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Briefing on How To Use the Federal Register
For information on briefing in Oakland, CA 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.

OAKLAND, CA

WHEN: March 30 at 9:00 am

WHERE: Oakland Federal Building, 1301 Clay Street, Conference Rooms A, B, and C, 2nd Floor, Oakland, CA

RESERVATIONS: Federal Information Center 1–800–726–4995

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 838, 842, and 890

RIN 3206–AF66

Payment of Survivor Deposits by Actuarial Reduction

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its interim regulations to implement section 11004 of the Omnibus Budget Reconciliation Act of 1993 as final. The Act requires OPM to reduce a retiree's annuity instead of collecting a deposit when the retiree marries during retirement and elects to provide a survivor annuity for the new spouse. These regulations comply with the requirement that OPM establish, by regulation, the method for computing the reduction on an actuarial basis. These regulations also reorganize OPM's survivor elections and survivor annuity regulations for the Civil Service Retirement System to group together sections on similar subjects and provide a more detailed table of contents to make the regulations easier to use.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On October 13, 1993, we published (at 58 FR 56877) interim regulations concerning survivor elections under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) and survivor annuities under CSRS. The interim regulations implemented the statutory change in the way we collect survivor election deposits for post-retirement marriage. The interim regulations also reorganized subpart F of our CSRS regulations to make it easier to use. We also requested comments on the interim regulations. We received no comments.

Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM will no longer collect these deposits in either a lump sum or by installments. Instead, OPM is now required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law, and "translate" it into a lifetime reduction in the retiree's benefit. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under sections 8343a and 8420a of title 5, United States Code.

The following three charts contain the present value factors that will apply beginning on the first day of the month beginning on or after the effective date of the final regulations. These present value factors have been revised to reflect the new economic assumption adopted by the Board of Actuaries of the Civil Service Retirement and Disability Fund. On September 21, 1993, we published (at 58 FR 49066) the new economic assumption as part of the notice of change in FERS normal cost percentage effective at the beginning of fiscal year 1995.

CSRS PRESENT VALUE FACTORS

Age	Reduction factor
40	294.4
41	290.0
42	285.5
43	280.8
44	276.2
45	270.4
46	264.7
47	259.2
48	253.5
49	247.2
50	240.4
51	235.0
52	229.8
53	224.4
54	218.6
55	212.6
56	207.5
57	202.4
58	197.0
59	192.3
60	188.3
61	182.9
62	177.0
63	171.9

CSRS PRESENT VALUE FACTORS—Continued

Age	Reduction factor
64	166.5
65	161.1
66	156.0
67	150.7
68	145.4
69	140.2
70	134.7
71	129.4
72	124.0
73	118.8
74	113.6
75	108.5
76	103.5
77	98.7
78	93.9
79	89.4
80	84.9
81	80.5
82	76.3
83	72.3
84	68.4
85	64.7
86	61.2
87	57.9
88	54.7
89	51.8
90	48.9

FERS PRESENT VALUE FACTORS FOR REGULAR EMPLOYEES

Age	Reduction factor
40	169.2
41	168.8
42	168.4
43	168.1
44	167.7
45	166.9
46	166.1
47	165.4
48	164.7
49	163.7
50	162.4
51	161.9
52	161.6
53	161.2
54	160.6
55	160.0
56	160.0
57	160.2
58	160.4
59	161.2
60	162.7
61	163.5
62	161.3
63	157.1
64	152.5
65	148.0
66	143.6
67	139.1

FERS PRESENT VALUE FACTORS FOR REGULAR EMPLOYEES—Continued

Age	Reduction factor
68	134.6
69	130.1
70	125.4
71	120.7
72	116.0
73	111.4
74	106.8
75	102.2
76	97.8
77	93.5
78	89.2
79	85.0
80	80.9
81	77.0
82	73.1
83	69.4
84	65.8
85	62.4
86	59.1
87	56.0
88	53.0
89	50.2
90	47.5

FERS PRESENT VALUE FACTORS FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AIR TRAFFIC CONTROLLERS, AND MILITARY RESERVE TECHNICIANS WHO RETIRE UNDER 5 U.S.C. 8414(c) BY REASON OF DISABILITY

Age	Reduction factor
40	245.2
41	241.9
42	238.5
43	235.0
44	231.5
45	227.9
46	224.2
47	220.3
48	216.5
49	212.6
50	208.6
51	204.5
52	200.3
53	196.1
54	191.8
55	187.4
56	183.1
57	178.6
58	174.2
59	169.7
60	165.1
61	160.4

(Age 62 and over, see table for regular employees.)

