral communications; and

(c) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (a) and (b) of this section.

§ 16.307 Requirement to show cause and imposition of sanction.

(a) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of § 16.303, the Administrator or his designee or the hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(b) The Administrator may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the FAA, consider a violation of this subpart sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

Subpart J—Alternate Procedure for Certain Complaints Concerning Airport Rates and Charges

§ 16.401 Availability of alternate procedure.

(a) A scheduled air carrier holding a certificate of public convenience and necessity under 49 U.S.C. 1371, 1372, or 1388 or an exemption from those sections under 14 CFR part 298, may bring a complaint under this part using the procedures in this subpart.

(b) The procedures in this subpart are used only when all of the following requirements are met:

(1) The complaint alleges that an increase in the fee charged by an airport proprietor to scheduled air carriers is unreasonable within the meaning of 49 U.S.C. 1513 (a) through (d), or is unreasonable or unjustly discriminatory within the meaning of 49 U.S.C. 2210(c)(1);

(2) The Assistant Administrator, in his or her discretion, determines that the complaint involves a matter which, if not resolved by expedited procedure, may result in a substantial adverse impact on air transportation or that determines that the complaint involves a significant policy issue;

(3) The complaint meets the requirements for the filing of a complaint set forth in subparts B and C of this part; and

(4) The complaint includes an express request that the complaint be processed under this subpart.

(c) The Assistant Administrator may permit another air carrier eligible to file a complaint under paragraphs (a) and (b) of this section to join the complaint. A motion for joinder shall be filed on or before the date the answer is due to be filed.

(d) Other than joinder of additional parties under paragraph (c) of this section, participation in proceedings under this subpart by persons other than complainants will be permitted only through the filing of a written brief by a person with a substantial interest in the proceeding at the discretion of the presiding officer before issuance of the report of investigation, or by the Assistant Administrator after issuance of the report. A person may file a motion to submit a written brief to the presiding officer or the Assistant Administrator, as appropriate.

§ 16.403 Answer and other documents.

(a) Within seven calendar days of receiving a complainant requesting processing under this subpart, the Assistant Administrator serves on the complainant and each person named in the complaint the agency's determination whether the complaint—

(1) Meets the other requirements of this subpart; and

(2) Meets the requirements of subparts B and C of this part for the filing of complaints.

(b) If the Assistant Administrator determines that the complaint meets the requirements for a complaint under this subpart, each respondent shall file an answer within 21 days of service of the determination in paragraph (a) of this section.

(c) If the Assistant Administrator determines that the complaint does not meet the requirements of this subpart but does meet the requirements of subpart C of this part for the filing of a complaint, the complaint will be processed under § 16.29.

(d) The Assistant Administrator may dismiss a complaint as provided in §§ 16.25 and 16.27.

(e) The answer and all documents filed and served under this subpart shall be filed and served by personal delivery. All other requirements of subpart B of this part apply to the filing and service of documents under this subpart.

(f) The Assistant Administrator may for good cause grant an extension of the date by which the report of investigation is due.

§ 16.405 Notice and order of investigation.

Within seven days after the answer is served, the Assistant Administrator issues a notice and order of investigation. The investigation order states:

(a) The scope of the investigation, by describing the information sought in terms of its subject matter or its relevance to specified allegations;

(b) A description of the remedial or enforcement actions that may be ordered in the event that a rate or charge is found to be useful, including those provided in § 16.109(a).

(c) Such rules of procedure as may be necessary to supplement this part;

(d) The name and address of the presiding officer and the authority delegated to the presiding officer to conduct the investigation in accordance with the procedures set forth in this part;

(e) The date by which the presiding officer is directed to issue a report of investigation, normally 60 days after filing of the answer.

§ 16.407 Presiding officer.

(a) The presiding officer is a person designated by the Assistant Administrator who is neither an agency attorney, as defined in this part, nor a person otherwise engaged in the investigation of airport compliance.

(b) In accordance with the rules of this part, a presiding officer may:

(1) Give notice of, and hold, prehearing conferences and investigative hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas authorized by law;

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;

(7) Hold conferences to settle or to simplify the issues by consent of the parties;

(8) Dispose of procedural motions and requests; and

(9) Examine witnesses.

(c) The presiding officer shall issue a report of investigation which shall include findings of fact and, if directed by the Assistant Administrator, proposed conclusions of law.

§ 16.409 Parties.

(a) Parties may appear as provided in § 16.203(a) of this part.

(b) The parties to the investigation are the complainant(s), and the respondent(s).

(c) The FAA is represented by an agency attorney who, for the purposes of this part, will be deemed to be in the position of a party. The function of the agency attorney is to assist in development of a complete record for decision by the Assistant Administrator.

§ 16.411 Investigation procedure.

(a) *Investigative hearing.* The presiding officer shall hold an evidentiary hearing to investigate the factual matters identified in the investigative order. The hearing may be in person or, alternatively, by oral argument following submission of documentary evidence if the presiding officer determines that there are no genuine issues of material fact that require oral examination of witnesses and that documentary evidence in combination with oral argument is sufficient to develop a complete record. Oral proceedings will be transcribed and a transcript made available to the parties.

(b) *Discovery.* Discovery is limited to requests for admissions and requests for production of documents. The presiding officer may—

(1) Require parties to submit discovery requests to the presiding officer;

(2) Submit requests to the parties as modified by the presiding officer in the interest of relevance, economy, and completeness of the record for decision; and

(3) Require that responses be submitted to the presiding officer with service on other parties.

(c) *Witnesses.* Consistent with paragraph (a), witnesses may be designated and appear as provided in §§ 16.217 and 16.221(a). The presiding officer may exclude testimony as provided in § 16.221(b).

(d) *Subpoenas.* Where necessary to ensure a complete record, the presiding officer may issue a subpoena to compel a complainant or respondent, or an officer, employee, or agent of a complainant or respondent, to testify or to produce documents at the investigatory hearing. Issuance of, service of, and motions regarding subpoenas shall be in accordance with § 16.219.

(e) *Evidence.* A party may offer direct and rebuttal evidence in accordance with this section.

(1) *Requirement for written testimony and evidence.* Except in the case of evidence obtained by subpoena, a party's direct and rebuttal evidence, including testimony of witnesses, shall be submitted in written form, in advance of any oral hearing pursuant to the schedule established by the presiding officer. Written direct and rebuttal fact testimony shall be certified by the witness as true and correct. Oral examination of a party's own witness is limited to certification of the accuracy of written evidence, including correction and updating, if necessary, and redirect examination following cross-examination by other parties.

(2) *Cross-examination.* A party may conduct cross-examination needed for disclosure of the facts, subject to the control of the presiding officer for fairness, expedition, and exclusion of extraneous matters.

(3) *Admission of evidence.* The presiding officer admits evidence in accordance with this section, but may exclude irrelevant, immaterial, privileged, or unduly repetitious evidence.

(4) *Expert or opinion witnesses.* An employee of the FAA or DOT may not be called as an expert or opinion witness for any party other than the agency except as provided in Department of Transportation regulations at 49 CFR part 9.

(f) *Public disclosure of evidence.* Proceedings under this part are open to the public. Evidence is disclosed or withheld from public disclosure as provided in § 16.225. Objections to public disclosure may be filed with and ruled on by the presiding officer.

(g) *Location of hearing.* The investigative hearing shall be conducted at a place or places designated by the presiding officer with due regard for the convenience of the parties and the expeditious and efficient handling of the investigation.

(h) *Offer of proof.* A party whose evidence has been excluded by a ruling of the presiding officer may make an offer of the proof to be included in the record.

(i) *Exclusive record.* The pleadings, transcript of the hearing, all exhibits received into evidence, all motions, applications, requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for the report of investigation.

(j) *Argument before the presiding officer.* During the hearing, the presiding officer shall give the parties reasonable opportunity to present oral argument on the record supporting or opposing motions, objections, and rulings. In addition, the presiding officer may permit oral argument on the merits of the case. The presiding officer may request the parties to submit proposed findings of fact and conclusions of law.

§ 16.413 Report of investigation.

(a) On or before the date set in the notice and order of investigation, the presiding officer shall issue a written report of investigation based on the record developed during the investigation. The report shall include a concise summary of the evidence and findings of fact and, if directed by the Assistant Administrator, conclusions of law, on the issues set forth in the order of investigation.

(b) The presiding officer shall transmit the report of investigation and the record to the Assistant Administrator.

(c) The presiding officer shall file the report of investigation in the Enforcement Docket and serve copies on the parties.

§ 16.415 Initial determination.

(a) Within 120 days after the complaint is filed, unless extended by the Assistant Administrator upon agreement of all the parties, the Assistant Administrator will render an initial determination and serve it on each party by certified mail, return receipt requested, or personal delivery.

(b) The initial determination will set forth a concise explanation of the factual and legal basis for the Assistant Administrator's determination on each claim made by the complainant.

(c) A party adversely affected by the initial determination may appeal the initial determination as provided in § 16.31(c) or 16.31(d).

§ 16.417 Eligibility for grants pending final agency decision.

(a) *Suspension of eligibility.* If the initial determination under § 16.415 is that the challenged increase in rates and charges is unreasonable or unjustly discriminatory, the respondent's eligibility to receive new Airport Improvement Program grants under the AAIA and to receive payments under existing grants is suspended effective 30 days after the issuance of the initial determination, unless the respondent files a notice of resolution of complaint or a notice of rescission under this section.

(b) *Rescission of increase.* The suspension of eligibility is deferred if, within 30 days after service of the initial determination, the respondent does one of the following—

(1) Rescinds the increase in rates or charges. To implement the rescission for purposes of this part, the respondent shall file a notice of rescission in the

Enforcement Docket and serve a copy on each party.

(2) Resolves the dispute through agreement with other parties, subject to the concurrence of the Assistant Administrator. The respondent shall indicate resolution by the filing of a joint motion for dismissal and for withdrawal of the complaint in the Enforcement Docket. In exercising discretion whether to grant the motion, the Assistant Administrator will consider, among other things, whether all parties have joined the motion and the effect of the proposed resolution on non-party aeronautical users of the airport.

(c) Deferral of the suspension of eligibility for grants and grant payments under this section does not limit the FAA's authority to impose any sanction or remedy for the past or continuing imposition of an unreasonable or unjustly discriminatory fee, including ordering refund with interest of fees paid prior to the effective date of the order.

(d) Notwithstanding the provision for suspension of eligibility in paragraph (a) of this section, the Assistant Administrator may execute a grant agreement or approve payment under an existing grant if necessary to correct or prevent an unsafe condition.

Issued in Washington, DC, on June 3, 1994

Federico Peña,

Secretary of Transportation.

David R. Hinson,

Administrator, Federal Aviation Administration.

[FR Doc. 94–13942 Filed 6–6–94; 12:42 pm]

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federal register

Thursday
June 9, 1994

Part IV

Department of Labor

Office of the Secretary

29 CFR Part 70
Freedom of Information Act; Technical Amendment; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 70

Freedom of Information Act; Technical Amendment

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of final rulemaking: technical amendment.

SUMMARY: This document amends Appendix A to the Department of Labor's regulation relating to the Freedom of Information Act (FOIA). Appendix A lists the disclosure officers under FOIA. This amendment will delete one office, will update the name of another office, and will update the titles and the addresses within Appendix A so that the publication of the disclosure officers will be accurate. The document also adds an Appendix B which will list the names of the Department's FOIA/PA Coordinators.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, U.S. Department of Labor, room N–2428, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 219–8188.

SUPPLEMENTARY INFORMATION: This document amends Appendix A to the Department of Labor's regulation implementing the Freedom of Information Act (FOIA). Appendix A lists the disclosure officers under FOIA. This amendment will delete one office, will update the name of another office, and will update the titles and the addresses within Appendix A so that the publication of the disclosure officers will be accurate. The document also adds an Appendix B which will list the names of the Department's FOIA/PA Coordinators.

Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, as generally required by the Administrative Procedure Act (5 U.S.C. 553)(APA) since this rulemaking merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of section 553(b)(A).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and nonsubstantive, and merely reflects agency organization, practice and procedure.

Executive Order 12866

This rule is not classified as a "rule" under Executive Order 12866 on federal regulations, because it is a regulation relating to agency organization, management or personnel. See section 3(d)(3) which exempts this rule.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

List of Subjects in 29 CFR Part 70

Freedom of information.

Accordingly, part 70 subtitle A of title 29 of the Code of Federal Regulations is amended as follows:

PART 70—EXAMINATION AND COPYING OF DEPARTMENT OF LABOR RECORDS

1. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301, 552, as amended by Pub. L. 93–502, 88 Stat. 1561; 29 U.S.C. 9(b); Reorganization Plan No. 6 of 1950; 64 Stat. 1263 5 U.S.C. Appendix

Appendix A to Part 70—Disclosure Officers [Amended]

2. Appendix A to part 70 is amended by removing paragraph (a)(7), by redesignating current paragraphs (a)(8) through (a)(20) as new paragraphs (a)(7) through (a)(19), and by revising the newly redesignated paragraph (a)(12) (which currently contains the Office of Labor-Management Standards) to read as follows:

(a) * * *

(12) Office of the American Workplace

* * * * *

PART 70—[AMENDED]

3. Part 70 is amended by revising paragraph (b) of Appendix A to Part 70—Disclosure Officers to read as follows:

* * * * *

(b)(1) The titles of the responsible officials of the various independent agencies in the Department of Labor are listed below. This list is provided for information and to assist requesters in locating the office most likely to have responsive records. The officials may be changed by appropriate designation. Unless otherwise specified, the mailing addresses of the officials shall be: U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Secretary of Labor, Attention: Assistant Secretary for Administration and Management (OASAM)
Deputy Solicitor, Office of the Solicitor
Chief Administrative Law Judge, Office of the Administrative Law Judges (OALJs)
Assistant Secretary for Administration and Management (OASAM)
Deputy Assistant Secretary for Administration and Management (OASAM)
Director, National Capital Service Center (NCSC)
Deputy Director, National Capital Service Center (NCSC)
Director, Office of Personnel Management Services (NCSC)
Director, Office of Procurement Services (NCSC)
Director, Directorate of Personnel Management (OASAM)
Deputy Director, Directorate of Personnel Management (OASAM)
Comptroller, Office of the Comptroller (OASAM)
Deputy Comptroller, Office of the Comptroller (OASAM)
Director, Office of Budget (Comptroller-OASAM)
Director, Office of Accounting (Comptroller-OASAM)
Director, Office of Financial Policy and Systems (Comptroller-OASAM)
Director, Directorate of Administrative and Procurement Programs (OASAM)
Director, Office of Facilities Management (OASAM)
Chief, Division of Security and Emergency Preparedness (OASAM)
Director, Office of Acquisition Integrity (OASAM)
Director, Office of Safety and Health (OASAM)
Director, Directorate of Civil Rights (OASAM)
Director, Directorate of Information Resources Management (DIRM-OASAM)
Director, Office of IRM Policy (DIRM-OASAM)
Director, DOL Academy
Director, Office of Small Business and Minority Affairs
Comptroller, Office of the Comptroller (OASAM)
Director, Office of Safety and Health (OASAM)
Director, Directorate of Civil Rights (OASAM)
Director, Office of Employee and Labor-Management Relations (OASAM)
Director, Office of Employment and Evaluation (OASAM)
Chief, Division of Security and Emergency Preparedness (OASAM)

Director, Office of Acquisition Integrity (OASAM)
Chairperson, Employees' Compensation Appeals Board (ECAB)
Deputy Assistant Secretary for Policy
Deputy Director, Office of Information and Public Affairs
Director, Office of Administrative Appeals
Assistant Inspector General, Office of Resource Management and Legislative Assessment, Office of the Inspector General (OIG)
Director, Office of Management, Administration and Planning, Bureau of International Labor Affairs (ILAB)
Assistant Secretary for the American Workplace (OAW)
Deputy Assistant Secretary for Labor-Management Programs, OAW
Deputy Assistant Secretary for Labor-Management Standards, OAW
Deputy Assistant Secretary for Work and Technology Policy, OAW
Commissioner, Bureau of Labor Statistics

The mailing address for responsible officials in the Bureau of Labor Statistics is: Rm. 4040—Postal Square Bldg., 2 Massachusetts Ave., NE., Washington, DC 20212–0001.

Assistant Secretary for Employment Standards, Employment Standards Administration (ESA)
Director, Office of Workers' Compensation Programs (OWCP), Assistant to the Director, OWCP, ESA
Director for Federal Employees' Compensation, OWCP, ESA
Director for Longshore and Harbor Workers' Compensation, OWCP, ESA
Director for Coal Mine Workers' Compensation, OWCP, ESA
Administrator, Wage and Hour Division, ESA
Deputy Administrator, Wage and Hour Division, ESA
Assistant Administrator, Office of Program Operations, Wage and Hour Division, ESA
Assistant Administrator, Office of Policy, Planning and Review, Wage and Hour Division, ESA
Deputy Assistant Administrator, Wage and Hour Division, ESA
Director, Office of Federal Contract Compliance Programs (OFCCP), ESA
Director, Division of Policy, Planning and Program Development, OFCCP, ESA
Director, Division of Program Operations, OFCCP, ESA
Director, Office of Management, Administration and Planning, ESA
Director, Division of Personnel and Organization Management, ESA
Director, Division of Internal Management Control, ESA
Director, Equal Employment Opportunity Unit, ESA
Director, Office of Public Affairs, ESA
Director, Division of Policy and Research Analysis, ESA
Assistant Secretary of Labor, Employment and Training Administration (ETA)
Deputy Assistant Secretary of Labor, Employment and Training Administration (ETA)
Administrator, Office of Financial and Administative Management, ETA
Director, Office of Management Support, ETA
Director, Office of Human Resources, ETA
Director, Office of the Comptroller, ETA
Director, Office of Information Resources Management, ETA
Director, Office of Grants and Contracts Management, ETA
Chief, Division of Acquisition and Assistance, ETA
Administrator, Office of Regional Management, ETA
Administrator, Office of Strategic Planning and Policy Development, ETA
Director, Unemployment Insurance Service, ETA
Director, United States Employment Service, ETA
Chief, Division of Foreign Labor Certifications, ETA
Administrator, Office of Job Training Programs, ETA
Director, Office of Employment and Training Programs, ETA
Director, Office of Job Corps, ETA
Director, Office of Special Targeted Programs, ETA
Administrator, Office of Work-Based Learning, ETA
Director, Bureau of Apprenticeship and Training, ETA
Director, Office of Worker Retraining and Adjustment Programs, ETA
Director, Office of Trade Adjustment Assistance, ETA
Director, Office of Equal Employment Opportunity Occupational Safety and Health Administration (OSHA)
Director, Office of Management Accountability and Performance, OSHA
Director, Office of Information and Consumer Affairs, OSHA
Director, Office of Field Operations, OSHA
Director, Office of Construction and Engineering, OSHA
Director, Directorate of Federal-State Operations, OSHA
Director, Directorate of Policy, OSHA
Director, Directorate of Administrative Programs, OSHA
Director, Office of Personnel Management, OSHA
Director, Office of Administrative Services, OSHA
Director, Office of Management Data Systems, OSHA
Director, Office of Management Systems and Organization, OSHA
Director, Office of Program Budgeting, Planning and Financial Management, OSHA
Director, Directorate of Technical Support, OSHA
Director, Directorate of Safety Standards Programs, OSHA
Director, Directorate of Health Standards Programs, OSHA
Director, Office of Statistics, OSHA
Director of Program Services, Pension and Welfare Benefits Administration
Assistant Secretary for Veterans' Employment and Training (VETS)
Deputy Assistant Secretary for Veterans' Employment and Training, VETS
Director, Office of Information, Management and Budget, VETS

The mailing address for responsible officials in the Mine Safety and Health Administration is: 4015 Wilson Boulevard, Arlington, Virginia 22203.

Deputy Assistant Secretary
Chief, Office of Congressional and Legislative Affairs
Director, Office of Information and Public Affairs
Administrator for Coal Mine Safety and Health
Chief, Office of Technical Compliance and Investigation (Coal)
Administrator for Metal and Nonmetal Mine Safety and Health
Director, Office of Assessments
Director, Office of Standards, Regulations and Variances
Director of Program Planning and Evaluation
Director of Administration and Management
Director of Educational Policy and Development

The mailing address for the Office of Administrative Law Judges and the Benefits Review Board is, respectively: 800 K Street, NW., Washington, DC 20001–8002 and 20001–8001.

Chief, Office of Administrative Law Judges, suite 400–N.
Chair, Benefits Review Board, suite 500–N.

(2) The titles of the responsible officials in the field offices of the various independent agencies are listed below: Unless otherwise specified, the mailing address for these officials by region, shall be:

Region I:

One Congress Street, 11th floor, Boston, Massachusetts 02114.

In Region I, Only, the Mailing Address For OSHA Is:

133 Portland Street, 1st floor, Boston, Massachusetts 02114.

Region II:

201 Varick Street, New York, New York 10014.

Region III:

Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104.

Region IV:

1375 Peachtree Street, NE., Atlanta, Georgia 30367.
214 N. Hogan Street, suite 1006, Jacksonville, Florida 32202, (OWCP Only).

Region V:

Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604.
1240 East Ninth Street, room 851, Cleveland, Ohio 44199, (FEC only).

Region VI:

525 Griffin Square Building, Griffin & Young Streets, Dallas, Texas 75202.

Region VII:

Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.

Region VIII:

Federal Office Building, 1961 Stout Street, Denver, Colorado 80294.
and
1801 California Street, Denver, Colorado 80202.

The mailing address for the Director of the Regional Bureau of Apprentice and Training in Region VIII is:

Room 465, U.S. Custom House, 721—19th Street, Denver, CO. 80202.

Region IX:

71 Stevenson Street, San Francisco, California 94105.

Region X:

111 Third Avenue, Seattle, Washington 98101–3212.

Regional Administrator for Administration and Management (OASAM)
Regional Personnel Officer, OASAM
Regional Director for Information and Public Affairs
Regional Administrator for Employment and Training Administration (ETA)
Regional Director, Job Corps, ETA
Director, Regional Bureau of Apprenticeship and Training, ETA
Regional Management Analyst, ETA-Atlanta, Georgia
Regional Administrator for Wage and Hour, ESA
Regional Director for Federal Contract Compliance Programs, ESA
Regional Director for the Office of Workers' Compensation Programs, ESA
District Director, Office of Workers' Compensation Programs, ESA

Wage and Hour Division, ESA Responsible Officials, District Offices

135 High Street, room 310, Hartford, Connecticut 06103.
66 Pearl Street, room 211, Portland, Maine 04101.
One Bowdoin Square, 8th floor, Boston, Massachusetts 02114.
200 Sheffield St., room 102, Mountainside, New Jersey 07092.
3131 Princeton Pike, Building 5, room 216, Lawrenceville, New Jersey 08648.
Leo W. O' Brien Federal Bldg. rm. 822, Albany, New York 12207.
1967 Turnbull Avenue, Bronx, New York 10473.
111 West Huron Street, room 617, Buffalo, New York 14202.
825 East Gate Boulevard, room 202, Garden City, New York 11530.
26 Federal Plaza, room 3838, New York, New York 10278.
159 Carlos Chardon Street, room 102, Hato Rey, Puerto Rico 00918.
Federal Office Building, room 913, 31 Hopkins Plaza, Charles Center, Baltimore, Maryland 21201.
U.S. Custom House, room 238, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106.
Federal Building, room 313, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.
3329 Penn Place, 20 North Pennsylvania Ave., Wilkes-Barre, Pennsylvania 18701.
Federal Building, room 7000, 400 North Eighth Street, Richmond, Virginia 23240.
2 Hale Street, suite 301, Charleston, West Virginia 25301–2834.
1375 Peachtree St NE., room 668, Atlanta, Georgia 30367.
Berry Building, suite 301, 2015 North Second Avenue, Birmingham, Alabama 35203.
Federal Building, room 407, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301.
3728 Phillips Hwy., suite 219, Jacksonville, Florida 32207.
1150 Southwest First Street, room 202, Miami, Florida 33130.
Austin Laurel Bldg., suite 300, 4905 W. Laurel Street, Tampa, Florida 33607.
Federal Building, room 167, 600 Martin Luther King Jr. Place, Louisville, Kentucky 40202.
800 Briar Creek Road, suite CC–412, Charlotte, North Carolina 28205.
Somerset Park Building, 4407 Bland Rd., suite 260, Raleigh, North Carolina 27609.
Federal Building, room 1072, 1835 Assembly Street, Columbia, South Carolina 29201.
1 Jackson Place, No.1020, 188 East Capitol Street, Jackson, Mississippi 39210.
1321 Murfreesboro Road, suite 511, Nashville, Tennessee 37217.
230 South Dearborn Street, room 412, Chicago, Illinois 60604–1595.
509 West Capitol Avenue, suite 205, Springfield, Illinois 62704.
46 East Ohio Street, room 148, Indianapolis, Indiana 46204–1919.
River Glen Plaza, suite 160, 501 East Monroe, South Bend, Indiana 46601–1615.
2920 Fuller Avenue, NE., suite 100, Grand Rapids, Michigan 49505–3409.
Bridge Place, room 106, 220 South Second Street, Minneapolis, Minnesota 55401–2104.
Federal Office Building, room 817, 1240 East Ninth Street, Cleveland, Ohio 44199–2054.
525 Vine Street, room 880, Cincinnati, Ohio 45202–3268.
646 Federal Office Building, 200 North High Street, Columbus, Ohio 43215–2475.
Federal Center Building, room 309, 212 East Washington Avenue, Madison, Wisconsin 53703–2878.
Savers Building, suite 611, 320 West Capitol, Little Rock, Arkansas 72201.
701 Loyola Avenue, room 13028, New Orleans, Louisiana 70113.
Western Bank Bldg., suite 840, 505 Marquette, NW., Albuquerque, New Mexico 87102–2160.
Government Plaza Building, room 307, 400 Mann Street, Corpus Christi, Texas 78401.
Federal Building, room 507, 525 South Griffin Street, Dallas, Texas 75202.
2320 LaBranch, room 2100, Houston, Texas 77004.
Northchase I Office Building, suite 140, 10127 Morocco, suite 104, San Antonio, Texas 78216.
Fifty-One Yale Building, suite 303, 5110 South Square, Tulsa, Oklahoma 74135–7438.
Federal Building, room 643, 210 Walnut Street, Des Moines, Iowa 50309.
Federal Office Building, room 2900, 911 Walnut Street, Kansas City, Missouri 64106.
1222 Spruce Street, rm. 9102B, St. Louis, Missouri 63103.
Federal Building, room 715, 106 South 15th Street, Omaha, Nebraska 68102.
Room 615, Federal Office Building, 1961 Stout Street, PO Drawer 3505, Denver, Colorado 80294.
10 West Broadway, suite 307, Salt Lake City, Utah 84101.
3221 North 16th Street, suite 301, Phoenix, Arizona 85016.
300 South Glendale Avenue, room 250, Glendale, California 91205–1752.
2981 Fulton Avenue, Sacramento, California 95821.
211 Main Street, room 341, San Francisco California 94105.
5675 Ruffin Road, suite 320, San Diego, California 92123–5378.
111 SW Columbia, suite 1010, Portland, Oregon 97201–5842.
1111 Third Avenue, suite 755, Seattle, Washington 98101–3212.

Office of Federal Contract Compliance Programs, ESA, Responsible Officials, Regional Offices

One Congress Street, 11th floor, Boston, Massachusetts 02114.
201 Varick Street, room 750, New York, New York 10014.
Gateway Building, room 15340, 3535 Market Street, Philadelphia, Pennsylvania 19104.
1375 Peachtree Street, NE., suite 678, Atlanta, Georgia 30367.
Kluczynski Federal Building, room 570, 230 South Dearborn Street, Chicago, Illinois 60604.
Federal Building, room 840, 525 South Griffin Street, Dallas, Texas 75202.
Federal Office Building, 911 Walnut Street, room 2011, Kansas City, Missouri 64106.
1801 California Street, suite 935, Denver, Colorado 80202.
71 Stevenson Street, suite 1700, San Francisco, California 94105.
1111 Third Avenue, suite 610, Seattle, Washington 98101–3212.

Office of Workers' Compensation Programs, ESA, Responsible Officials, District Directors

One Congress Street, 11th Floor, Boston, Massachusetts 02203, (FECA and LHWCA only).
201 Varick Street, Seventh Floor, New York, New York 10014, (FECA and LHWCA only).
3535 Market Street, Philadelphia, Pennsylvania 19104, (FECA and LHWCA only).
Penn Traffic Building, 319 Washington Street, Johnstown, Pennsylvania 15901, (BLBA only).
South Main Towers, 116 South Main Street, room 208, Wilkes-Barre, Pennsylvania 18701, (BLBA only).
Wellington Square, 1225 South Main Street, Greensburg, Pennsylvania 15601, (BLBA only).
31 Hopkins Plaza, room 1026, Baltimore, Maryland 22201, (LHWCA only).
Federal Building, 200 Granby Mall, room 212, Norfolk, Virginia 23510, (LHWCA only).
2 Hale Street, suite 304, Charleston, West Virginia 25301, (BLBA only).
609 Market Street, Parkersburg, West Virginia 26101, (BLBA only).
800 North Capitol Street, NW., Washington, DC 20211, (FECA only).
1200 Upshur Street, NW., Washington, DC 20210, (DCCA only).
334 Main Street, Fifth Floor, Pikeville, Kentucky 41501, (BLBA only).
500 Springdale Plaza, Spring Street, Mt. Sterling, Kentucky 40353, (BLBA only).

214 N. Hogan Street, 10th Floor, Jacksonville, Florida 32201, (FECA and LHWCA only).
230 South Dearborn Street, 8th floor, Chicago, Illinois 60604, (FECA and LHWCA).
1240 East 9th Street, Cleveland, Ohio 44199, (FECA only).
274 Marconi Boulevard, 3rd Floor, Columbus, Ohio 43215, (BLBA only).
525 Griffin Street, Federal Building, Dallas, Texas 75202, (FECA only).
701 Loyola Avenue, room 13032, New Orleans, Louisiana 70113, (LHWCA only).
12600 North Featherwood Drive, Houston, Texas 77034, (LHWCA only).
911 Walnut Street, Kansas City, Missouri 64106, (FECA only).
1801 California Street, Denver, Colorado 80202, (FECA and BLBA only).
71 Stevenson Street, 2nd Floor, San Francisco, California 94105, (FECA and LHWCA only).
401 E. Ocean Boulevard, suite 720, Long Beach, California 90802, (LHWCA only).
300 Ala Moana Boulevard, room 5108, Honolulu, Hawaii 96850, (LHWCA only).
1111 3rd Avenue, Seattle, Washington 98101–3212, (LHWCA and FECA only).

Mine Safety & Health Administration Field Offices

Chief, Division of Mining Information System MSHA

P.O. Box 25367, DFC, Denver, CO 80225–0367.

Superintendent, National Mine Health and Safety Academy

P.O. Box 1166, Beckley, WV 25802–1166.

Chief, Approval and Certification Center, MSHA

R.R. Box 251, Industrial Park Road, Triadelphia, WV 26059.

District Manager for Coal Mine Safety and Health

Penn Place, room 3128, 20 N. Pennsylvania Avenue, Wilkes-Barre, PA 18701.
RR1, Box 736, Hunker, PA 15639.
5012 Mountaineer Mall, Morgantown, WV 26505.
100 Bluestone Road, Mt. Hope, WV 25880.
P.O. Box 560, Norton, VA 24273.
219 Ratliff Creek Road, Pikeville, KY 41501.
HC 66, Box 1762, Barbourville, KY 40906.
P.O. Box 418, Vincennes, IN 47591.
P.O. Box 25367, Denver, CO 80225–0367.
100 YMCA Drive, Madisonville, KY 42431–9019.

District Manager for Metal and NonMetal Mine Safety and Health

230 Executive Drive, Mars, PA 16046–9812.
135 Gemini Circle, suite 212, Birmingham, AL 35209.
515 W. 1st Street, #228, Duluth, MN 55802–1302.
1100 Commerce Street, room 4C50, Dallas, TX 75242–0499.
P.O. Box 25367, Denver, CO 80225–0367
3333 Vaca Valley Parkway, suite 600, Vacaville, CA 95688.

Office of Labor-Management Standards, Regional Directors—District Directors

OLMS Regional Directors

Suite 600, 1365 Peachtree Street, NE., Atlanta, GA 30367.
Suite 302, 121 High Street, Boston, MA 02110.
Suite 774, Federal Office Building, 230 S. Dearborn Street, Chicago, IL 60604.
Suite 831, Federal Office Building, 1240 E. Ninth Street, Cleveland, OH 44199.
Suite 300, 525 Griffin Sq. Bldg., Griffin & Young Streets, Dallas, TX 75202.
Suite 2200, Federal Office Bldg., 911 Walnut Street, Kansas City, MO 64106.
Suite 878, 201 Varick Street, New York, NY 10014.
Suite 9452, William Green Federal Bldg., 600 Arch Street, Philadelphia, PA 19106.
Suite 725, 71 Stevenson Place, San Francisco, CA 94105.
Suite 558, Riddell Bldg., 1730 K Street, NW., Washington, DC 20006.

OLMS District Directors

Suite 1310, Federal Bldg., 111 W. Huron Street, Buffalo, NY 14202.
Suite 950, 525 Vine Street, Cincinnati, OH 45202.
Suite 940, 1801 California Street, Denver, CO 80202–2614.
Suite 630, Federal Bldg., & Courthouse, 231 W. Lafayette Street, Detroit, MI 48226.
Suite 350, Federal Office Bldg., Carlos Chardon Street, Hato Rey, PR 00918.
Suite 165, 401 Louisiana Street, Houston, TX 77002.
Suite 708, 3660 Wilshire Boulevard, Los Angeles, CA 90010.
Suite 503, Washington Square Bldg., 111 NW 183rd Street, Miami, FL 33169.
Suite 118, 517 East Wisconsin Avenue, Milwaukee, WI 53202–4504.
Suite 100, Bridgeplace, 220 South Second Street, Minneapolis, MN 55401.
Suite 238, 233 Cumberland Bend Drive, Nashville, TN 37228.
Metro Star Plaza, 190 Middlesex/Essex Turnpike, Iselin, NJ 08830.
Suite 804, 234 Church Street, New Haven, CT 06510.
Suite 13009, 701 Loyola Avenue, New Orleans, LA 70113.
Suite 801, Federal Office Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222.
Suite 9109 E, 1222 Spruce Street, St. Louis, MO 63103.
Suite 880, 111 3rd Avenue, Seattle, WA 98101–3212.
Suite 301, 4905 W. Laurel Street, Tampa, FL 33607

Regional Administrator, Occupational Safety and Health Administration (OSHA)

Area Director, OSHA

Valley Office Park, 13 Branch Street, Methuen, Massachusetts 01844.
639 Granite Street, 4th Floor, Braintree, Massachusetts 02184.
279 Pleasant Street, suite 201, Concord, New Hampshire 03301.
380 Westminister Mall, room 243, Providence, Rhode Island 02903.
1145 Main Street, room 108, Springfield, Massachusetts 01103–1493.
40 Western Avenue, room 121, Augusta, Maine 04330.
Federal Office Building, 450 Main Street, room 508, Hartford, Connecticut 06103.
One LaFayette Square, suite 202, Bridgeport, Connecticut 06604.
90 Church Street, room 1407, New York, New York 10007.
990 Westbury Road, Westbury, New York 11590.
42–40 Bell Boulevard, Bayside, New York 11361.
3300 Vikery Road, North New, Syracuse, New York 13212.
5360 Genesee Street, Bowmansville, New York 14026.
U.S. Courthouse & Federal Office Building, Carlos Chardon Avenue, room 559, Hato Key, Puerto Rico 00918.
401 New Karner Road, suite 300, Albany, New York 12205–3809.
Marlton Executive Park, Building 2, suite 120, 701 Route 73 South, Marlton, New Jersey 08053.
299 Cherry Hill Road, suite 304, Parsippany, New Jersey 07054.
500 Route 17 South, 2nd Floor, Hasbrouck Heights, New Jersey 07604.
Plaza 35, suite 205, 1030 St. Georges Avenue, Avenel, New Jersey 07001.
660 White Plains Road, 4th Floor, Tarrytown, New York 10591–5107.
US Custom House, room 242, Second & Chestnut Street, Philadelphia, Pennsylvania 19106.
One Rodney Square, suite 402, 920 King Street, Wilmington, Delaware 19801.
Federal Building, room 1428, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.
20 North Pennsylvania Avenue, Penn Place, room 2005, Wilkes-Barre, Pennsylvania 18701–3590.
850 North 5th Street, Allentown, Pennsylvania 18102.
550 Eagan Street, room 206, Charleston, West Virginia 25301.
3939 West Ridge Road, suite B12, Erie, Pennsylvania 16506–1857.
Progress Plaza, 49 North Progress Street, Harrisburg, Pennsylvania 17109.
Federal Building, room 1110, Charles Center, 31 Hopkins Plaza, Baltimore, Maryland 21201.
Federal Office Building, 200 Granby Street, room 835, Norfolk, Virginia 23510–1811.
La Vista Perimeter Office Park, Building 7, suite 110, Tucker, Georgia 30084.
2400 Herodian Way, suite 250, Smyrna, Georgia 30080.
450 Mall Boulevard, suite J, Savannah, Georgia 31406.
Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216.
3737 Government Boulevard, suite 100, Mobile, Alabama 36693.
1835 Assembly Street, room 1468, Columbia, South Carolina 29201.
Jacaranda Executive Court, 8040 Peters Road, Building H–100, Fort Lauderdale, Florida 33324.
3780 I–55 North, suite 210, Jackson, Mississippi 39211–6323.
3100 University Boulevard South, room 303, Jacksonville, Florida 32216
John C. Watts Federal Building, 330 West Broadway, room 108, Frankfort, Kentucky 40601.

2002 Richard Jones Road, suite C–205, Nashville, Tennessee 37215.
Century Station, 300 Fayetteville Mall, room 438, Raleigh, North Carolina 27601.
5807 Breckenridge Parkway, suite A, Tampa, Florida 33610.
1600 167th Street, suite 12, Calumet City, Illinois 60409.
O'Hara Lake Plaza, 2360 East Devon Avenue, suite 1010, Des Plaines, Illinois 60018.
344 Smoke Tree Business Park, North Aurora, Illinois 60542.
Federal Office Building, 1240 East 9th Street, room 899, Cleveland, Ohio 44199.
Federal Office Building, 200 N. High Street, room 620, Columbus, Ohio 43215.
US P.O. & Courthouse Building, 46 East Ohio Street, room 423, Indianapolis, Indiana 46204.
36 Triangle Park Drive, Cincinnati, Ohio 45246.
2618 North Ballard Road, Appleton, Wisconsin 54915.
Henry S. Reuss Building, room 1180, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.
110 South 4th Street, room 116, Minneapolis, Minnesota 55401.
234 North Summit Street, room 734, Toledo, Ohio 43604.
801 South Waverly Road, suite 306, Lansing, Michigan 48917–4200.
4802 East Broadway, Madison, Wisconsin 53716.
2918 W. Willow Knolls Road, Peoria, Illinois 61614.
8344 East R.L. Thornton Freeway, suite 420, Dallas, Texas 75228.
611 East 6th Street, Grant Building, room 303, Austin, Texas 78701.
Westbank Building, suite 820, 505 Marquette Avenue, NW., Albuquerque, New Mexico 87102.
2156 Wooddale Boulevard, Hoover Annex, suite 200, Baton Rouge, Louisiana 70806.
Government Plaza, 400 Mann Street, room 300, Corpus Christi, Texas 78401.
Federal Office Building, 1205 Texas Avenue, room 422, Lubbock, Texas 79401.
350 North Sam Houston Parkway East, room 120, Houston, Texas 77060.
17625 El Camino Real, suite 400, Houston, Texas 77058.
420 West Main Place, suite 300, Oklahoma City, Oklahoma 73102.
North Starr II, suite 430, 8713 Airport Freeway, Fort Worth, Texas 76180–7604.
Savers Building, suite 828, 320 West Capitol Avenue, Little Rock, Arkansas 72201.
4171 North Mesa Street, room C119, El Paso, Texas 79902.
6200 Connecticut Avenue, suite 100, Kansas City, Missouri 64120.
911 Washington Avenue, room 420, St. Louis, Missouri 63101.
210 Walnut Street, room 815, Des Moines, Iowa 50309.
300 Epic Center, 301 North Main, Wichita, Kansas 67202.
Overland—Wolf Building, room 100, 6910 Pacific Street, Omaha, Nebraska 68106.
5799 Broadmoor, suite 338, Mission, Kansas 66202.
19 North 25th Street, Billings, Montana 59101.
220 E. Rosser, room 348, P.O. Box 2439, Bismarck, North Dakota 58501.
7935 East Prentice Avenue, suite 209, Englewood, Colorado 80011–2714.
1391 Speer Boulevard, suite 210, Denver, Colorado 80204.
1781 South 300 West, PO Box 65200, Salt Lake City, Utah 84165–0200.
71 Stevenson Street, room 415, San Francisco, California 94105.
300 Ala Moana Boulevard, suite 5122, PO Box 50072, Honolulu, Hawaii 96850.
3221 North 16th Street, suite 100, Phoenix, Arizona 85016.
1050 East William, suite 435, Carson City, Nevada 89701.
301 West Northern Lights Boulevard, suite 407, Anchorage, Alaska 99503.
3050 North Lakeharbor Lane, suite 134, Boise, Idaho 83703.
121 107th Avenue, Northeast, room 110, Bellevue, Washington 98004.
1220 Southwest Third Avenue, room 640, Portland, Oregon 97204.