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects

5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 838

Administrative practice and procedure, Claims, Disability benefits, Government employees, Income taxes, Pensions, Retirement, Courts.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, under authority of 5 U.S.C. 8347, 8461, and 8913, OPM is adopting its interim rules amending 5 CFR parts 831, 838, 842, and 890 published on October 13, 1993, at 58 FR 56877, as final rules without change.

[FR Doc. 94–6046 Filed 3–15–94; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 890

RIN 3206–AF17

Federal Employees Health Benefits Program: Coverage of Temporary Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations clarifying the eligibility of temporary employees to continue their Federal Employees Health Benefits (FEHB) coverage when they become compensationers. These regulations also allow temporary employees an opportunity to change health plans if their salary is insufficient to pay the premium withholdings, show the effective date of such an enrollment change, and provide for the termination of these employees' enrollment if they do not change health plans.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, 202–606–0191.

SUPPLEMENTARY INFORMATION: On September 13, 1993, OPM issued interim regulations (58 FR 47823) concerning health benefits for temporary employees. These regulations clarified when a temporary employee's eligibility under 5 U.S.C. 8906a is considered his or her first opportunity to enroll. Many eligible temporary employees do not enroll in the FEHB Program, since there is no Government contribution and they must pay the full cost of the premium. In implementing 5 U.S.C. 8906a, OPM believed it would be unfair to consider eligibility under this section to be an employee's first opportunity to enroll for purposes of continuing health benefits into retirement, since temporary employees are precluded from participating in a retirement system. This may have inadvertently appeared to deny temporary employees eligibility for continued health benefits while receiving compensation from the Office of Workers' Compensation (OWCP), since for the purposes of chapter 89 of title 5 U.S.C., compensationers are considered to be annuitants.

The interim regulations clarified that for the purpose of continuing health benefits as a compensationer, a temporary employee's first opportunity to enroll is when he or she first becomes eligible under 5 U.S.C. 8906a. The regulations also granted temporary employees an opportunity to change health plans if their pay is insufficient to make premium withholdings for the plan in which they are enrolled, specified the effective date of such a change, and provided for the termination of enrollment of temporary employees in this situation who do not, or cannot, choose a lower cost health plan.

OPM received one comment from a Federal agency; this comment concurred with our interim regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only temporary Federal employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.
Lorraine A. Green,
Deputy Director.

Accordingly, under authority of 5 U.S.C. 8913, OPM is adopting its interim regulations under 5 CFR part 890 as published on September 13, 1993, (58 FR 47823) as final rules without change.

[FR Doc. 94–6045 Filed 3–15–94; 8:45 am]
BILLING CODE 6325–01–M

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209–AA07

Executive Agency Ethics Training Programs

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule amendments with request for comments.

SUMMARY: This interim rule amends the OGE executive branch-wide regulation on "Executive Agency Ethics Training Programs." In response to agency concerns, the interim regulation grants executive branch agencies greater flexibility in administering their ethics training programs, enabling them to more efficiently use available resources to provide their employees with effective ethics training. Under the interim regulation, executive agencies will be able to provide their employees with summaries of the branch-wide regulations governing employee conduct in place of the actual text of those provisions as part of the employees' initial ethics orientation. Agencies are also able to make use of communications and electronic technologies in providing annual ethics training to covered employees. Written materials may be used to meet the annual training requirement for certain categories of employees; the requirement that employees in these categories receive a minimum of one hour of official duty time for annual ethics training is removed. The interim regulation clarifies that employees who fulfill the confidential financial disclosure requirements through an alternate procedure or an OGE-approved substitute affirmative disclosure system are required to receive annual ethics training. Minor changes have also been made to delete out-of-date language associated with the initiation of the training requirements in calendar years 1992 and 1993 and to add an appropriate cross-reference to the detailed training provisions.