Pension and Welfare Benefits Administration Area Director or District Supervisor

Area Director, One Bowdoin Square, 7th Floor, Boston, Massachusetts 02114.
Area Director, 1633 Broadway, rm. 226, New York, NY 10019.
Area Director, 3535 Market Street, room M300, Gateway Building, Philadelphia, Pennsylvania 19104.
District Supervisor, 1730 K Street NW., suite 556, Washington, DC 20006.
Area Director, 1371 Peachtree Street NE., room 205, Atlanta, Georgia 30367.
District Supervisor, 111 NW. 183rd Street, suite 504, Miami, Florida 33169.
Area Director, 1885 Dixie Highway, suite 210, Ft. Wright, Kentucky 41011.
District Supervisor, 231 W. Lafayette Street, room 619, Detroit, Michigan 48226.
Area Director, 401 South State St., suite 840, Chicago, Illinois 60605.
Area Director, room 1700, 911 Walnut Street, Kansas City, Missouri 64106.
District Supervisor, 815 Olive Street, room 338, St. Louis, Missouri 63101.
Area Director, 525 Griffin Street, room 707 Dallas, Texas 75202.
Area Director, 71 Stevenson Street, suite 915, P.O. Box 190250, San Francisco, California 94119–0250.
District Director, 1111 Third Avenue, room 860, Seattle, Washington 98101–3212.
Area Director, 3660 Wilshire Boulevard, room 718, Los Angeles, California 90010.
Area Director, suite 514, 790 E. Colorado Blvd., Pasadena, CA 91101.

Regional Administrators, Veterans' Employment and Training Service (VETS)

Region I: One Congress Street, 11th Floor, Boston, Massachusetts 02114.
Region II: 201 Varick Street, room 766, New York, New York 10014.
Region III: U.S. Customs House, room 305, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106.
Region IV: 1371 Peachtree Street, NE., room 326, Atlanta, Georgia 30367.
Region V: 230 South Dearborn, room 1064, Chicago, Illinois 60604.
Region VI: 525 Griffin Street, room 205, Dallas, Texas 75202.
Region VII: Federal Building, room 803, 911 Walnut Street, Kansas City, Missouri 64106.
Region VIII: 1801 California Street, suite 910, Denver, Colorado 80202–2614.
Region IX: 71 Stevenson Street, suite 705, San Francisco, California 94105.
Region X: 1111 Third Avenue, suite 800, Seattle, Washington 98101–3212.

PART 70—[AMENDED]

4. Part 70 is amended by adding an Appendix B to read as follows:

Appendix B to Part 70—Freedom of Information/Privacy Act Coordinators

The Departmental Legal and Administrative Contact is Miriam McD. Miller, Esq., Office of the Solicitor, Room N–2428, FPB, tel. (202) 219–8188; FAX (202)·219–6896. For direct assistance, you may wish to contact the following agency coordinators for the Freedom of Information Act and the Privacy Act:

Agency	Person	Address	Telephone [1]
Office of the Secretary (O/SECY)	Tena Lumpkins	Rm. N–1301, FPB	219–5095
Office of the Assistant Secretary for Admin. and Management (OASAM).	Tena Lumpkins	Rm. N–1301, FPB	219–5095
Office of the Admin. Law Judges (OALJ)	Mary Grace Dorsey	Suite 400–N, 800 K St., NW WDC	633–0355
Benefits Review Board (BRB)	Sharon Ratliff	Suite 500–N, 800 K St., NW WDC	633–7503
Office of the American Workplace, Ofc of Statutory Programs (OAW/OSP).	Kelly Andrews	RM. N–5411, FPB	219–4473
Bureau of Labor Statistics (BLS)	K. Kurz or D. Solis	Rm. 3255, PSB	606–7628
Employees Compensation Appeals Board (ECAB)	Mary Ellen McKenna	Rm. 300, Reporters Bldg.	401–8600

Agency	Person	Address	Telephone [1]
Employment Standards Admin. (ESA)	Dorothy Chester	Rm. S–3013C, FPB	219–8447
Employment and Training Admin. (ETA)	Patsy Files	Rm. N–4671, FPB	219–6695
Ofc of the Inspector General (OIG)	Pamela Davis	Rm. S–5506, FPB	219–6747
Deputy Under Secretary for International Labor Affairs (ILAB).	Patricia Clark	Rm. S–5303, FPB	219–6136
Office of Labor-Management Standards (OLMS)	James Santelli	Rm. N–5613, FPB	219–7373
Mine Safety and Health Admin. (MSHA)	Tom Brown	Rm. 605, BT#3 Arlington, VA	(703) 235–1452
Occupational Safety and Health Admin. (OSHA)	James Foster	Rm. N–3647, FPB	219–8148
Pension and Welfare Benefits Admin. (PWBA)	June Patron	Rm. N–5625, FPB	219–6999
President's Committee on the Employment of Persons with Disabilities (PCEPD).	Gregory Best	Suite 300, 1331 F St., NW WDC	376–6200
Office of the Solicitor (OSOL)	Elizabeth Newton	Rm. N–2414, FPB	219–6884
Veterans' Employment and Training Service (VETS)	Bernard Wroble	Rm. S–1310, FPB	219–6350

[1] All numbers are within area code (202) except MSHA.

Building Addresses

a. Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

b. Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC 20212–0001.

c. Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, VA 22203.

d. Reporters' Building, 300 7th Street, SW., Washington, DC 20024.

e. Tech World, 800 K Street, NW., Washington, DC 20001–8002.

Signed at Washington, DC, this 1st day of June, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–13882 Filed 6–8–94; 8:45 am]

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federal register

Thursday
June 9, 1994

Part V

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Revised mandatory guidelines.

SUMMARY: The Department of Health and Human Services (HHS) revises some of the scientific and technical guidelines for Federal drug testing programs and revises certain standards for certification of laboratories engaged in urine drug testing for Federal agencies.

EFFECTIVE DATE: September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Donna M. Bush, Chief, Drug Testing Section, Division of Workplace Programs, Substance Abuse and Mental Health Services Administration (SAMHSA), room 9A–53, 5600 Fishers Lane, Rockville, Maryland 20857, tel. (301) 443–6014.

SUPPLEMENTARY INFORMATION: The Department is revising the guidelines entitled "Mandatory Guidelines for Federal Workplace Drug Testing Programs," (Mandatory Guidelines) which were initially published in the **Federal Register** on April 11, 1988 (53 FR 11979). These Mandatory Guidelines and the revisions are developed in accordance with Executive Order No. 12564 dated September 15, 1986, and section 503 of Public Law 100–71, 5 U.S.C. section 7301 note, the Supplemental Appropriations Act for fiscal year 1987 dated July 11, 1987. The revisions to the Mandatory Guidelines incorporate changes based on the comments submitted and the Department's first 5 years of experience in implementing and administering these Guidelines.

BACKGROUND AND SUMMARY OF PUBLIC COMMENTS AND POLICIES OF THE REVISED GUIDELINES

A. Proposed Revised Mandatory Guidelines

The basic purpose of the Mandatory Guidelines is to establish scientific and technical guidelines for Federal agencies' workplace drug testing programs and to establish a certification program for laboratories engaged in urine drug testing for Federal agencies. The proposed revisions published in the **Federal Register** on January 25, 1993 (58 FR 6062), retained the basic requirements in the Mandatory Guidelines published in the **Federal Register** on April 11, 1988, but as indicated above refined some requirements in order to incorporate changes based on the Department's first 5 years of experience in implementing and administering these Guidelines.

The major changes proposed in the notice published in the **Federal Register** on January 25, 1993, are summarized here to facilitate the discussion of the comments received during the public comment period.

The Department proposed reducing the requirement to collect 60 mL of urine at the collection site to 30 mL. This change was proposed because many times donors have difficulty in providing the 60 mL of urine. In addition, 30 mL is adequate to complete the required testing and satisfy other program requirements.

The Department proposed to revise the specimen collection procedure to allow Federal agencies to use an optional "split specimen" collection procedure. Several Federal agencies have been granted waivers to use split specimen collection procedures during the past 5 years. Establishing a "split specimen" procedure will ensure that each Federal agency will be using the same procedure. The Department believes that appropriate guidance must be provided regarding the minimum acceptable volumes for the split specimens, measuring temperature before a single donor specimen is transferred into two separate specimen bottles, sending both split specimen bottles to the laboratory at the same time to ensure that they are subject to the same shipping and storage conditions, and specifying the procedures for testing Bottle B when the Bottle A specimen is reported positive.

The Department proposed to revise the collection procedure to allow Federal agencies to use an individual of the same gender, other than a collection site employee, to observe the collection of a specimen whenever there is reason to believe the individual may have altered or substituted the specimen. This change is based on the understanding that it is not always possible to have a collection site employee of the same gender observe the collection.

The Department proposed a change to allow a laboratory to use a certifying scientist who is only certified to review initial drug tests which are negative. This could assist in reducing the cost of testing without compromising the reliability of drug testing.

The Department proposed that the initial test level for marijuana metabolites he reduced from 100 ng/mL to 50 ng/mL. This change reflects advances in technology of immunoassay tests for marijuana metabolites.

The Department proposed to allow laboratories to use multiple immunoassay tests for the same drug or drug class. This would allow laboratories to use an initial test and then forward all presumptive positives for a second test by a different immunoassay technique to minimize possible presumptive positives due to the presence of structural analogues in the specimen. In addition, this policy would allow a laboratory to use a different immunoassay for specimens that may be untestable with one immunoassay.

The Department proposed that in order to report a specimen positive for only methamphetamine, the specimen must also contain the metabolite amphetamine at a concentration equal to or greater than 200 ng/mL by the confirmatory test. This proposed requirement would ensure that high concentrations of sympathomimetic amines available in over-the-counter and prescription medications will not be misidentified as methamphetamine.

The Department proposed reducing the number of blind samples a Federal agency must submit each quarter to its contracting laboratory from 10% of all samples to a minimum of 3% (with a maximum of 100 blind samples). This proposed change may significantly reduce the costs associated with maintaining a blind sample program without affecting the Federal agency's ability to monitor a laboratory's performance.

The performance testing sample portion of the laboratory certification program was proposed to be changed by reducing the performance testing (PT) challenges for certified laboratories from 6 cycles per year to 4 cycles per year. Experience in this and other performance testing programs indicates that 4 cycles per year is sufficient to assess a laboratory's ability to test and report results for performance testing samples.

The Department proposed restricting the types of arrangements that can exist between the Medical Review Officer (MRO) and the laboratory to ensure that a conflict of interest does not exist. The restrictions would require that the agency's MRO not be an employee or an agent of, or have any financial interest in, the laboratory for which the MRO is reviewing drug testing results. Similarly, the laboratory would be prohibited from entering into any agreement with an MRO that could be construed as a conflict of interest.

A new subpart D was proposed which provides detailed procedures for the

internal review of a suspension or proposed revocation of a laboratory's certification to perform drug testing. These procedures will ensure and provide a timely and fair review of all suspensions or proposed revocations.

The Department proposed that the written notice of the suspension which is sent to the laboratory, as well as the reviewing official's written decision upholding or denying suspension or proposed revocation under the review procedures in subpart D, would be made available to the public upon request. This provision ensures that the public has access to the documents containing the basis for HHS's actions.

B. Public Comments and the Department's Responses

The Department received 73 public comments on the proposed changes from Federal agencies, individuals, organizations, and companies. About 50% of these supported all or some of the proposed changes. All written comments were reviewed and taken into consideration in the preparation of the revised Mandatory Guidelines. The substantive concerns raised in the public comments and the Department's responses to the comments are set out below. Similar comments are considered together.

1. Definitions

A number of commenters expressed concerns with the definitions in section 1.2. It was suggested that the definition for chain of custody indicate that couriers do not need to document chain of custody while the specimens are in transit to the laboratory. The Department agrees that the Mandatory Guidelines should be clarified to address that issue. Specimens are sealed in packages and any tampering with a sealed specimen would be noticed by the laboratory and documented on the specimen chain of custody. In addition, as a practical matter, couriers, express couriers, and postal service personnel do not have access to the specimen chain of custody form since the form is inside the sealed package. Section 2.2(i) of the Mandatory Guidelines that discusses the transportation of a specimen to a laboratory has been revised to clarify this point.

One commenter recommended that the definitions in the Guidelines conform to the definitions established by the National Committee for Clinical Laboratory Standards (NCCLS) since the proposed definitions may be in conflict with the efforts of that nonprofit, educational organization. The Department fully supports the efforts of this committee to develop standard definitions since a common understanding of definitions is essential for maintaining a high level of performance within laboratory testing programs. The Department has revised the definitions in section 1.2 to ensure that they are consistent with those proposed currently by NCCLS. The Department has changed the proposed definitions for calibrator, control, and standard as well as included new definitions for donor, specimen, sample, and quality control sample. The Department also made appropriate changes in other sections of the Guidelines to ensure that the terms used were consistent with these new definitions. The Department notes, however, that these changes are not substantive, but rather are technical in nature to clarify the definitions. The Department believes these changes will eliminate the confusion expressed by several other commenters regarding the use of these terms in other sections of the Guidelines.

One commenter believes the proposed definition for the certifying scientist should specifically state that the individual understands chain of custody. The Department intended that the definition of certifying scientist include that the individual have a thorough understanding of chain of custody, since it was proposed that such individual have "training and experience in the theory and practice of all methods and procedures used in the laboratory." See section 1.2. However, in order to prevent any confusion, the definition has been changed to clarify this issue.

One commenter suggested that the Secretary require a certifying scientist to possess at least a masters degree, so they would be equal to experts presented by an employee who is contesting the result in court or in an administrative proceeding. Based on the Department's experience, there are numerous highly qualified individuals serving as certifying scientists who possess bachelors' degrees, and who have the expertise to testify as to the records they have certified. These certifying scientists do not need to be qualified as experts in litigation, as the defense may qualify someone else in the laboratory or outside the laboratory to perform this function, if necessary. Further, the Department believes that requiring higher educational requirements would place an unnecessary burden on the laboratories, as well as eliminate many qualified individuals from serving as certifying scientists.

One commenter believes the requirement to use an Office of Management and Budget (OMB) approved specimen chain of custody form requires the laboratories to use OMB approved laboratory chain of custody forms. This interpretation is incorrect. The Department proposed that such forms be used only for specimen chain of custody forms, *not* laboratory chain of custody forms. The Department believes that standard specimen chain of custody forms are important to ensure that collection sites have a consistent form so as to reduce any errors or incomplete documentation when filling out the forms.

One commenter noted that the Department's proposed definition of an immunoassay test is ambiguous and does not support the policy that allows using a second immunoassay test for specimens that are presumptively positive for amphetamines. Specifically, the term "initial test" was proposed to be defined as "[a]n immunoassay test to eliminate "negative" urine specimens from further consideration and to identify the class of drugs that requires confirmation." The Department agrees with the commenter that the definition is ambiguous. The Department supports allowing laboratories to perform multiple immunoassay tests for the same drug or drug class. Therefore, the Department has clarified the definition to ensure that further testing is consistent with section 2.4(e)(4) which permits conducting multiple initial tests.

2. Dilution/Adulteration Tests

Several commenters concurred with section 2.1(c) which clarifies that laboratories may conduct dilution/adulteration testing to determine the validity of the specimen while some commenters sought to have the Secretary define the specific tests to be conducted and require that such tests be performed. The issue regarding the types of dilution/adulteration testing to be performed has been highly controversial among forensic laboratory professionals since there is a lack of data to suggest that dilution/adulteration testing can clearly identify a donor who has intentionally taken a substance to affect the outcome of a drug test or has otherwise diluted or adulterated the specimen. At this time, the Department believes that such testing should remain optional and the selection of tests to be conducted for possible dilution/adulteration and the cutoff levels for such tests, if conducted, should be determined by the laboratories based on their best judgment.

Two commenters requested that the Department allow dilution/adulteration testing to be conducted at the collection

site. The Department believes that it is better able to monitor the performance of such testing when it is conducted by laboratory personnel, rather than require agencies to monitor such testing at the collection sites. During the laboratory inspection process, the Department is able to evaluate the laboratories' performance of such testing to ensure that tests are performed properly, chain of custody is not broken, and cross-contamination does not occur from one donor specimen to another which could impact the integrity of a specimen. The MRO can review the results of the dilution/adulteration tests and make a decision on the basis of the test and on his or her interview of the donor to determine whether a medical factor may have contributed to the results of such testing. In addition, disallowing the use of dilution/adulteration testing at the collection site ensures that agency employees are not unnecessarily subject to observed collection and thus protects the privacy of individuals to the maximum extent possible.

3. Specimen Collection Procedure

With regard to the specimen collection procedure, a number of commenters were highly supportive of reducing the required volume of a urine specimen from 60 mL to 30 mL as stated in section 2.2(f)(10). One commenter, however, expressed concern that 30 mL is insufficient when dealing with a specimen that is positive for more than one drug. That may be the case in some cases. Nevertheless, the number of specimens that are positive for more than one drug is very small and most volumes collected generally exceed 30 mL. The Department believes this reduced volume requirement will make it easier for an individual to provide a urine specimen with sufficient volume on the first attempt rather than requiring the collection of a second specimen after drinking a reasonable quantity of liquid. It is noted that the policy of combining additional urine, after drinking a reasonable amount of liquid, with a partial specimen (i.e., an insufficient volume of urine on the first void) has been eliminated. The Department believes the reduced volume requirements will ensure that a sufficient volume is collected on the first void and combining partial specimens will not be necessary.

One commenter expressed concern over the fact that the Mandatory Guidelines did not specify limitations or guidance as to the amount of liquid to be given a donor who could not provide a 30 mL urine specimen. The commenter expressed concerns regarding the possible risk of water intoxication if there is no limit established for the amount of liquid that can be provided. The Department concurs and has changed the example given in section 2.2(f)(10) to read "(e.g., an 8 oz glass of water every 30 minutes, but not to exceed a maximum of 24 oz)." The example provided describes a reasonable amount of liquid to be provided and the Department would expect collection sites to use reasonable care in its determination of the amount of liquid to provide donors.

Several commenters noted that the temperature range stated in the proposed revisions did not agree with the range stated in the introductory discussion of the proposed changes. A notice correcting the error was published in the Federal Register on March 1, 1993. The correct temperature range is "32°-38°/90°-100°F."

There was general agreement that the marginally wider temperature range will not adversely affect the ability to detect a donor who may possibly tamper with the specimen. Two commenters, however, believe that the lower limit of the temperature range should be increased. The Department does not agree with this recommendation. A urine specimen provided in a collection cup that is at room temperature will cool quickly; therefore, a narrow temperature range will significantly increase the number of specimens that will not satisfy the temperature range requirements. This would cause numerous unnecessary collections of second specimens and falsely raise suspicions that many donors have tampered with their specimens.

With regard to the collection of a urine specimen when using direct observation, one commenter suggested that the employee's agency choose the observer if there is no collection site person of the same gender available. The Department agrees and sections 2.2(f)(13), 2.2(f)(16), and 2.2(f)(23) have been revised to include this requirement. The Department believes that the agency will select an individual who will act responsibly and reliably so as not to substantiate any allegation to the contrary by an employee.

One commenter believes that only trained collectors should be involved in the collection procedure, especially when direct observation is required. The Department acknowledges that trained personnel should be involved in the collection of urine specimens; however, it is not always possible to ensure that a trained collection site person of the same gender will be available when a direct observation is required. Allowing the agency to select an individual to act as the observer, when there are unusual circumstances, ensures that the collection will occur promptly and as scheduled rather than delaying the collection unnecessarily.

One commenter believed that observed collection should never be used in any circumstances. The Department disagrees. The Department continues to believe that observed collection is justified and necessary when there exists reasonable suspicion to believe that the donor altered or substituted the specimen. Observed collections do not occur frequently. However, the Department believes that any invasion of a donor's privacy is greatly outweighed by public health and safety concerns in such cases.

One commenter recommended that we refer to the individual providing the urine specimen as the "donor." The Department concurs with the recommendation and has replaced the word "individual," when it refers to the person providing a urine specimen, with the word "donor" throughout the Guidelines. A definition for donor has been included in section 1.2. In addition, the use of the word "donor" is consistent with its use on the specimen chain of custody form.

One commenter suggested that the entire collection procedure be revised substantially to provide more specific guidance to agencies on the collection process. The Department believes the procedure, as described, provides sufficient guidance to the agencies on the collection process, including factors to ensure that urine specimens are collected properly and satisfy chain of custody requirements. The changes made in the Mandatory Guidelines with regard to the single specimen collection procedure and the optional split specimen procedure should clarify the procedures and, thereby, address many of the concerns raised by this commenter without completely revising and expanding the descriptions of the collection procedures.

Many commenters concurred with including an optional split specimen collection procedure. They believed it was important to include split specimens since the Omnibus Transportation Employee Testing Act of 1991, Title V of Public Law 102–143, requires using a split specimen collection procedure for industries regulated by the Department of Transportation (DOT). This is particularly important since Federal employees from a number of Departments will be subject to both the requirements of DOT (49 CFR Part 40) and the requirements of the Mandatory Guidelines and Executive Order 12564 (September 15, 1986).

Two commenters suggested allowing the use of two or three containers to collect split specimens. The Department agrees with this recommendation and has revised the collection procedure to indicate clearly that either a specimen bottle or a specimen container may be used when collecting urine specimens. However, when using a split specimen collection procedure, it is not acceptable for a donor to provide the split specimens by urinating directly into both Bottle A and Bottle B. The specimen must be provided by urinating into only one container or into Bottle A. After the temperature is measured, if the specimen was provided directly into Bottle A, an appropriate amount is poured into Bottle B. If a specimen container was used, appropriate amounts are poured from the specimen container into both Bottle A and Bottle B. For split specimen collections, this procedure ensures that the specimens in Bottle A and Bottle B are identical, it is easier to measure the temperature of a single specimen rather than to measure the temperature of two specimens that were collected in separate containers, and it is easier for a donor to provide one specimen in a single container/bottle rather than into two separate bottles.

It was suggested by several commenters that we specify the amount of urine to he poured into Bottle B. We concur with that recommendation and have changed section 2.2(h)(3) of the split specimen procedure to specify that a minimum of 15 mL of urine shall he poured into Bottle B. Since Bottle B will only be tested for a specific suhstance(s), 15 mL is sufficient to conduct the testing and to allow a sufficient quantity to be retained frozen if Bottle A is reported positive. Additionally, section 2.2(h)(1) has been changed to specify that a minimum of 45 mL of urine is required when using a split specimen collection procedure rather than the 30 mL minimum when using the single specimen collection procedure.

One commenter was concerned with the handling and storage of the split specimen (Bottle B) after the Bottle A specimen is shipped to the laboratory. We agree that the wording in section 2.2(h)(5) of the split specimen collection procedure regarding refrigerating the specimens was confusing and it has been revised. The Department believes that the most efficient and cost effective way to handle split specimens is to send both the Bottle A and Bottle B specimens to the laboratory at the same time including the appropriate specimen chain of custody forms. This procedure will ensure the integrity of both Bottle A and Bottle B. This procedure is also simpler and more cost effective than one which would require the collection site to retain Bottle B specimens until the results for the Bottle A specimens are reported by the MRO to the agency and the agency notifies the collection site to either discard the Bottle B specimens or to ship a specific Bottle B specimen to another certified laboratory. When both specimens are received by the laboratory, Bottle A is normally tested within one day and, if positive, both Bottle A and Bottle B can he placed in secure, refrigerated storage until the confirmatory test is completed. This procedure will ensure that hoth specimens are treated essentially the same and subject to similar storage conditions until the testing is completed.

Several commenters were concerned with the impact that a failed to reconfirm result on the Bottle B specimen would have on a donor since personnel action may have been taken hased on an MRO verified positive result for Bottle A. Although a failed to reconfirm result for Bottle B requires the MRO to void the test result for Bottle A and an agency may be required to reverse any personnel action that may have been taken, we believe failed to reconfirm reports will occur infrequently and this possibility should not be the basis for an agency to delay any personnel action. The Department believes that removing an employee, for example, from a safety-sensitive position which may impact public health and safety outweighs the minimal possibility that the testing of Bottle B will not reconfirm the presence of a drug or metabolite.

In view of the comments, section 2.2(h)(6) has also been clarified to indicate the MRO's responsibility to report a positive result for Bottle A. When an MRO has verified the test of the first specimen bottle (Bottle A) as a positive result, the MRO must report the result to the agency without waiting for the donor to request that the Bottle B specimen be tested.

Several commenters expressed concern regarding the actions taken when a second laboratory fails to reconfirm the presence of a drug or metabolite in the second specimen bottle (Bottle B) in a split specimen collection. Since the Bottle B specimen is tested without regard to the cutoff levels, the result reported by the second laboratory is not reported as a negative or positive result, but reported as either reconfirmed or failed to reconfirm the presence of a drug or metabolite. The Department agrees that if this situation occurs, an investigation must be conducted. The Department has added this requirement in section 2.2(h)(8) of the Mandatory Guidelines and has required the MRO to notify the donor's agency. In addition, the Federal agency must contact the Secretary and the Secretary will investigate the failed to reconfirm result and attempt to determine the reason for the inconsistent results between Bottle A and Bottle B. HHS will report its findings to the Federal agency and ensure that appropriate action is taken to prevent the recurrence of the failed to reconfirm result.

Some commenters simply did not like permitting Federal agencies to have the option of a split specimen procedure, believing, for example, that the use of a split specimen procedure gives the perception of a lack of confidence in the results when using a single specimen collection, that the additional administrative and collection costs are not justified, and that there is an increased risk of administrative errors.

It should he noted that certain Federal employees are subject to both the Mandatory Guidelines and the Omnibus Transportation Employee Act of 1991, Title V of Public Law 102–431, (Omnibus Act) which requires split specimens. Therefore, the agencies must have the flexibility to collect split specimens as required by the Omnibus Act. Since Federal agencies may also request a waiver under section 1.1(e) of the Mandatory Guidelines and the Department has provided a number of agencies with a waiver to permit split specimens during the past 5 years, the Department believes including an optional split specimen collection procedure in the Mandatory Guidelines will ensure consistency among all agencies currently using split specimens and those wanting to implement split specimen collections. In addition, each agency should have the option of treating its employees equally rather than treating its employees under the Omnibus Act differently from the employees only subject to the Mandatory Guidelines.

With regard to the perception that the results from a single specimen collection are unreliable and not adequate to protect employee rights when compared to a split specimen collection, the Department is confident that the results from a single specimen collection are scientifically and legally supportable. This belief is based on the stringent requirements that have been established by the Mandatory Guidelines—that is, requiring the use of rigorous chain of custody procedures when handling and testing specimens; requiring laboratories to use qualified

and trained personnel, validated analytical testing procedures, and extensive internal quality control and quality assurance procedures; requiring laboratories to participate in a comprehensive certification program that includes performance testing samples and semi-annual inspections; and using MROs to ensure that procedures have been followed as required.

Although the split specimen procedures are designed to minimize administrative errors, the Department acknowledges that any time procedures are modified the risk of administrative errors increases. However, the use of a standard specimen chain of custody form should minimize such errors and the Department, through the inspection process, will monitor the laboratories' procedures in processing split specimens.

The procedures for split specimens are also designed to keep the administrative burden at a minimum. The Department believes that the paperwork for collection sites or laboratories will not increase much since the collection sites will be using a seven-part chain of custody form instead of a six-part form and sending both split specimens to the laboratory at the same time and in the same shipping container. This should minimize the additional cost and administrative burden on both collection sites and laboratories.

One commenter believed that split specimen collections create a potential to reverse results especially if there is a significant variation in the analytical sensitivities of the confirmatory tests used by each of the HHS-certified laboratories. The Department is aware of this potential and has provided guidance to the laboratories with regard to their capability to accurately quantitate and identify drugs at concentrations that are 40 percent of the confirmatory test levels. The Department believes this guidance and challenging laboratories with performance testing samples at these low concentrations will ensure that all laboratories have essentially the same sensitivity for each of the confirmatory tests.

Finally, one commenter requested guidance on whether the donor or agency would be responsible for paying the costs associated with analyzing the split specimen. The Department believes that the decision regarding financial responsibility for testing Bottle B is one the agencies must decide.

4. Certifying Test Results

One commenter stated that the proposed revision to section 2.3(b) that discusses "test validation" did not make it clear that a laboratory may use a certifying scientist who is only certified to review initial drug tests which are negative. Although this is the intent of this section and to ensure that no confusion exists, the title of section 2.3(b) has been changed to read "Certifying Test Results" and that section has been revised to state clearly that a laboratory may designate a certifying scientist(s) that is only qualified to certify results that are negative on the initial test. We note, however, that if a certifying scientist certifies confirmatory test results, the individual must have training and experience in all "procedures relevant to the results that the individual certifies." This includes both initial test and confirmatory test procedures. Changing the title of this section to read "Certifying Test Results" should also ensure that we are referring to the review and certification of specimen test results rather than the results associated with "validating" an analytical procedure before it is used to test specimens. The Department believes there was some confusion associated with the former title of this section.

5. Security and Chain of Custody

One commenter requested that the security requirements in section 2.4(a)(1), as proposed, be revised to allow emergency personnel access to all sections of the laboratory without escorts. The requirements for security pertain to limiting and documenting access under normal situations and providing escorts for authorized visitors, maintenance, and service personnel. For real emergencies, such as fires, it would be inappropriate to require the laboratory to provide an escort. This section has been changed to ensure that emergency personnel (such as firefighters) can have unescorted access similar to that authorized for inspectors. As suggested by the commenter, it would be acceptable for the laboratory to document the emergency and include, to the extent practicable, dates, time of entry and exit, and purpose of entry for all emergency response personnel. It must be noted that this exception does not apply to emergency "service" personnel, such as manufacturers' technical representatives who are called to repair an instrument or to conduct routine service.

6. Specimen Processing

One commenter noted that the word "standards" had been used incorrectly in section 2.4(d), as proposed, when stating the requirements for each initial and confirmatory batch. The Department concurs and has changed this section to state that each initial and confirmatory batch must satisfy the quality control requirements in sections 2.5(b) and 2.5(c), respectively, rather than using terms such as "standards" and "controls." Additionally, the last sentence of this section has been deleted because it is not entirely correct. Quality control samples must be known to laboratory technicians conducting the testing while only blind performance testing samples are unknown (i.e., the location in the batch, drug or metabolite present, and concentration). The requirements for laboratory blind performance testing samples and agency blind samples are discussed in section 2.5.

7. Marijuana Initial Test Level

Many respondents concurred with lowering the initial test level for marijuana metabolites from 100 to 50 ng/mL as proposed in section 2.4(e). However, one commenter claimed that the lowered cutoff concentration would identify the occasional user. The intent of Federal workplace drug testing programs is to identify individuals who use illegal substances regardless of whether they are regular or occasional users. Lowering the initial test level should increase the ability to detect any use of marijuana.

Another commenter questioned the impact that might result by the lowered cutoff concentration for those individuals who are exposed to passive inhalation (i.e., breathing the smoke exhaled by another individual smoking marijuana cigarettes). The Department does not believe that passive inhalation is a reasonable defense or that significant exposure can occur through passive inhalation to cause a urine specimen to be reported positive. A comprehensive study of passive inhalation conducted at the National Institute on Drug Abuse's Addiction Research Center in Baltimore (see Cone, E.J., et al., Passive Inhalation of Marijuana Smoke: Urinalysis and Room Air Levels of Delta-9–Tetrahydrocannabinol, Journal of Analytical Toxicology, 11: 89–96, 1987) indicates that it takes extensive exposure to extremely high concentrations under unrealistic conditions to cause a positive result; therefore, passive inhalation is not a

reasonable explanation for a positive result.

8. Initial and Confirmatory Tests

One commenter believed that the wording in section 2.4(e)(3), as proposed, conflicted with the authority to conduct dilution/adulteration tests as stated in section 2.1(c). The Department agrees that this section needs to be clarified. A laboratory may conduct dilution/adulteration tests on all specimens, whether they are positive or negative, and either before or after conducting the initial test. Section 2.4(e)(3) has been changed to clarify this policy.

Several commenters questioned the use of specimens that test negative on either the initial test or the confirmatory test for the laboratory's internal quality control program as proposed in sections 2.4(e)(3) and 2.4(f)(3). These commenters were concerned that the results may have been affected by such factors as medications that may have been taken, the health of the donors, and possible unknown problems with confirmation, thereby, making these specimens unsuitable as quality control samples. Several of these commenters recommended the use of certified negative urine or, at a minimum, confirming the negative pool by GC/MS prior to its use in a quality control program. In response to these concerns, the Department notes that the laboratory's operation must be consistent with good forensic laboratory practice (see section 3.20(c)) and such practice requires a laboratory to always certify a urine pool as negative before it is used to prepare negative samples or to prepare other quality control samples. If pooled urine does not satisfy the criteria for acceptability, it is discarded. Such certification of the urine will ensure the quality of a laboratory's internal quality control program.

9. Multiple Initial Tests

Two commenters supported the use of multiple initial tests as stated in section 2.4(e)(4), as proposed, while several commenters expressed concern with permitting the use of multiple testing. The Department believes that the use of multiple initial tests may reduce the number of presumptive positives that are forwarded to confirmatory testing that will not be confirmed and may allow obtaining a valid analytical result if a specimen is untestable on one immunoassay test. The use of multiple initial tests has been widely used with regard to testing for amphetamines and this policy should apply to all drugs.

In addition, there are reports that various substances, including prescription medications, can prevent obtaining a valid initial test result when using one immunoassay test. We believe it is appropriate to use a different immunoassay test in order to obtain a valid initial test result before reporting the specimen as "test not performed" and including an appropriate comment on the specimen chain of custody form. To clarify this issue, the example given in section 2.4(e)(4) has been changed to include the use of a second immunoassay test for untestable specimens.

It is noted that the last sentence of section 2.4(e)(4), as proposed, has been deleted since it is redundant with the requirements as stated in the first sentence of the section.

10. 200 ng/mL Amphetamine Reporting Rule

Six commenters concurred with the proposal in sections 2.4(f)(1) and 2.4(g)(2) that require a methamphetamine positive to contain at least 200 ng/mL of amphetamine before reporting the result as positive. Two commenters recommended that the 200 ng/mL rule be dropped entirely because they believed it is no longer relevant and the emphasis should be on improving the quality of the GC/MS confirmatory procedure. Seven commenters held similar views that the 200 ng/mL rule is too conservative and produces too many false negatives and recommended that it be lowered to either 100 or 50 ng/mL or at least equal to or greater than the limit of detection for amphetamine.

The Department believes that the 200 ng/mL requirement implemented as a temporary policy since December 22, 1990, is a necessary one to prevent false positive test results. On a special set of performance testing samples provided to the laboratories by the program, the Department found that the requirement adequately controlled all of the possible technical problems based on observations of results reported by the laboratories on that set of performance testing samples. The results indicated that a significant number of laboratories experienced chromatographic resolution problems when methamphetamine was present with ephedrine and 2% of the performance testing results evidenced a methamphetamine response when challenged with high concentrations of over-the-counter medications (e.g., ephedrine, pseudoephedrine, or phenylpropanolamine). These results indicated that the 200 ng/mL rule was effective in preventing any false positive results and should be continued. In addition, recent information provided by laboratories regarding their limits of quantitation and their results on performance testing samples that contained very low concentrations of amphetamine and methamphetamine indicate that 200 ng/mL continues to be the lowest concentration that most of the laboratories can reliably identify and quantitate for either methamphetamine or amphetamine. For these reasons, the Department believes using a lower concentration or eliminating the 200 ng/mL rule would increase the possibility for reporting a false positive methamphetamine result.

11. Reporting Results

One commenter was concerned that substituting "certifying scientist" in section 2.4(g)(5), as proposed, for the responsible person was making the certifying scientist responsible for the overall laboratory operations. We believe the commenter did not understand the purpose for changing the wording in this section. The use of "certifying scientist" in this section ensures that the requirement is consistent with current program practice. The responsible person continues to be responsible for the overall operation of the laboratory (see section 2.3(a)); however, section 2.4(g)(5) allows a certifying scientist to sign the external chain of custody form that is sent to the MRO.

12. Calibrators and Controls

One commenter raised concern with the materials used to prepare calibrators and controls which as described in section 2.4(n)(2) only allowed calibrators and controls to be prepared from pure drug standards. The commenter correctly indicated that calibrators and controls were available from other sources. The Department concurs and has revised the sentence to allow calibrators and controls to be prepared not only from pure drug reference materials, but from stock standard solutions obtained from other laboratories, or from commercial manufacturers. This change clarifies that laboratories have the flexibility to obtain "standards" used to prepare the calibrators and controls from different sources.

13. Potential Conflicts of Interest

Several commenters supported the policies in sections 2.4(n)(6) and 2.6(b), as proposed, that restricts the types of relationships between laboratories and Medical Review Officers to ensure there were no conflicts of interest. There were several comments submitted, however, stating that these requirements were not necessary since there is no evidence that MROs have not acted in the interest of

the donor or that current arrangements have adversely affected the ability of an MRO to monitor laboratories. The Department does not question the dedication and integrity of its certified laboratories and the MROs in carrying out their responsibilities and protecting the interests of the Federal agencies and donors. Nevertheless, the Department believes the issue must be addressed..

The MRO plays an essential role in the Federal drug testing program. See generally section 2.6 of the Mandatory Guidelines. The MRO is a licensed physician with a knowledge of substance abuse disorders who verifies whether the tests are positive or negative. In the case of a positive result reported by the laboratory, the Mandatory Guidelines require that the MRO contact the employee and personally interview the employee, i.e., in-person or by telephone, to determine whether alternate medical explanations would explain a positive result. See section 2.6(c). During the course of such interview and possibly through having the specimen retested, the MRO may identify false positive test results. In such a case, the MRO is required to contact the Secretary so that the Department can conduct an investigation into the matter and take whatever action is necessary to prevent such a result from occurring in the future. See section 2.6(g).

Because the MRO plays such an essential role, the Department believes any relationship that may be construed as a potential conflict of interest may be sufficient to undermine the integrity of the program. Every Federal agency, employee, and job applicant must have complete assurance that test results will be thoroughly reviewed and, if errors are discovered, that the MRO will report the error and an appropriate investigation and corrective action will be taken.

14. Laboratory Quality Control Requirements for Initial Tests

There were several comments submitted regarding the requirements in section 2.5(b), as proposed, for quality control samples when conducting the initial test. The commenters believed the proposed requirements were confusing and suggested using different terms to describe the types of quality controls that must be included in each initial test batch. The Department concurs that the quality control requirements in this section were confusing and they have been revised based on the definitions in section 1.2. It should be noted the changes to this section only clarify the requirements for quality control samples; the actual policy has not changed from the original Mandatory Guidelines. See section 2.5(b) of 53 FR 11979, 11984 (April 11, 1988). We have also revised the quality control requirements for each confirmatory test batch in section 2.5(c) using the new definitions in section 1.2 without changing the policy as compared to the original Mandatory Guidelines. See section 2.5(c) of 53 FR 11979, 11985 (April 11, 1988).

In addition, it was noted that there was an error in the requirement that each initial test batch must contain a minimum of 20% quality control samples. A correction stating that 10% was the minimum amount was published in the **Federal Register** on March 1, 1993.

15. Agency Blind Sample Program

A number of commenters supported reducing the requirements for agency blind samples from 10% to 3% as indicated in section 2.5(d)(2). One commenter suggested retaining the 10% minimum and one commenter suggested establishing a minimum number of blind samples per quarter for organizations with a small test population. The Department believes the reduced requirement will not have a significant impact on the ability of an agency to evaluate its entire drug testing program; however, there is no prohibition for an agency to use a higher percentage or a higher number of blind samples to be submitted with donor specimens.

The Department has also changed the requirements for the number of blind samples to be submitted with donor specimens during the initial 90-day period of any new contract to conform with reducing the requirements of blind samples as provided by section 2.5(d)(2). Our experience during the past 5 years suggests that it is not necessary to submit large numbers of blind samples to verify the testing conducted by the certified laboratories.

16. Reanalysis Authorized

Two commenters expressed concern with the retesting policy proposed in section 2.6(e) which provided that only the MRO was authorized to order a reanalysis of the original specimen or Bottle B from a split specimen collection. One commenter believes the donor was authorized to request a retest of the original specimen. It is the Department's position that if an MRO cannot verify a positive result for whatever reason, only the MRO is authorized to request the retest of the original specimen since the MRO is the only individual who has all the information necessary to identify a particular specimen in a laboratory.

Another commenter pointed out an inconsistency between the retest policy proposed in this section and the policy proposed for testing Bottle B from a split specimen collection as described in section 2.2(h)(6) which states that only the donor may request through the MRO that the second specimen bottle (Bottle B) be tested. The Department agrees that there is an inconsistency in the proposed policies because we inadvertently referred to the Bottle B specimen in section 2.6(e) rather than the Bottle A specimen. Section 2.6(e) has been changed to clarify that only the MRO may request the retest of either a single specimen or a Bottle A specimen when using a split specimen collection. The procedures for the testing of Bottle B remain as proposed in section 2.2(h)(6)—that is, only the donor may request through the MRO that Bottle B be tested.

17. Reporting Final Results to the Agency

One commenter suggested that section 2.6(h), as proposed, which clarifies the requirement that the MRO provide written reports to the agency on positive and negative drug test results would significantly increase the administrative costs associated with the program and recommended that the MRO be required to provide written reports to the agency for positive results only. The Department disagrees. Written reports from the MRO to the agency on all specimens tested ensures that all specimens have been tested and the results of all specimens have been reviewed by the MRO. In addition, the Department believes that this requirement for written reports to the agency does not prevent the MRO from reporting several results on the same correspondence sent to the agency and, therefore, should not significantly affect the cost associated with the MRO review of drug testing results.

18. Certified Laboratories Notifying Private Sector Clients

Two commenters were concerned that the policy in section 3.4 did not adequately ensure that a laboratory would inform clients if and when the laboratory did not satisfy the certification requirements. The Department concurs that a laboratory must inform its clients when its certification has been suspended. Since the program began, this notification has been required and is set out in the suspension letter that is sent to the laboratory.

However, the intent of the requirement in section 3.4 that certified laboratories clearly inform clients when procedures followed do not conform to the Mandatory Guidelines is not related to suspension and/or proposed revocation actions. The purpose is to ensure that unregulated, private sector clients are aware that the laboratory may be using procedures that are not subject to or in accordance with the Mandatory Guidelines. The Department believes that a certified laboratory must not use its certification to promote itself as such if, in fact, it uses procedures that do not comply with the Mandatory Guidelines for such clients. This section has been revised to clarify this requirement.

19. Performance Testing Program

There were several comments submitted regarding changing the performance testing (PT) program from a bimonthly program to a quarterly program as stated in various sections of subpart C. One commenter disagreed with changing the performance testing program to a quarterly program because this would prolong the recertification process and suggested that a monthly PT program would be more appropriate. The Department has no intention of changing the initial certification procedures or to change the procedures when a laboratory has been suspended and must successfully analyze performance testing samples prior to having the suspension lifted. In addition, the Department believes a monthly PT program does not allow sufficient time for a laboratory to receive its results on a set of PT samples, analyze its performance, and initiate appropriate corrective action before the next cycle of PT samples.

One commenter was concerned that adopting a quarterly PT program without changing the criteria for determining acceptable performance, as set out in section 3.19, would increase the period for evaluating a laboratory's performance to 9 months. The Department concurs that the criteria for determining acceptable performance, that is, performance on 3 consecutive quarterly PT cycles, would unduly lengthen the time before corrective action may be taken. Since the total number of PT samples in 2 cycles of the quarterly PT program will be essentially the same as those for 3 cycles of the bimonthly PT program, it is appropriate to establish acceptable performance criteria based on performance over 2 consecutive cycles of quarterly PT samples. All criteria in section 3.19 that pertain to evaluating the performance of certified laboratories have been changed to evaluate acceptable performance over 2 consecutive cycles rather than over 3 consecutive cycles, which retains the 6-month evaluation period.

One commenter agreed with the change in section 3.19(b)(4), as proposed, that would allow a certified laboratory to have one quantitative result greater than 50% from the target value without requiring program action against the laboratory. However, the commenter is concerned that the cause for the error may not be investigated since program action is not taken against the laboratory. The Department did not intend that this change would prevent any investigation into the cause for the error or that the laboratory would not be required by the Department to make a concerted effort to determine the cause for the error and to take appropriate corrective action.

One commenter believes that the overall costs for the certification program may be decreased without compromising the high quality of the program by increasing the PT challenges to a monthly program and decreasing the maintenance inspections to once a year. The Department disagrees with this proposal because it is important to inspect laboratories at least every six months to ensure that the laboratory has continued to satisfy the requirements of the Mandatory Guidelines and for the inspectors to review the results reported for the PT samples. If corrective action is necessary, it will be more timely than if inspections were on a yearly basis. In addition, the existence of a significant problem over a long period of time would possibly jeopardize the results of many more personnel specimens.

20. Corrective Action by Certified Laboratories

Several commenters expressed concern that section 3.12(c), as proposed, would give the Secretary the authority to review all results and activities associated with a laboratory's testing of specimens for private sector, unregulated clients. This was not the intent and the section has been changed to indicate that the Secretary has authority to review results for specimens collected for private sector clients that were tested by the certified laboratory under the Mandatory Guidelines to the extent necessary to ensure the full reliability of drug testing for Federal agencies.

21. Recertification

One commenter was concerned with the policy contained in section 3.16, as proposed, because the commenter believed the procedure to regain certification after the laboratory's certification has been revoked would be prolonged given that the maintenance PT program has been reduced to a quarterly program. The commenter misunderstood that provision. The Department has not changed the initial certification procedure (section 3.16) under which a laboratory that had its certification revoked must proceed to regain certification. Thus, such a laboratory will proceed as in the past and must satisfactorily perform in each phase of the initial certification process. However, the first sentence of section 3.16 has been changed to indicate that the recertification policy applies only when a laboratory has its certification revoked.

22. Inspection Performance

One commenter was concerned that the meaning of the phrase "consistent with good forensic laboratory practice" in section 3.20(c), as proposed, was too subjective. The commenter believes that each inspection team interprets laboratory's procedures differently, thereby, what is acceptable during one inspection may be unacceptable during the next inspection. We do not concur with this assessment of the inspection process. Although there is some inherent subjectivity in the inspection process when applying certain criteria under the Mandatory Guidelines, the inspectors are provided clear guidance on what is to be inspected and what is acceptable and unacceptable. The Department requires trained, qualified inspectors to use a comprehensive checklist consisting of some 300 questions to evaluate a laboratory's procedures. They are asked to respond "yes" or "no" to the questions and then provide comments if the answer is unacceptable. This checklist ensures that each inspector is reviewing essentially all of the same laboratory documents and results. The inspection reports are reviewed by the Department to ensure that program requirements and policies are applied consistently among all laboratories. In addition, it is the responsibility of each laboratory to review the Mandatory Guidelines, to be aware of what is to be inspected by reviewing the checklist and other program documents, to correct deficiencies, and to use good forensic laboratory practice in its testing program.

One commenter suggested that the word "all" be deleted from the second sentence in section 3.20(c), as proposed, because a laboratory is not required to correct "all" deficiencies identified by the inspectors. We concur with the comment and have deleted the word "all." The Department's policy has always been to include minor

deficiencies or concerns in the critique developed from the inspection reports and give the laboratory the option to take whatever additional corrective action it deems appropriate for these minor deficiencies or concerns.

23. Procedures for Review of Suspension or Proposed Revocation of a Certified Laboratory

One commenter suggests that the definition of appellant in section 4.2, as proposed, is unclear and believes that the review procedures only apply when there is a proposed revocation. The Department disagrees with this position. The Department believes that principles of fairness necessitate allowing laboratories to seek internal reviews not only of proposed revocations but also internal reviews of immediate suspensions.

24. Other Minor Changes

In addition to the changes discussed above, there were several minor changes made in other sections. The acronym "MRO" has been added to the definition for Medical Review Officer in section 1.2. Since the original Guidelines were published, the "MRO" acronym has become a common and accepted way to refer to a physician performing this function. We have replaced "Medical Review Officer" with "MRO" throughout the Guidelines.

Section 2.5(d)(4) was changed to clarify that an agency shall investigate any unsatisfactory blind performance testing results and submit its findings to HHS rather than HHS conducting the initial investigation. The Department believes the agency must gather all pertinent information and investigate the reason before HHS is contacted to continue the investigation and to ensure that the laboratory has taken corrective action.

Section 2.6(c) has been simplified to require the MRO to send results only to the designated person in the agency rather than to both agency's Employee Assistance Program and to the agency's management official. The Department believes that the agency should have the discretion to determine who should receive results.

Section 3.3 was clarified to read that a laboratory must satisfy all pertinent provisions of the Guidelines in order to maintain certification while the original requirement only addressed satisfying the provisions in ordor to qualify for certification.

Section 3.15(b) was revised to conform with the review procedure in new subpart D which allows laboratories the opportunity for an informal review of a program action within 30 days of the date the laboratory received the notice, or if seeking an expedited review, within 3 days of the date the laboratory received the notice.

Two commenters noted that section 3.18(b) referred to a subset of PT samples as "directed specimens" rather than as "retest samples" which is current program terminology. We concur with the comment submitted and have revised the section to refer to these PT samples as "retest samples."

Other appropriate minor editorial changes have been made for clarity and consistency.

Information Collection Requirements

Any comments related to the Paperwork Reduction Act of 1980 may be sent to the HHS Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Information collection and recordkeeping requirements which would be imposed on laboratories engaged in urine drug testing for Federal agencies concern quality assurance and quality control; security and chain of custody; documentation; reports; performance testing; and inspections as set out in sections 3.7, 3.8, 3.10, 3.11, 3.17, and 3.20. To facilitate ease of use and uniform reporting, a specimen chain of custody form has been developed as referenced in sections 1.2, 2.2(c), and 2.2(f).

The information collection and recordkeeping requirements contained in these Mandatory Guidelines have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

Dated: February 7, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Dated: March 16, 1994.

Donna E. Shalala,

Secretary.

The Mandatory Guidelines as revised are hereby adopted in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. For the public's convenience the Mandatory Guidelines as revised are set out in full as follows:

Mandatory Guidelines for Federal Workplace Drug Testing Programs

Subpart A—General

Subpart B—Scientific and Technical Requirements

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

Subpart D—Procedures for Review of Suspension or Proposed Revocation of a Certified Laboratory

Authority: E.O. 12564 and Sec. 503 of Pub. L. 100–71.

Subpart A—General

Section 1.1 Applicability.

(a) These mandatory guidelines apply to:

(1) Executive Agencies as defined in 5 U.S.C. 105;

(2) The Uniformed Services, as defined in 5 U.S.C. 2101(3) (but excluding the Armed Forces as defined in 5 U.S.C. 2101(2));

(3) And any other employing unit or authority of the Federal Government except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.

(b) Subpart C of these Guidelines (which establishes laboratory certification standards) applies to any laboratory which has or seeks certification to perform urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Only laboratories certified under these standards are authorized to perform urine drug testing for Federal agencies.

(c) The Intelligence Community, as defined by Executive Order No. 12333, shall be subject to these Guidelines only to the extent agreed to by the head of the affected agency.

(d) These Guidelines do not apply to drug testing conducted under legal authority other than E.O. 12564, including testing of persons in the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees.

(e) Agencies may not deviate from the provisions of these Guidelines without the written approval of the Secretary. In requesting approval for a deviation, an agency must petition the Secretary in writing and describe the specific provision or provisions for which a deviation is sought and the rationale therefor. The Secretary may approve the request upon a finding of good cause as determined by the Secretary.

(f) Agencies shall purchase drug testing services only from laboratories certified by HHS or an HHS-recognized certification program in accordance with these Guidelines.

Section 1.2 Definitions

For purposes of these Guidelines the following definitions are adopted:

Aliquot. A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

Calibrator. A solution of known concentration used to calibrate a measurement procedure or to compare the response obtained with the response of a test specimen/sample. The concentration of the analyte of interest in the calibrator is known within limits ascertained during its preparation. Calibrators may be used to establish a calibration curve over a range of interest.

Certifying Scientist. An individual with at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent who reviews all pertinent data and quality control results. The individual shall have training and experience in the theory and practice of all methods and procedures used in the laboratory, including a thorough understanding of chain of custody procedures, quality control practices, and analytical procedures relevant to the results that the individual certifies. Relevant training and experience shall also include the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial action to be taken in response to test systems being out of control-limits or detecting aberrant test or quality control results.

Chain of Custody. Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an Office of Management and Budget (OMB) approved specimen chain of custody form be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account for the specimens and samples within the laboratory. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or sample is handled or transferred and identifying every individual in the chain of custody.

Collection Site. A place designated by the agency where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection Site Person. A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals. A collection site person shall have successfully completed training to carry out this function.

Confirmatory Test. A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Control. A sample used to monitor the status of an analysis to maintain its performance within desired limits.

Donor. The individual from whom a urine specimen is collected.

Initial Test (also known as Screening Test). An immunoassay test to eliminate "negative" urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

Laboratory Chain of Custody Form. The form(s) used by the testing laboratory to document the security of the specimen and all aliquots of the specimens during testing and storage by the laboratory. The form, which may account for an entire laboratory test batch, shall include the names and signatures of all individuals who accessed the specimens or aliquots and the date and purpose of the access.

Medical Review Officer (MRO). A licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

Quality Control Sample. A sample used to evaluate whether or not the analytical procedure is operating within predefined tolerance limits. Calibrators, controls, negative urine samples, and blind samples are collectively referred to as "quality control samples" and each as a "sample."

Reason to Believe. Reason to believe that a particular individual may alter or substitute the urine specimen as provided in section 4(c) of E.O. 12564.

Sample. A representative portion of a urine specimen or quality control sample used for testing.

Secretary. The Secretary of Health and Human Services or the Secretary's designee. The Secretary's designee may be a contractor or other recognized organization which acts on behalf of the Secretary in implementing these Guidelines.

Specimen. The portion of urine that is collected from a donor.

Specimen Chain of Custody Form. An OMB approved form used to document the security of the specimen from time of collection until receipt by the laboratory. This form, at a minimum, shall include specimen identifying information, date and location of collection, name and signature of

collector, name of testing laboratory, and the names and signatures of all individuals who had custody of the specimen from time of collection until the specimen was prepared for shipment to the laboratory.

Standard. A reference material of known purity or a solution containing a reference material at a known concentration.

Section 1.3 Future Revisions

In order to ensure the full reliability and accuracy of drug assays, the accurate reporting of test results, and the integrity and efficacy of Federal drug testing programs, the Secretary may make changes to these Guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the **Federal Register**.

Subpart B—Scientific and Technical Requirements

Section 2.1 The Drugs

(a) The President's Executive Order 12564 defines "illegal drugs" as those included in Schedule I or II of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law. Hundreds of drugs are covered under Schedule I and II and while it is not feasible to test routinely for all of them, Federal drug testing programs shall test for drugs as follows:

(1) Federal agency applicant and random drug testing programs shall at a minimum test for marijuana and cocaine;

(2) Federal agency applicant and random drug testing programs are also authorized to test for opiates, amphetamines, and phencyclidine; and

(3) When conducting reasonable suspicion, accident, or unsafe practice testing, a Federal agency may test for any drug listed in Schedule I or II of the CSA.

(b) Any agency covered by these guidelines shall petition the Secretary in writing for approval to include in its testing protocols any drugs (or classes of drugs) not listed for Federal agency testing in paragraph (a) of this section. Such approval shall be limited to the use of the appropriate science and technology and shall not otherwise limit agency discretion to test for any drugs covered under Schedule I or II of the CSA.

(c) Urine specimens collected pursuant to Executive Order 12564, Public Law 100–71, and these Guidelines shall be used only to test for those drugs included in agency drug-free workplace plans and may not be used to conduct any other analysis or test unless otherwise authorized by law except if additional testing is required to determine the validity of the specimen. Urine that tests negative by initial or confirmatory testing may, however, be pooled for use in the laboratory's internal quality control program.

(d) These Guidelines are not intended to limit any agency which is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees or employees in its regulated industries.

Section 2.2 Specimen Collection Procedures

(a) *Designation of Collection Site.* Each agency drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory.

(b) *Security.* Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(c) *Chain of Custody.* Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) *Access to Authorized Personnel Only.* No unauthorized personnel shall be permitted in any part of the designated collection site when urine specimens are collected or stored.

(e) *Privacy.* Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular donor may alter or substitute the specimen to be provided.

(f) *Integrity and Identity of Specimen.* Agencies shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and on the specimen chain of custody form can identify the donor from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(2) When a donor arrives at the collection site, the collection site person shall request the donor to present photo identification. If the donor does not have proper photo identification, the collection site person shall contact the supervisor of the donor, the coordinator of the drug testing program, or any other agency official who can positively identify the donor. If the donor's identity cannot be established, the collection site person shall not proceed with the collection.

(3) If the donor fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the donor to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the donor's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The donor may retain his or her wallet.

(5) The donor shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the donor shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent, or any other materials which could be used to adulterate the specimen.

(7) The collection site person shall give the donor a clean specimen bottle or specimen container. The donor may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

(8) The collection site person shall note any unusual behavior or appearance on the specimen chain of custody form.

(9) In the exceptional event that an agency-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., an accident investigation), a public rest room may be used according to the following procedures: A person of the same gender as the donor shall accompany the donor into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be

placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the donor not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the donor will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10) Upon receiving the specimen from the donor, the collection site person shall determine the volume of urine in the specimen bottle/container.

(i) If the volume is greater than 30 milliliters (mL), the collection site person will proceed with step (11) below.

(ii) If the volume is less than 30 mL and the temperature is within the acceptable range specified in step (13) below, the specimen is discarded and a second specimen shall be collected. The donor may be given a reasonable amount of liquid to drink for this purpose (e.g., an 8 oz glass of water every 30 min, but not to exceed a maximum of 24 oz). If the donor fails for any reason to provide 30 mL of urine for the second specimen collected, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(iii) If the volume is less than 30 mL and the temperature is outside the acceptable range specified in step (13) below, a second specimen shall be collected using the procedure specified in step (13) below.

(11) After the specimen has been provided and submitted to the collection site person, the donor shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure only the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed 4 minutes.

(13) If the temperature of the specimen is outside the range of 32°–38 °C/90°–100 °F, that is a reason to believe that the donor may have altered or substituted the specimen, and another specimen shall be collected under direct observation of a person of the same gender and both specimens shall be forwarded to the laboratory for testing. The agency shall select the observer if there is no collection site person of the same gender available. A donor may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the donor may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the specimen chain of custody form.

(15) All specimens suspected of being adulterated or diluted shall be forwarded to the laboratory for testing.

(16) When there is any reason to believe that a donor may have altered or substituted the specimen to be provided, another specimen shall be obtained as soon as possible under the direct observation of a person of the same gender and both specimens shall be forwarded to the laboratory for testing. The agency shall select the observer if there is no collection site person of the same gender available.

(17) Both the donor and the collection site person shall keep the specimen bottle/container in view at all times prior to its being sealed and labeled. If the specimen is transferred from a specimen container to a specimen bottle, the collection site person shall request the donor to observe the transfer of the specimen and the placement of the tamper-evident seal/tape on the bottle. The tamper-evident seal may be in the form of evidence tape, a self-sealing bottle cap with both a tamper-evident seal and unique coding, cap and bottle systems that can only be sealed one time, or any other system that ensures any tampering with the specimen will be evident to laboratory personnel during the accessioning process.

(18) The collection site person and the donor shall be present at the same time during procedures outlined in paragraphs (f)(19)–(f)(22) of this section.

(19) The collection site person shall place securely on the specimen bottle an identification label which contains the date, the donor's specimen number, and any other identifying information provided or required by the agency.

(20) The donor shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter on the specimen chain of custody form all information identifying the specimen.

(22) The donor shall be asked to read and sign a statement on the specimen chain of custody form certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided.

(23) Based on a reason to believe that the donor may alter or substitute the specimen to be provided, a higher level supervisor shall review and concur in advance with any decision by a collection site person to obtain a specimen under direct observation. The person directly observing the specimen collection shall be of the same gender. The agency shall select the observer if there is no collection site person of the same gender available.

(24) The collection site person shall complete the specimen chain of custody form.

(25) The urine specimen and specimen chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.

(26) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the urine specimen and specimen chain of custody form shall be taken with him or her or shall be secured. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, the specimen shall be packaged for mailing before he or she leaves the site.

(g) *Collection Control.* To the maximum extent possible, collection site personnel shall keep the donor's specimen bottle within sight both before and after the donor has urinated. After the specimen is collected, it shall be properly sealed and labeled. A specimen chain of custody form shall be used for maintaining control and accountability of each specimen. The date and purpose shall be documented on a specimen chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(h) *Split Specimens.* An agency may, but is not required to, use a split specimen method of collection. If the urine specimen is split into two specimen bottles (hereinafter referred to as Bottle A and Bottle B) the following procedure shall be used:

(1) The donor shall urinate into either a specimen bottle or specimen container. The collection site person, in the presence of the donor, after determining specimen temperature, pours the urine into two specimen bottles that are labeled Bottle A and Bottle B or, if Bottle A was used to collect the specimen, pours an appropriate amount into Bottle B. A minimum of 45 mL of urine is required when using a split specimen procedure, i.e., 30 mL for Bottle A and 15 mL for Bottle B.

(2) The Bottle A specimen, containing a minimum of 30 mL of urine, is to be used for the drug test. If there is no additional urine available for the second specimen bottle (Bottle B), the first specimen bottle (Bottle A) shall nevertheless be processed for testing.

(3) A minimum of 15 mL of urine shall be poured into the second specimen bottle (Bottle B).

(4) All requirements of this part shall be followed with respect to Bottle A and Bottle B, including the requirements that a copy of the chain of custody form accompany each bottle processed under split sample procedures.

(5) The collection site shall send the split specimens (Bottle A and Bottle B) at the same time to the laboratory that will be testing the Bottle A specimen.

(6) If the test of the first specimen bottle (Bottle A) is verified positive by the MRO, the MRO shall report the result to the agency. Only the donor may request through the MRO that the second specimen bottle (Bottle B) be tested in an HHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the first specimen bottle (Bottle A). The MRO shall honor such a request if it is made within 72 hours of the donor's having received notice that he or she tested positive. The result of this test is transmitted to the MRO without regard to the cutoff levels used to test the first specimen bottle (Bottle A).

(7) Any action taken by a Federal agency as a result of an MRO verified positive drug test (e.g., removal from performing a safety-sensitive function) may proceed whether Bottle B is or is not tested.

(8) If the result of the test on the second specimen bottle (Bottle B) fails to reconfirm the result reported for Bottle A, the MRO shall void the test result for Bottle A and the donor shall re-enter the group subject to random testing as if the test had not been conducted. The MRO shall notify the Federal agency when a failed to reconfirm has occurred and the agency shall contact the Secretary. The Secretary will investigate the failed to reconfirm result and attempt to determine the reason for the inconsistent results between Bottle A and Bottle B. HHS will report its findings to the agency including recommendations and/or actions taken to prevent the recurrence of the failed to reconfirm result.

(i) *Transportation to Laboratory.* Collection site personnel shall arrange to ship the collected specimens to the drug testing laboratory. The specimens shall be placed in containers designed to minimize the possibility of damage during shipment, for example, specimen boxes or padded mailers; and those containers shall be securely sealed to eliminate the possibility of undetected tampering. The collection site personnel shall ensure that the specimen chain of custody form is enclosed within each container sealed for shipment to the drug testing laboratory. Since specimens are sealed in packages that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the package during transit.

Section 2.3 Laboratory Personnel

(a) *Day-to-Day Management.* (1) The laboratory shall have a responsible person (RP) to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by the State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology; or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in (i), (ii), and (iii) above, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multispeciality laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible person whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in section 2.4(n)(1))

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the results provided are accurate and reliable.

(b) *Certifying Test Results.* The laboratory's urine drug testing facility shall have a certifying scientist(s), as defined in section 1.2, who reviews all pertinent data and quality control

results in order to attest to the validity of the laboratory's test reports. A laboratory may designate certifying scientists that are qualified to certify only results that are negative on the initial test and certifying scientists that are qualified to certify both initial and confirmatory tests.

(c) *Day-to-Day Operations and Supervision of Analysts.* The laboratory's urine drug testing facility shall have an individual(s) to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) *Other Personnel.* Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) *Training.* The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) *Files.* Laboratory personnel files shall include: resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

Section 2.4 Laboratory Analysis Procedures

(a) *Security and Chain of Custody.* (1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of the Secretary or emergency personnel (e.g., firefighters and medical rescue teams), all authorized visitors and maintenance and service personnel shall be escorted at all times. The laboratory shall maintain a record that documents the dates, time of entry and exit, and purpose of entry of authorized visitors, maintenance, and service personnel accessing secured areas.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) *Receiving.* (1) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the specimen chain of custody forms attached to the shipment shall be immediately reported to the agency and shall be noted on the specimen chain of custody forms which shall accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles will normally be retained within the laboratory's accession area until all analyses have been completed. Aliquots and laboratory chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests while the original specimen and specimen chain of custody form remain in secure storage.

(c) *Short-Term Refrigerated Storage.* Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6 °C. Emergency power equipment shall be available in case of prolonged power failure.

(d) *Specimen Processing.* Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall satisfy the quality control requirements in sections 2.5 (b) and (c), respectively.

(e) *Initial Test.* (1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial test level (ng/mL)
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	[1]300
Phencyclidine	25
Amphetamines	1,000

[1] 25 ng/mL if immunoassay specific for free morphine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. The agency requesting the authorization to include other drugs shall submit to the Secretary in writing the agency's proposed initial test methods, testing levels, and proposed performance test program.

(3) Specimens that test negative on all initial immunoassay tests will be reported negative. No further testing of these negative specimens for drugs is permitted and the specimens shall either be discarded or pooled for use in the laboratory's internal quality control program.

(4) Multiple initial tests (also known as rescreening) for the same drug or drug class may be performed provided that all tests meet all Guideline cutoffs and quality control requirements (see section 2.5(b)). Examples: a test is performed by immunoassay technique "A" for all drugs using the HHS cutoff levels, but presumptive positive amphetamines are forwarded for immunoassay technique "B" to eliminate any possible presumptive positives due to structural analogues; a valid analytical result cannot be obtained using immunoassay technique "A" and immunoassay technique "B" is used in an attempt to obtain a valid analytical result.

(f) *Confirmatory Test.* (1) All specimens identified as positive on the initial test shall be confirmed for the class(es) of drugs screened positive on the initial test using gas chromatography/mass spectrometry

(GC/MS) at the cutoff values listed in this paragraph. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "exceeds the linear range of the test."

	Confirmatory test level (ng/mL)
Marijuana metabolite[1]	15
Cocaine metabolite[2]	150
Opiates:	
Morphine	300
Codeine	300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine[3]	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.
[2] Benzoylecgonine.
[3] Specimen must also contain amphetamine at a concentration ≥ 200 ng/mL.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. The agency requesting the authorization to include other drugs shall submit to the Secretary in writing the agency's proposed confirmatory test methods, testing levels, and proposed performance test program.

(3) Specimens that test negative on confirmatory tests shall be reported negative. No further testing of these specimens for drugs is permitted and the specimens shall either be discarded or pooled for use in the laboratory's internal quality control program.

(g) *Reporting Results.* (1) The laboratory shall report test results to the agency's MRO within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by a certifying scientist who satisfies the requirements described by the definition in section 1.2. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the cutoff for each, the specimen number assigned by the agency, and the drug testing laboratory specimen identification number.

(2) Except as otherwise provided by this subsection, the laboratory shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug. For amphetamines, to report a specimen positive for methamphetamine only, the specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/mL by the confirmatory test. If this criterion is not met, the specimen must be reported as negative for methamphetamine.

(3) The MRO may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO may not disclose quantitation of test results to the agency but shall report only whether the test was positive or negative.

(4) The laboratory may transmit results to the MRO by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the MRO a certified copy of the original chain of custody form signed by a certifying scientist.

(6) The laboratory shall provide to the agency official responsible for coordination of the drug-free workplace program a monthly statistical summary of urinalysis testing of Federal employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

Initial Testing:

(i) Number of specimens received;

(ii) Number of specimens reported out; and

(iii) Number of specimens screened positive for: Marijuana metabolites, Cocaine metabolites, Opiate metabolites, Phencyclidine, and Amphetamines.

Confirmatory Testing:

(i) Number of specimens received for confirmation;

(ii) Number of specimens confirmed positive for: Marijuana metabolite, Cocaine metabolite, Morphine, codeine, Phencyclidine, Amphetamine, and Methamphetamine. (7) The laboratory shall make available copies of all analytical results for Federal drug testing programs when requested by HHS or any Federal agency for which the laboratory is performing drug testing services.

(8) Unless otherwise instructed by the agency in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) *Long-Term Storage.* Long-term frozen storage (−20 °C or less) ensures that positive urine specimens will be available for any necessary retest. Unless otherwise authorized in writing by the agency, drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive. Within this 1-year period an agency may request the laboratory to retain the specimen for an additional period of time. If no such request is received, the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens under legal challenge for an indefinite period.

(i) *Retesting of a Specimen* (i.e., the reanalysis by gas chromatography/mass spectrometry of a specimen previously reported positive or the testing of Bottle B of a split specimen collection). Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) *Subcontracting.* Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment unless otherwise authorized by the agency. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine, and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in these Guidelines.

(k) *Laboratory Facilities.* (1) Laboratory facilities shall comply with applicable provisions of any State licensure requirements.

(2) Laboratories certified in accordance with Subpart C of these Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) *Inspections.* The Secretary, any Federal agency utilizing the laboratory, or any organization performing laboratory certification on behalf of the Secretary may reserve the right to inspect the laboratory at any time. Agency contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the agency to conduct unannounced inspections. In addition, prior to the

award of a contract the agency may carry out preaward inspections and evaluation of the procedural aspects of the laboratory's drug testing operation.

(m) *Documentation.* The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2-year period may be extended upon written notification by HHS or by any Federal agency for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody forms; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall be required to maintain documents for any specimen under legal challenge for an indefinite period.

(n) *Additianal Requirements for Certified Laboratories.*

(1) *Pracedure Manual.* Each laboratory shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cutoff values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) *Calibratars and Controls.* Laboratory calibrators and controls shall be prepared using pure drug reference materials, stock standard solutions obtained from other laboratories, or standard solutions obtained from commercial manufacturers. The calibrators and controls shall be properly labeled as to content and concentration. The standards (e.g., pure reference materials, stock standard solutions, purchased standards) shall be labeled with the following dates: When received (if applicable); When prepared or opened; when placed in service; and expiration date.

(3) *Instruments and Equipment.* (i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks, and instructions for major troubleshooting and repair. Records shall be available on preventive maintenance.

(4) *Remedial Actions.* There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) *Personnel Available to Testify at Proceedings.* A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against a Federal employee when that proceeding is based on positive urinalysis results reported by the laboratory.

(6) *Restrictians.* The laboratory shall not enter into any relationship with an agency's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having an agency use a specific MRO.

Section 2.5 Quality Assurance and Quality Control

(a) *General.* Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, certification of calibrators and controls, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the testing process.

(b) *Labaratary Quality Cantral Requirements far Initial Tests.* Each analytical run of specimens to be screened shall include:

(1) Sample(s) certified to contain no drug (i.e., negative urine samples);

(2) Positive control(s) fortified with drug or metabolite;

(3) At least one positive control with the drug or metabolite at or near the threshold (cutoff);

(4) A sufficient number of calibrators to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known calibrators, those values will be used to calculate sample data;

(5) A minimum of 10 percent of the total specimens and quality control samples in each analytical run shall be quality control samples; and

(6) One percent of each run, with a minimum of at least one sample, shall be the laboratory's blind quality control samples to appear as normal samples to the laboratory analysts.

Implementation of procedures to ensure that carryover does not contaminate the testing of an donor's specimen shall be documented.

(c) *Labaratary Quality Cantral Requirements for Confirmatian Tests.* Each analytical run of specimens to be confirmed shall include:

(1) Sample(s) certified to contain no drug (i.e., negative urine samples);

(2) Positive calibrator(s) and control(s) fortified with drug or metabolite; and

(3) At least one positive control with the drug or metabolite at or near the threshold (cutoff).

The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of a donor's specimen shall also be documented.

(d) Agency Blind Sample Program.

(1) Agencies shall only purchase blind quality control materials that: (a) have been certified by immunoassay and GC/MS and (b) have stability data which verifies those materials' performance over time.

(2) During the initial 90-day period of any new drug testing program, each agency shall submit blind performance test samples to each laboratory it contracts with in the amount of at least 20 percent of the total number of specimens submitted (up to a maximum of 200 blind samples) and thereafter a minimum of 3 percent blind samples (up to a maximum of 100 blind samples) submitted per quarter.

(3) Approximately 80 percent of the blind quality control samples shall be negative (i.e., certified to contain no drug) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the agency is testing.

(4) The agency shall investigate any unsatisfactory blind performance test sample results and submit its findings to the Secretary. The Secretary shall continue the investigation to ensure that the laboratory has corrected the cause of the unsatisfactory performance test result. A report of the Secretary's

investigative findings and the corrective action taken by the laboratory shall be sent to the agency contracting officer. The Secretary shall ensure notification of the finding to all other Federal agencies for which the laboratory is engaged in urine drug testing and coordinate any necessary action.

(5) Should a false positive error occur on a blind performance test sample and the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future; and, if there is reason to believe the error could have been systematic, the Secretary may also require review and reanalysis of previously run specimens.

(6) Should a false positive error occur on a blind performance test sample and the error is determined to be a technical or methodological error, the laboratory shall submit all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the Responsible Person. The Secretary may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. The Secretary has the option of revoking (section 3.13) or suspending (section 3.14) the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

Section 2.6 Reporting and Review of Results

(a) *Medical Review Officer Shall Review Results.* An essential part of the drug testing program is the final review of results. A positive test result does not automatically identify an employee/applicant as an illegal drug user. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the MRO prior to the transmission of results to agency administrative officials.

(b) *Medical Review Officer—Qualifications and Responsibilities.* The MRO shall be a licensed physician with knowledge of substance abuse disorders. The MRO may be an employee of the agency or a contractor for the agency; however, the MRO shall not be an employee or agent of or have any financial interest in the laboratory for which the MRO is reviewing drug testing results. Additionally, the MRO shall not derive any financial benefit by having an agency use a specific drug testing laboratory or have any agreement with the laboratory that may be construed as a potential conflict of interest. The role of the MRO is to review and interpret positive test results obtained through the agency's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the donor, review of the donor's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the donor when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results of urine specimens that are not obtained or processed in accordance with these Guidelines.

(c) *Positive Test Result.* Prior to making a final decision to verify a positive test result, the MRO shall give the donor an opportunity to discuss the test result with him or her. Following verification of a positive test result, the MRO shall report the result to the agency's official designated to receive results.

(d) *Verification for Opiates; Review for Prescription Medication.* Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of illegal use of any opium, opiate, or opium derivative (e.g., morphine/codeine) listed in Schedule I or II of the Controlled Substances Act. This requirement does not apply if the confirmatory procedure for opiates confirms the presence of 6-monoacetylmorphine since the presence of this metabolite is proof of heroin use.

(e) *Reanalysis Authorized.* Should any question arise as to the accuracy or validity of a positive test result, only the MRO is authorized to order a retest of a single specimen or the Bottle A specimen from a split specimen collection. Such retests are authorized only at laboratories certified under these Guidelines.

(f) *Result Consistent With Legal Drug Use.* If the MRO determines there is a legitimate medical explanation for the positive test result, he or she shall take no further action and report the test result as negative.

(g) *Result Scientifically Insufficient.* Additionally, the MRO, based on review of inspection reports, quality control data, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the MRO may request a retest of the original specimen before making this decision. (The MRO may request that the retest be performed by the same laboratory or, as provided in section 2.6(e), that an aliquot of the original specimen be sent for a retest to an alternate laboratory which is certified in accordance with these Guidelines.) The laboratory shall assist in this review process as requested by the MRO by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the agency. The MRO shall report to the Secretary all negative findings based on scientific insufficiency but shall not include any personal identifying information in such reports.

(h) *Reporting Final Results.* The MRO shall report the final results of the drug tests in writing and in a manner designed to ensure confidentiality of the information.

Section 2.7 Protection of Employee Records

Consistent with 5 U.S.C. 522a(m) and 48 CFR 24.101–24.104, all laboratory contracts shall require that the contractor comply with the Privacy Act, 5 U.S.C. 522a. In addition, laboratory contracts shall require compliance with patient access and confidentiality provisions of section 503 of Public Law 100–71. The agency shall establish a Privacy Act System of Records or modify an existing system, or use any applicable Government-wide system of records to cover both the agency's and the laboratory's records of employee urinalysis results. The contract and the Privacy Act System of Records shall specifically require that employee records be maintained and used with the highest regard for employee privacy.

Section 2.8 Individual Access to Test and Laboratory Certification Results

In accordance with section 503 of Public Law 100–71, any Federal employee who is the subject of a drug test shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification,

review, or revocation-of-certification proceedings.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

Section 3.1 Introduction

Urine drug testing is a critical component of efforts to combat drug abuse in our society. Many laboratories are familiar with good laboratory practices but may be unfamiliar with the special procedures required when drug test results are used in the employment context. Accordingly, the following are minimum standards to certify laboratories engaged in urine drug testing for Federal agencies. Certification, even at the highest level, does not guarantee accuracy of each result reported by a laboratory conducting urine drug testing for Federal agencies. Therefore, results from laboratories certified under these Guidelines must be interpreted with a complete understanding of the total collection, analysis, and reporting process before a final conclusion is made.

Section 3.2 Goals and Objectives of Certification

(a) *Uses of Urine Drug Testing.* Urine drug testing is an important tool to identify drug users in a variety of settings. In the proper context, urine drug testing can be used to deter drug abuse in general. To be a useful tool, the testing procedure must be capable of detecting drugs or their metabolites at concentrations indicated in sections 2.4(e) and 2.4(f).

(b) *Need to Set Standards; Inspections.* Reliable discrimination between the presence, or absence. of specific drugs or their metabolites is critical, not only to achieve the goals of the testing program but to protect the rights of the Federal employees being tested. Thus, standards have been set which laboratories engaged in Federal employee urine drug testing must meet in order to achieve maximum accuracy of test results. These laboratories will be evaluated by the Secretary or the Secretary's designee as defined in section 1.2 in accordance with these Guidelines. The qualifying evaluation will involve three rounds of performance testing plus an on-site inspection. Maintenance of certification requires participation in a quarterly performance testing program plus periodic, on-site inspections. One inspection following successful completion of a performance testing regimen is required for initial certification. This must be followed by a second inspection within 3 months, after which biannual inspections will be required to maintain certification.

(c) *Urine Drug Testing Applies Analytical Forensic Toxicology.* The possible impact of a positive test result on an individual's livelihood or rights, together with the possibility of a legal challenge of the result, sets this type of test apart from most clinical laboratory testing. In fact, urine drug testing should be considered a special application of analytical forensic toxicology. That is, in addition to the application of appropriate analytical methodology, the specimen must be treated as evidence, and all aspects of the testing procedure must be documented and available for possible court testimony. Laboratories engaged in urine drug testing for Federal agencies will require the services and advice of a qualified forensic toxicologist, or individual with equivalent qualifications (both training and experience) to address the specific needs of the Federal drug testing program, including the demands of chain of custody of specimens, security, proper documentation of all records, storage of positive specimens for later or independent testing, presentation of evidence in court, and expert witness testimony.

Section 3.3 General Certification Requirements

A laboratory must meet all the pertinent provisions of these Guidelines in order to qualify for and maintain certification under these standards.

Section 3.4 Capability to Test for Five Classes of Drugs

To be certified, a laboratory must be capable of testing for at least the following five classes of drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine using the initial immunoassay and quantitative confirmatory GC/MS methods specified in these Guidelines. The certification program will be limited to the five classes of drugs (sections 2.1(a) (1) and (2)) and the methods (sections 2.4 (e) and (f)) specified in these Guidelines. The laboratory will be surveyed and performance tested only for these methods and drugs. Certification of a laboratory indicates that any test result reported by the laboratory for the Federal Government meets the standards in these Guidelines for the five classes of drugs using the methods specified. Certified laboratories must clearly inform all unregulated, private clients when their specimens are being tested using procedures that are different from those for which the laboratory is certified (i.e., testing specimens not under the Guidelines).

Section 3.5 Initial and Confirmatory Capability at Same Site

Certified laboratories shall have the capability, at the same laboratory site, of performing both initial immunoassays and confirmatory GC/MS tests (sections 2.4 (e) and (f)) for marijuana, cocaine, opiates, amphetamines, and phencyclidine and for any other drug or metabolite for which agency drug testing is authorized (sections 2.1(a) (1) and (2)). All positive initial test results shall be confirmed prior to reporting them.

Section 3.6 Personnel

Laboratory personnel shall meet the requirements specified in section 2.3 of these Guidelines. These Guidelines establish the exclusive standards for qualifying or certifying those laboratory personnel involved in urinalysis testing whose functions are prescribed by these Guidelines. A certification of a laboratory under these Guidelines shall be a determination that these qualification requirements have been met.

Section 3.7 Quality Assurance and Quality Control

Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process, including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality control procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs as specified in section 2.5 of these Guidelines.

Section 3.8 Security and Chain of Custody

Laboratories shall meet the security and chain of custody requirements provided in section 2.4(a).

Section 3.9 One-Year Storage for Confirmed Positives

All confirmed positive specimens shall be retained in accordance with the provisions of section 2.4(h) of these Guidelines.

Section 3.10 Documentation

The laboratory shall maintain and make available for at least 2 years documentation in accordance with the specifications in section 2.4(m).

Section 3.11 Reports

The laboratory shall report test results in accordance with the specifications in section 2.4(g).

Section 3.12 Certification

(a) *General.* The Secretary may certify any laboratory that meets the standards in these Guidelines to conduct urine drug testing. In addition, the Secretary may consider to be certified any laboratory that is certified by an HHS-recognized certification program in accordance with these Guidelines.

(b) *Criteria.* In determining whether to certify a laboratory or to accept the certification of an HHS-recognized certification program in accordance with these Guidelines, the Secretary shall consider the following criteria:

(1) The adequacy of the laboratory facilities;

(2) The expertise and experience of the laboratory personnel;

(3) The excellence of the laboratory's quality assurance/ quality control program;

(4) The performance of the laboratory on any performance tests;

(5) The laboratory's compliance with standards as reflected in any laboratory inspections; and

(6) Any other factors affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

(c) *Corrective Action by Certified Laboratories.* A laboratory must meet all the pertinent provisions of these Guidelines in order to qualify for and maintain certification. The Secretary has broad discretion to take appropriate action to ensure the full reliability and accuracy of drug testing and reporting, to resolve problems related to drug testing, and to enforce all standards set forth in these Guidelines. The Secretary shall have the authority to issue directives to any laboratory suspending the use of certain analytical procedures when necessary to protect the integrity of the testing process; ordering any laboratory to undertake corrective actions to respond to material deficiencies identified by an inspection or through proficiency testing; ordering any laboratory to send aliquots of urine specimens to another laboratory for retesting when necessary to ensure the accuracy of testing under these Guidelines; ordering the review of results for specimens tested under the Guidelines for private sector clients to the extent necessary to ensure the full reliability of drug testing for Federal agencies; and ordering any other action necessary to address deficiencies in drug testing, analysis, specimen collection, chain of custody, reporting of results, or any other aspect of the certification program.

Section 3.13 Revocation

(a) *General.* The Secretary shall revoke certification of any laboratory certified under these provisions or accept revocation by an HHS-recognized certification program in accordance with these Guidelines if the Secretary determines that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results.

(b) *Factors to Consider.* The Secretary shall consider the following factors in determining whether revocation is necessary:

(1) Unsatisfactory performance in analyzing and reporting the results of drug tests; for example, a false positive error in reporting the results of an employee's drug test;

(2) Unsatisfactory participation in performance evaluations or laboratory inspections;

(3) A material violation of a certification standard or a contract term or other condition imposed on the laboratory by a Federal agency using the laboratory's services;

(4) Conviction for any criminal offense committed as an incident to operation of the laboratory; or

(5) Any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

(c) *Period and Terms.* The period and terms of revocation shall be determined by the Secretary and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing of Federal employees.

Section 3.14 Suspension

(a) *Criteria.* Whenever the Secretary has reason to believe that revocation may be required and that immediate action is necessary in order to protect the interests of the United States and its employees, the Secretary may immediately suspend a laboratory's certification to conduct urine drug testing for Federal agencies. The Secretary may also accept suspension of certification by an HHS-recognized certification program in accordance with these Guidelines.

(b) *Period and Terms.* The period and terms of suspension shall be determined by the Secretary and shall depend upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing of Federal employees.

Section 3.15 Notice

(a) *Written Notice.* When a laboratory is suspended or the Secretary seeks to revoke certification, the Secretary shall immediately serve the laboratory with written notice of the suspension or proposed revocation by facsimile mail, personal service, or registered or certified mail, return receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and

(3) The period of suspension or proposed revocation.

(b) *Opportunity for Informal Review.* The written notice shall state that the laboratory will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30 days of the date the laboratory received the notice, or if expedited review is requested, within 3 days of the date the laboratory received the notice. Subpart D contains detailed procedures to be followed for an informal review of the suspension or proposed revocation.

(c) *Effective Date.* A suspension shall be effective immediately. A proposed revocation shall be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension shall terminate immediately and any proposed revocation shall not take effect.

(d) *HHS-Recognized Certification Program.* The Secretary's responsibility under this section may be carried out by an HHS-recognized certification program in accordance with these Guidelines.

(e) *Public Notice.* The Secretary will publish in the **Federal Register** the name, address, and telephone number of any laboratory that has its certification suspended or revoked under section 3.13 or section 3.14, respectively, and the name of any laboratory which has its suspension lifted. The Secretary shall provide to any member of the public upon request the written notice provided to a laboratory that has its certification suspended or revoked, as well as the reviewing official's written decision which upholds or denies the suspension or proposed revocation under the procedures of subpart D.

Section 3.16 Recertification

Following revocation, a laboratory may apply for recertification. Unless otherwise provided by the Secretary in

the notice of revocation under section 3.13(a) or the reviewing official's decision under section 4.9(e) or 4.14(a), a laboratory which has had its certification revoked may apply for certification in accordance with this section. In order to be certified, the laboratory shall meet the criteria of section 3.12(b), as well as all other requirements of these Guidelines, including the successful participation in three cycles of performance testing (sections 3.17(b) and 3.19(a)) and a laboratory inspection (sections 3.2(b) and 3.20). Once certified, the laboratory must undergo a second inspection within three months, after which biannual inspections will be required to maintain certification (section 3.2(b)), as well as participation in the quarterly performance testing program (sections 3.1(b) and 3.17(c)).

Section 3.17 Performance Testing (PT) Requirement for Certification

(a) *An Initial and Continuing Requirement.* The PT program is a part of the initial evaluation of a laboratory seeking certification (both PT and laboratory inspection are required) and of the continuing assessment of laboratory performance necessary to maintain this certification.

(b) *Three Initial Cycles Required.* Successful participation in three cycles of testing shall be required before a laboratory is eligible to be considered for certification.

(c) *Four Challenges Per Year.* After certification, laboratories shall be challenged with at least 10 PT samples on a quarterly cycle.

(d) *Laboratory Procedures Identical for Performance Test and Routine Employee Specimens.* All procedures associated with the handling and testing of the PT samples by the laboratory shall to the greatest extent possible be carried out in a manner identical to that applied to routine laboratory specimens, unless otherwise specified.

(e) *Blind Performance Test.* Any certified laboratory shall be subject to blind PT samples (see section 2.5(d)). Performance on blind PT samples shall be at the same level as for the open or non-blind PT samples.

(f) *Reporting—Open Performance Test.* The laboratory shall report results of open PT samples to the certifying organization in the same manner as specified in section 2.4(g)(2) for routine specimens.

Section 3.18 Performance Test Samples Composition

(a) *Description of the Drugs.* PT samples shall contain those drugs and metabolites which each certified laboratory must be prepared to assay in concentration ranges that allow detection of the analytes by commonly used immunoassay screening techniques. These levels are generally in the range of concentrations which might be expected in the urine of recent drug users. For some drug analytes, the sample composition will consist of the parent drug as well as major metabolites. In some cases, more than one drug class may be included in one sample, but generally no more than two drugs will be present in any one sample in order to imitate the type of specimen which a laboratory normally encounters. For any particular PT cycle, the actual composition of kits going to different laboratories will vary but, within any annual period, all laboratories participating will have analyzed the same total set of samples.

(b) *Concentrations.* PT samples (as differentiated from blind quality control samples) shall be spiked with the drug classes and their metabolites that are required for certification (marijuana, cocaine, opiates, amphetamines, and phencyclidine) with concentration levels set by, but not limited to, one of the following schema: (1) At least 20 percent above the cutoff limit for either the initial assay or the confirmatory test, depending on which is to be evaluated; (2) below the cutoff limit as retest samples (for GC/MS quantitation); and, (3) below the cutoff limit for special purposes. Some PT samples may be identified for GC/MS assay only (retest samples). Blanks shall contain less than 2 ng/mL of any of the target drugs. These concentration and drug types may be changed periodically in response to factors such as changes in detection technology and patterns of drug use. Finally, PT samples may be constituted with interfering substances.

Section 3.19 Evaluation of Performance Testing

(a) *Initial Certification.* (1) An applicant laboratory shall not report any false positive result during PT for initial certification. Any false positive will automatically disqualify a laboratory from further consideration.

(2) An applicant laboratory shall maintain an overall grade level of 90 percent for the three cycles of PT required for initial certification, i.e., it must correctly identify and confirm 90 percent of the total drug challenges. Any laboratory which achieves a score on any one cycle of the initial certification such that it can no longer achieve a total grade of 90 percent over the three consecutive PT cycles will be immediately disqualified from further consideration.

(3) An applicant laboratory shall obtain quantitative values for at least 80 percent of the total drug challenges which are ±20 percent or ±2 standard deviations (whichever range is larger) of the calculated reference group mean. Failure to achieve 80 percent will result in disqualification.

(4) An applicant laboratory shall not obtain any quantitative values that differ by more than 50 percent from the calculated reference group mean. Any quantitative values that differ by more than 50 percent will result in disqualification.

(5) For any individual drug, an applicant laboratory shall successfully detect and quantitate in accordance with paragraphs (a)(2), (a)(3), and (a)(4) of this section at least 50 percent of the total drug challenges. Failure to successfully quantitate at least 50 percent of the challenges for any individual drug will result in disqualification.

(b) *Ongoing Testing of Certified Laboratories.* (1) *False Positives and Procedures for Dealing with Them.* No false drug identifications are acceptable for any drugs for which a laboratory offers service. Under some circumstances a false positive test may result in suspension or revocation of certification. The most serious false positives are by drug class, such as reporting THC in a blank specimen or reporting cocaine in a specimen known to contain only opiates. Misidentifications within a class (e.g., codeine for morphine) are also false positives which are unacceptable in an appropriately controlled laboratory, but they are clearly less serious errors than misidentification of a class. The following procedures shall be followed when dealing with a false positive:

(i) The agency detecting a false positive error shall immediately notify the laboratory and the Secretary of any such error.

(ii) The laboratory shall provide the Secretary with a written explanation of the reasons for the error within 5 working days. If required by paragraph (b)(1)(v) below, this explanation shall include the submission of all quality control data from the batch of specimens that included the false positive specimen.

(iii) The Secretary shall review the laboratory's explanation within 5 working days and decide what further action, if any, to take.

(iv) If the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary may direct the laboratory to take corrective action to minimize the occurrence of the particular error in the future and, if

there is reason to believe the error could have been systematic, may require the laboratory to review and reanalyze previously run specimens.

(v) If the error is determined to be a technical or methodological error, the laboratory shall submit to the Secretary all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive by the laboratory from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the laboratory's responsible person. Depending on the type of error which caused the false positive, this retesting may be limited to one analyte or may include any drugs a laboratory certified under these Guidelines must be prepared to assay. The laboratory shall immediately notify the agency if any result on a specimen that has been retested must be corrected because the criteria for a positive are not satisfied. The Secretary may suspend or revoke the laboratory's certification for all drugs or for only the drug or drug class in which the error occurred. However, if the case is one of a less serious error for which effective corrections have already been made, thus reasonably assuring that the error will not occur again, the Secretary may decide to take no further action

(vi) During the time required to resolve the error, the laboratory shall remain certified but shall have a designation indicating that a false positive result is pending resolution. If the Secretary determines that the laboratory's certification must be suspended or revoked, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or any recertification process is complete.

(2) *Requirement to Identify and Confirm 90 Percent of Total Drug Challenges.* In order to remain certified, laboratories must successfully complete four cycles of PT per year. Failure of a certified laboratory to maintain a grade of 90 percent over the span of two consecutive PT cycles, i.e., to identify 90 percent of the total drug challenges and to correctly confirm 90 percent of the total drug challenges, may result in suspension or revocation of certification.

(3) *Requirement to Quantitate 80 Percent of Total Drug Challenges at ±20 Percent or ±2 Standard Deviations.* Quantitative values obtained by a certified laboratory for at least 80 percent of the total drug challenges must be ±20 percent or ±2 standard deviations (whichever range is larger) of the appropriate reference or peer group mean as measured over two consecutive PT cycles.

(4) *Requirement to Quantitate Within 50 Percent of Calculated Reference Group Mean.* After achieving certification a laboratory is permitted one quantitative result differing by more than 50% from the target value within two consecutive cycles of PT. More than one error of this type within two consecutive PT cycles may result in a suspension or proposed revocation.

(5) *Requirement to Successfully Detect and Quantitate 50 Percent of the Total Drug Challenges for Any Individual Drug.* For any individual drug, a certified laboratory must successfully detect and quantitate in accordance with paragraphs (b)(2),(b)(3), and (b)(4) of this section at least 50 percent of the total drug challenges.

(6) *Procedures When Requirements in Paragraphs (b)(2)—(b)(5) of this Section Are Not Met.* If a certified laboratory fails to maintain a grade of 90 percent over the span of two consecutive PT cycles after initial certification as required by paragraph (b)(2) of this section or if it fails to successfully quantitate results as required by paragraphs (b)(3),(b)(4), or (b)(5) of this section, the laboratory shall be immediately informed that its performance fell under the 90 percent level or that it failed to quantitate test results successfully and how it failed to quantitate successfully. The laboratory shall be allowed 5 working days in which to provide any explanation for its unsuccessful performance, including administrative error or methodological error, and evidence that the source of the poor performance has been corrected. The Secretary may revoke or suspend the laboratory's certification or take no further action, depending on the seriousness of the errors and whether there is evidence that the source of the poor performance has been corrected and that current performance meets the requirements for a certified laboratory under these Guidelines. The Secretary may require that additional performance tests be carried out to determine whether the source of the poor performance has been removed. If the Secretary determines to suspend or revoke the laboratory's certification, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or until any recertification process is complete.

(c) *80 Percent of Participating Laboratories Must Detect Drug.* A laboratory's performance shall be evaluated for all samples for which drugs were spiked at concentrations above the specified performance test level unless the overall response from participating laboratories indicates that less than 80 percent of them were able to detect a drug.

(d) *Participation Required.* Failure to participate in a PT cycle or to participate satisfactorily may result in suspension or revocation of certification.

Section 3.20 Inspections

(a) *Frequency.* Prior to laboratory certification under these Guidelines and at least twice a year after certification, a team of three qualified inspectors, at least two of whom have been trained as laboratory inspectors, shall conduct an on-site inspection of laboratory premises. Inspections shall document the overall quality of the laboratory setting for the purposes of certification to conduct urine drug testing. Inspection reports may also contain recommendations to the laboratory to correct deficiencies noted during the inspection.

(b) *Inspectors.* The Secretary shall establish criteria for the selection of inspectors to ensure high quality, unbiased, and thorough inspections. The inspectors shall perform inspections consistent with the guidance provided by the Secretary. Inspectors shall document the overall quality of the laboratory's drug testing operation.

(c) *Inspection Performance.* The laboratory's operation shall be consistent with good forensic laboratory practice and shall be in compliance with these Guidelines. It is the laboratory's responsibility to correct deficiencies identified during the inspection and to have the knowledge, skill, and expertise to correct deficiencies consistent with good forensic laboratory practice. Consistent with sections 3.13 and 3.14, deficiencies identified at inspections may be the basis for suspending or revoking a laboratory's certification.

Section 3.21 Results of Inadequate Performance

Failure of a laboratory to comply with any aspect of these Guidelines may lead to revocation or suspension of certification as provided in sections 3.13 and 3.14 of these Guidelines.

Section 3.22 Listing of Certified Laboratories

A **Federal Register** listing of laboratories certified by HHS will be updated and published periodically. Laboratories which are in the applicant stage of HHS certification are *not* to be

considered as meeting the minimum requirements in these Guidelines. A laboratory is not certified until HHS has sent the laboratory an HHS letter of certification.

Subpart D—Procedures for Review of Suspension or Proposed Revocation of a Certified Laboratory

Section 4.1 Applicability

These procedures apply when:

(a) The Secretary has notified a laboratory in writing that its certification to perform urine drug testing under these Mandatory Guidelines for Federal Workplace Drug Testing Programs has been suspended or that the Secretary proposes to revoke such certification.

(b) The laboratory has, within 30 days of the date of such notification or within 3 days of the date of such notification when seeking an expedited review of a suspension, requested in writing an opportunity for an informal review of the suspension or proposed revocation.

Section 4.2 Definitions

Appellant: Means the laboratory which has been notified of its suspension or proposed revocation of its certification to perform urine drug testing and has requested an informal review thereof.

Respondent: Means the person or persons designated by the Secretary in implementing these Guidelines (currently the National Laboratory Certification Program is located in the Division of Workplace Programs, Substance Abuse and Mental Health Services Administration).

Reviewing Official: Means the person or persons designated by the Secretary who will review the suspension or proposed revocation. The reviewing official may be assisted by one or more of his or her employees or consultants in assessing and weighing the scientific and technical evidence and other information submitted by the appellant and respondent on the reasons for the suspension and proposed revocation.

Section 4.3 Limitation on Issues Subject to Review

The scope of review shall be limited to the facts relevant to any suspension or proposed revocation, the necessary interpretations of those facts, the Mandatory Guidelines for Federal Workplace Drug Testing Programs, and other relevant law. The legal validity of the Mandatory Guidelines shall not be subject to review under these procedures.

Section 4.4 Specifying Who Represents the Parties

The appellant's request for review shall specify the name, address, and phone number of the appellant's representative. In its first written submission to the reviewing official, the respondent shall specify the name, address, and phone number of the respondent's representative.

Section 4.5 The Request for Informal Review and the Reviewing Official's Response

(a) Within 30 days of the date of the notice of the suspension or proposed revocation, the appellant must submit a written request to the reviewing official seeking review, unless some other time period is agreed to by the parties. A copy must also be sent to the respondent. The request for review must include a copy of the notice of suspension or proposed revocation, a brief statement of why the decision to suspend or propose revocation is wrong, and the appellant's request for an oral presentation, if desired.

(b) Within 5 days after receiving the request for review, the reviewing official will send an acknowledgment and advise the appellant of the next steps. The reviewing official will also send a copy of the acknowledgment to the respondent.

Section 4.6 Abeyance Agreement

Upon mutual agreement of the parties to hold these procedures in abeyance, the reviewing official will stay these procedures for a reasonable time while the laboratory attempts to regain compliance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs or the parties otherwise attempt to settle the dispute. As part of an abeyance agreement, the parties can agree to extend the time period for requesting review of the suspension or proposed revocation. If abeyance begins after a request for review has been filed, the appellant shall notify the reviewing official at the end of the abeyance period advising whether the dispute has been resolved. If the dispute has been resolved, the request for review will be dismissed. If the dispute has not been resolved, the review procedures will begin at the point at which they were interrupted by the abeyance agreement with such modifications to the procedures as the reviewing official deems appropriate.

Section 4.7 Preparation of the Review File and Written Argument

The appellant and the respondent each participate in developing the file for the reviewing official and in submitting written arguments. The procedures for development of the review file and submission of written argument are:

(a) *Appellant's Documents and Brief.* Within 15 days after receiving the acknowledgment of the request for review, the appellant shall submit to the reviewing official the following (with a copy to the respondent):

(1) A review file containing the documents supporting appellant's argument, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not to exceed 20 double-spaced pages, explaining why respondent's decision to suspend or propose revocation of appellant's certification is wrong (appellant's brief).

(b) *Respondent's Documents and Brief.* Within 15 days after receiving a copy of the acknowledgment of the request for review, the respondent shall submit to the reviewing official the following (with a copy to the appellant):

(1) A review file containing documents supporting respondent's decision to suspend or revoke appellant's certification to perform urine drug testing, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not exceeding 20 double-spaced pages in length, explaining the basis for suspension or proposed revocation (respondent's brief).

(c) *Reply Briefs.* Within 5 days after receiving the opposing party's submission, or 20 days after receiving acknowledgment of the request for review, whichever is later, each party may submit a short reply not to exceed 10 double-spaced pages.

(d) *Cooperative Efforts.* Whenever feasible, the parties should attempt to develop a joint review file.

(e) *Excessive Documentation.* The reviewing official may take any appropriate step to reduce excessive documentation, including the return of or refusal to consider documentation found to be irrelevant, redundant, or unnecessary.

Section 4.8 Opportunity for Oral Presentation

(a) *Electing Oral Presentation.* If an opportunity for an oral presentation is desired, the appellant shall request it at the time it submits its written request for review to the reviewing official. The reviewing official will grant the request if the official determines that the

decision-making process will be substantially aided by oral presentations and arguments. The reviewing official may also provide for an oral presentation at the official's own initiative or at the request of the respondent.

(b) *Presiding Official.* The reviewing official or designee will be the presiding official responsible for conducting the oral presentation.

(c) *Preliminary Conference.* The presiding official may hold a prehearing conference (usually a telephone conference call) to consider any of the following: simplifying and clarifying issues; stipulations and admissions; limitations on evidence and witnesses that will be presented at the hearing; time allotted for each witness and the hearing altogether; scheduling the hearing; and any other matter that will assist in the review process. Normally, this conference will be conducted informally and off the record; however, the presiding official may, at his or her discretion, produce a written document summarizing the conference or transcribe the conference, either of which will be made a part of the record.

(d) *Time and Place of Oral Presentation.* The presiding official will attempt to schedule the oral presentation within 30 days of the date appellant's request for review is received or within 10 days of submission of the last reply brief, whichever is later. The oral presentation will be held at a time and place determined by the presiding official following consultation with the parties.

(e) *Conduct of the Oral Presentation.*

(1) *General.* The presiding official is responsible for conducting the oral presentation. The presiding official may be assisted by one or more of his or her employees or consultants in conducting the oral presentation and reviewing the evidence. While the oral presentation will be kept as informal as possible, the presiding official may take all necessary steps to ensure an orderly proceeding.

(2) *Burden of Proof/Standard of Proof.* In all cases, the respondent bears the burden of proving by a preponderance of the evidence that its decision to suspend or propose revocation is appropriate. The appellant, however, has a responsibility to respond to the respondent's allegations with evidence and argument to show that the respondent is wrong.

(3) *Admission of Evidence.* The rules of evidence do not apply and the presiding official will generally admit all testimonial evidence unless it is clearly irrelevant, immaterial, or unduly repetitious. Each party may make an opening and closing statement, may present witnesses as agreed upon in the prehearing conference or otherwise, and may question the opposing party's witnesses. Since the parties have ample opportunity to prepare the review file, a party may introduce additional documentation during the oral presentation only with the permission of the presiding official. The presiding official may question witnesses directly and take such other steps necessary to ensure an effective and efficient consideration of the evidence, including setting time limitations on direct and cross-examinations.

(4) *Motions.* The presiding official may rule on motions including, for example, motions to exclude or strike redundant or immaterial evidence, motions to dismiss the case for insufficient evidence, or motions for summary judgment. Except for those made during the hearing, all motions and opposition to motions, including argument, must be in writing and be no more than 10 double-spaced pages in length. The presiding official will set a reasonable time for the party opposing the motion to reply.

(5) *Transcripts.* The presiding official shall have the oral presentation transcribed and the transcript shall be made a part of the record. Either party may request a copy of the transcript and the requesting party shall be responsible for paying for its copy of the transcript.

(f) *Obstruction of Justice or Making of False Statements.* Obstruction of justice or the making of false statements by a witness or any other person may be the basis for a criminal prosecution under 18 U.S.C. 1505 or 1001.

(g) *Post-hearing Procedures.* At his or her discretion, the presiding official may require or permit the parties to submit post-hearing briefs or proposed findings and conclusions. Each party may submit comments on any major prejudicial errors in the transcript.

Section 4.9 Expedited Procedures for Review of Immediate Suspension

(a) *Applicability.* When the Secretary notifies a laboratory in writing that its certification to perform urine drug testing has been immediately suspended, the appellant may request an expedited review of the suspension and any proposed revocation. The appellant must submit this request in writing to the reviewing official within 3 days of the date the laboratory received notice of the suspension. The request for review must include a copy of the suspension and any proposed revocation, a brief statement of why the decision to suspend and propose revocation is wrong, and the appellant's request for an oral presentation, if desired. A copy of the request for review must also be sent to the respondent.

(b) *Reviewing Official's Response.* As soon as practicable after the request for review is received, the reviewing official will send an acknowledgment with a copy to the respondent.

(c) *Review File and Briefs.* Within 7 days of the date the request for review is received, but no later than 2 days before an oral presentation, each party shall submit to the reviewing official the following: (1) a review file containing essential documents relevant to the review, tabbed, indexed, and organized chronologically, and (2) a written statement, not to exceed 20 double-spaced pages, explaining the party's position concerning the suspension and any proposed revocation. No reply brief is permitted.

(d) *Oral Presentation.* If an oral presentation is requested by the appellant or otherwise granted by the reviewing official, the presiding official will attempt to schedule the oral presentation within 7–10 days of the date of appellant's request for review at a time and place determined by the presiding official following consultation with the parties. The presiding official may hold a pre-hearing conference in accordance with section 4.8(c) and will conduct the oral presentation in accordance with the procedures of sections 4.8 (e), (f), and (g).

(e) *Written Decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation and will attempt to issue the decision within 7–10 days of the date of the oral presentation or within 3 days of the date on which the transcript is received or the date of the last submission by either party, whichever is later. All other provisions set forth in section 4.14 will apply.

(f) *Transmission of Written Communications.* Because of the importance of timeliness for these expedited procedures, all written communications between the parties and between either party and the reviewing official shall be by facsimile or overnight mail.

Section 4.10 Ex parte Communications

Except for routine administrative and procedural matters, a party shall not communicate with the reviewing or presiding official without notice to the other party.

Section 4.11 Transmission of Written Communications by Reviewing Official and Calculation of Deadlines

(a) Because of the importance of a timely review, the reviewing official should normally transmit written

communications to either party by facsimile or overnight mail in which case the date of transmission or day following mailing will be considered the date of receipt. In the case of communications sent by regular mail, the date of receipt will be considered 3 days after the date of mailing.

(b) In counting days, include Saturdays, Sundays, and holidays. However, if a due date falls on a Saturday, Sunday, or Federal holiday, then the due date is the next Federal working day.

Section 4.12 Authority and Responsibilities of Reviewing Official

In addition to any other authority specified in these procedures, the reviewing official and the presiding official, with respect to those authorities involving the oral presentation, shall have the authority to issue orders; examine witnesses; take all steps necessary for the conduct of an orderly hearing; rule on requests and motions; grant extensions of time for good reasons; dismiss for failure to meet deadlines or other requirements; order the parties to submit relevant information or witnesses; remand a case for further action by the respondent; waive or modify these procedures in a specific case, usually with notice to the parties; reconsider a decision of the reviewing official where a party promptly alleges a clear error of fact or law; and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.

Section 4.13 Administrative Record

The administrative record of review consists of the review file; other submissions by the parties; transcripts or other records of any meetings, conference calls, or oral presentation; evidence submitted at the oral presentation; and orders and other documents issued by the reviewing and presiding officials.

Section 4.14 Written Decision

(a) *Issuance of Decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation. The decision will set forth the reasons for the decision and describe the basis therefor in the record. Furthermore, the reviewing official may remand the matter to the respondent for such further action as the reviewing official deems appropriate.

(b) *Date of Decision.* The reviewing official will attempt to issue his or her decision within 15 days of the date of the oral presentation, the date on which the transcript is received, or the date of the last submission by either party, whichever is later. If there is no oral presentation, the decision will normally be issued within 15 days of the date of receipt of the last reply brief. Once issued, the reviewing official will immediately communicate the decision to each party.

(c) *Public Notice.* If the suspension and proposed revocation are upheld, the revocation will become effective immediately and the public will be notified by publication of a notice in the **Federal Register**. If the suspension and proposed revocation are denied, the revocation will not take effect and the suspension will be lifted immediately. Public notice will be given by publication in the **Federal Register**.

Section 4.15 Court Review of Final Administrative Action; Exhaustion of Administrative Remedies

Before any legal action is filed in court challenging the suspension or proposed revocation, respondent shall exhaust administrative remedies provided under this subpart, unless otherwise provided by Federal Law. The reviewing official's decision, under section 4.9(e) or 4.14(a), constitutes final agency action and is ripe for judicial review as of the date of the decision.

[FR Doc. 94–13940 Filed 6–8–94; 8:45 am]
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federal register

Thursday
June 9, 1994

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 189
Use of Federal Aviation Administration Communications Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 189

[Docket No. 27778; Notice No. 94–17]

RIN 2120–AE68

Use of Federal Aviation Administration Communications Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to modify part 189 of the Federal Aviation Regulations (FAR) to remove outdated fee provisions and services designated in the rule. Due to enhanced commercial communications the FAA has determined that the need to accept (and charge fees for) messages that address such topics as lost baggage, hotel reservations, crew assignments, and other commercial matters (Class B messages) no longer exists. The proposed change is only intended to remove the outdated fee provisions and services related to Class B messages; it is not intended to affect the FAA's transmission of messages relating to flight safety, flight plans, and weather (Class A messages) to alter the current practice of relaying messages received from an FAA FSS outside of the 48 contiguous States and the District of Columbia, or received from a foreign station of the Aeronautical Fixed Telecommunications Network (AFTN).

DATES: Comments must be received on or before September 7, 1994.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27778, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27778. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen E. Crum, Air Traffic Rules Branch, ATP–230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27778." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The predecessor of part 189, part 612—Aeronautical Fixed Communications, published in the August 25, 1950, *Federal Register*, became effective on September 1, 1950. It specified that airlines could send certain messages over specific Government circuits. The specific circuits were established between several Pacific Islands. The United States government made this communications network available, at the users expense, to transmit Class B messages since there were few other communication systems established. Subsequent amendments to part 612 accomplished the following: (1) Expanded the service to any station serviced by the integrated international aeronautical network (now AFTN); (2) defined the specific messages that would be accepted free of charge and those for which fees would be charged. (3) established the priority given to two categories of messages; and (4) limited the Government's liability in the handling of all messages accepted under these provisions.

Concurrent with the evolution of the above provisions, similar International Civil Aviation Organization (ICAO) procedures were developed. Beginning in 1951, ICAO procedures were implemented whereby each country would: (1) accept, free of charge, messages that were meant for "* * * ensuring safety of air navigation and regularity of air traffic between aeronautical fixed stations of the different States * * *;" (2) accept other messages that did not fall in the above category provided there was an "* * * absence of rapid commercial telecommunications * * *;" and (3) determine the acceptability of messages.

Communication systems and the air traffic control system have improved greatly in the last several decades. Consequently, users have elected to transmit Class B messages through communications systems other than the FAA's.

In the past, the FAA has considered the need for, and removal of, part 189 of the FAR. In 1981, all FAA Regional offices were queried regarding what operational effect, if any, the complete removal of part 189 would have. At that time, only the Alaska region objected to this action. The Anchorage International Flight Service Station (IFSS) handled a high volume of Class B messages, and the Region felt strongly that complete removal of part 189 would preclude them from continuing this service. In 1992, the Regions were again queried regarding their positions with respect to the proposed amendment to part 189. All of the Regions concurred with this proposal. Since the IFSS in Anchorage, Alaska was decommissioned in 1984, aircraft that had previously utilized its communications services are not using a private communications company; therefore, the prior concerns of the Alaska Region are no longer relevant.

Current Requirements

Part 189 stipulates that domestic FSS's may accept for transmission only messages related to distress and distress traffic, safety of human life, flight safety

(including air traffic control messages), weather, aeronautical administration, and Notices to Airmen (NOTAM's) (Class A messages). The acceptance and transmission of these messages is completed without charge. The FAA is not proposing to change this service.

In addition to accepting Class A messages, IFSS's, and those FSS's located outside the 48 contiguous States and the District of Columbia, may accept messages originated by and addressed to aircraft operating agencies, or their representatives, that directly bear on the efficient and economic conduct of day to day operations. These messages (Class B messages) include such things as new or revised passenger or cargo rates and train or hotel reservations. This service is provided for a fee of 25 cents for each group of 10 words. FSS acceptance of these messages is based on the absence of adequate non-USA communication facilities.

In recent years additional means of communication have been developed, including satellites, computer networks, and cellular telephones. Therefore, the need to use the FAA AFTN system for the transmission of Class B messages has been greatly reduced. In January, 1988, a new communication network called National Airspace Data Interchange Network (NADIN) was commissioned in the United States. The capability to segregate Class B messages, which required payment from the user, was intentionally omitted from the system because the need for such a capability is negligible. However, part 189 was not amended when NADIN was commissioned; consequently it is outdated because it still contains provisions for the collection of fees for the transmission of Class B messages.

Annex 10, an International Civil Aviation Organization (ICAO) document, provides guidance to FSS's for handling the operational aspects of international aeronautical telecommunications. The FAA relays Class A or B messages that were originally accepted for transmission at an FAA FSS outside of the 48 contiguous States and the District of Columbia that were received from a foreign station of the AFTN, and that in normal routing would require transit of the 48 contiguous States or the District of Columbia in order to reach an overseas address.

The Proposal

Elimination of Acceptance for Transmission of Class B Messages

Currently, only FAA IFSS's or FSS's located outside the 48 contiguous States and the District of Columbia may accept for transmission Class B messages when adequate commercial communication systems are not available. These facilities have not received any requests to accept Class B messages for transmission in over 5 years.

Communication systems technology has improved and expanded to include private data networks, private line services, telegrams, satellite communications, and cellular telephones. Therefore, the need to use FAA communications systems for transmission of Class B messages has diminished. This proposal will not restrict or deny users from utilizing the FAA communications systems for relay of Class B messages when other adequate communications systems are not available. Additionally, this proposal will align the regulations with current practices by eliminating the authority of FSS's to accept for transmission Class B messages without adversely affecting the users.

Elimination of Charges for Class B Messages

The current rule requires that fees be charged when Class B messages are accepted for transmission over FAA communication systems. However, current communication systems cannot segregate those kinds of messages that require a charge for transmission. In fact, over the last 5 years, there are no records of fees having been collected for transmission of Class B messages, nor does the FAA propose to resume this practice. This proposed change will remove from the regulation all references to the collection of fees and align the regulation with current practices.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this notice, the FAA has reviewed the SARP of Annex 10. The FAA has determined that this proposal, if adopted, would not present any differences.

Economic Summary

This proposed rule would be neither a significant proposed regulatory action under Executive Order 12866 nor a significant proposed rule under the Department of Transportation Regulatory Policies and Procedures. The FAA does not expect the proposal to impose a significant cost on society (aviation industry, public, or government). The NPRM would not cause any diminution of safety.

The proposed amendment would delete rule language that allows the transfer of certain data. This data includes messages addressing topics such as: lost baggage, hotel reservations, and crew assignments on international or overseas flights (Class B data). At present, only IFSS's and FSS's located outside the 48 contiguous States and the District of Columbia have the authority and capability to accept such information for transmission. In practice, the FAA has not received requests for this service for several years.

The FAA queried FSS's to determine the consequences of this action. The responses indicated that this action would not affect any air carrier operator Adequate private communications facilities are available to transmit Class B data and, in the past few years, international and overseas carriers have not chosen to avail themselves of the FAA service. However, the FAA recognizes a remote possibility that a future potential user of this service would not have the chance to do so.

The FAA does not expect the proposal to impose a significant cost, but requests comment and information on the potential use of this service and on any impact of eliminating the acceptance for transmission of Class B messages.

International Trade Impact Analysis

This proposed rule would have no effect on the sale of foreign products or services in the United States. The rule also does not affect the sale of United States products or services in foreign countries. Hence, all foreign and domestic trade would be equally unaffected by this proposed rule.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have "a significant economic impact on a substantial number of small entities."

The proposed amendment deletes rule language that allows the transfer of certain data because users have not requested this service for several years. Hence, the proposal would not impose a significant cost on a substantial number of small entities.

Federalism Implications

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

List of Subjects in 14 CFR Part 189

Air transportation, Telecommunications.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 189 of the Federal Aviation Regulation (14 CFR part 189) as follows:

PART 189—USE OF FEDERAL AVIATION ADMINISTRATION COMMUNICATIONS SYSTEM

1. The authority citation for part 189 continues to read as follows:

Authority: Secs. 301(c), 305, 307(b), 313(a), and 314, 72 Stat. 744; 49 U.S.C. 1341(c), 1346, 1348(b), 1354(a), and 1355, and sec. 501, 65 Stat. 290; 31 U.S.C. 483a.

2. Section 189.1 is revised to read as follows:

§ 189.1 Scope.

This part describes the kinds of messages that may be transmitted or relayed by FAA Flight Service Stations.

3. Section 189.3 is amended by removing paragraph (b); revising this section heading and the introductory text of paragraph (a); adding a new paragraph (b) introductory text; redesignating paragraphs (a)(7) and (a)(8) as new paragraphs (b)(1) and (b)(2) respectively; and in newly designated (b)(2)(i), by revising the reference "(a)(7)" to "(b)(1)". The changes read as follows:

§ 189.3 Kinds of messages accepted or relayed.

(a) Flight Service Stations may accept for transmission over FAA communication systems any messages concerning international or overseas aircraft operations described in paragraphs (a)(1) through (6) of this section. In addition, Flight Service Stations may relay any message described in this section that was originally accepted for transmission at an FAA Flight Service Station outside the 48 contiguous States, or was received from a foreign station of the Aeronautical Fixed Telecommunications Network that, in normal routing, would require transit of the United States to reach an overseas address.

* * * * *

(b) The following messages may only be relayed through the FAA communications systems:

* * * * *

4. Section 189.5 is revised to read as follows:

§ 189.5 Limitation of liability.

The United States is not liable for any omission, error, or delay in transmitting or relaying, or for any failure to transmit or relay, any message accepted for transmission or relayed under this part, even if the omission, error, delay, or failure to transmit or relay is caused by the negligence of an employee of the United States.

§ 189.7 [Removed]

5. Section 189.7 is removed in its entirety.

Issued in Washington, DC, on June 1, 1994.

Harold W. Becker,

Manager, Airspace Rules & Aero. Information Division.

[FR Doc. 94–13912 Filed 6–8–94; 8:45 am]

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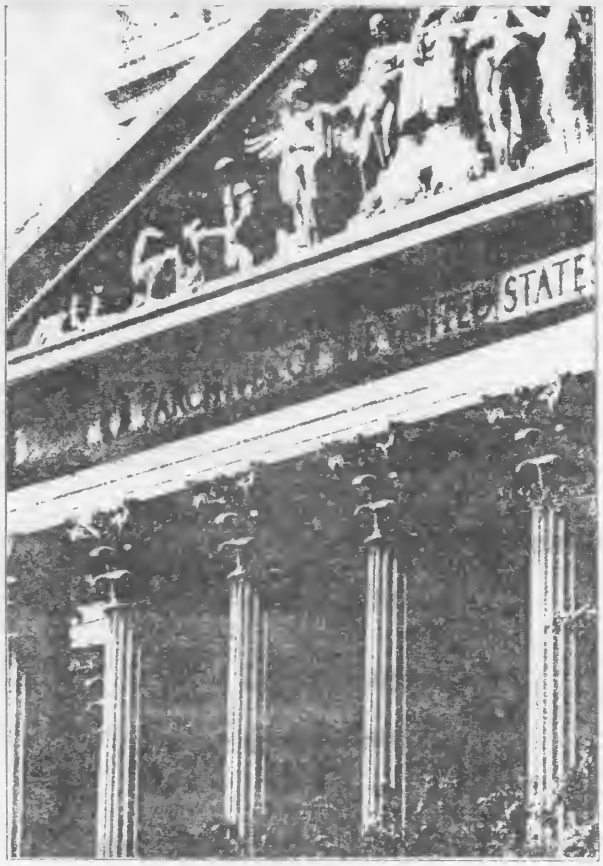

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