DATES: Interim regulation amendments effective January 1, 1994. Comments by agencies and the public are invited and are due on or before May 16, 1994.

ADDRESSES: Comments should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: John C. Condray.

FOR FURTHER INFORMATION CONTACT: John C. Condray, Office of the General Counsel and Legal Policy, Office of Government Ethics, telephone: 202–523–5757; FAX: 202–523–6325.

SUPPLEMENTARY INFORMATION:

A. Synopsis of Changes

In accordance with section 301 of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990) (hereinafter Executive Order 12674), and consistent with its authority under the Ethics in Government Act (as amended), the Office of Government Ethics published subpart G of 5 CFR part 2638 as a final rule on April 7, 1992 at 57 FR 11886–11891, as corrected at 57 FR 15219 (April 29, 1992). On December 10, 1992, OGE published as a final rule certain amendments to the training regulation not directly related to this proposed amendment (see 57 FR 58399–58400, as corrected at 57 FR 61612 (December 28, 1992)). Based on concerns that agencies expressed to OGE, this interim rule further amends subpart G to provide agencies with greater flexibility in providing ethics training to their employees. The substantive amendments made by this interim regulation concern two sections of subpart G, §§ 2638.703 and 2638.704. The amendments to § 2638.703 revise the format of the requirement that agencies provide all of their employees with an initial ethics orientation. The amendments to § 2638.704 revise the format of the annual ethics training that agencies must provide to certain covered employees. These amendments are described in greater detail below. Section 2638.702(a) has been amended to correspond to the amendments made to § 2638.704. Minor changes have also been made throughout subpart G to delete language associated with the initiation of the training requirements in calendar years 1992 and 1993.

Section 2638.703 Initial Agency Ethics Orientation

The key change for the initial ethics orientation requirement is found at interim 5 CFR 2638.703(b)(2). This provision permits agencies to substitute a summary of part I of Executive Order 12674 and the Standards of Ethical Conduct in the place of the actual text of the Standards. This was done in response to agency concerns that their employees may not be able to adequately assimilate the information contained in the actual text of the Standards and part I of Executive Order 12674 in the amount of time set aside for the initial agency ethics orientation, a minimum of one hour of official duty time. In the original training regulation as published in April 1992, OGE required the full text of these materials to be distributed to employees receiving the initial ethics orientation. This was based upon section 301(b) of Executive Order 12674, which requires that agencies ensure review by all employees of the Executive order and any regulations promulgated thereunder. The principle of that section is to ensure that employees understand the ethical expectations and responsibilities that they are required to meet. After careful consideration, OGE has determined that this requirement is more effectively met by allowing agencies the freedom to develop a summary that conveys the substance of the Executive order and the Standards of Ethical Conduct in a form that their employees will be better able to assimilate. Of course, executive branch employees remain subject to the requirements of part 2635. To make certain that employees have access to all of the information contained in part I of Executive Order 12674 and part 2635, § 2638.703(b)(2) requires agencies using summary materials in lieu of part 2635 for an employees' initial ethics orientation to ensure that copies of the complete text of part 2635 are retained and readily accessible in the employee's immediate office area.

For those agencies that do decide to continue to provide the full text of the Standards for review instead of summary materials, § 2638.703(a) has been amended to delete the requirement that agencies also provide their employees with a copy of part I of Executive Order 12674 as part of the initial agency ethics orientation. The revised § 2638.703(a) only requires agencies to provide a copy of the Standards of Ethical Conduct for Employees of the Executive Branch, together with the names, titles, office addresses and telephone numbers of ethics officials available to answer employee questions (this is also required in the case of provision of summary materials). The Office of Government Ethics has deleted the requirement that agencies provide their employees with a copy of part I of Executive Order 12674 because the requirement was redundant. The

Standards, which were published in the **Federal Register** four months after subpart G was originally published, restate the 14 principles of ethical conduct contained in part I of Executive Order 12674 virtually verbatim. 5 CFR 2635.101(b). Agencies should note that OGE has retained part I of Executive Order 12674 as one of the subjects that must be included in any summary provided to agency employees in accordance with new § 2638.703(b)(2). This was done to ensure that the 14 principles, which are fundamental to employee conduct, are included in any summary used thereunder.

Section 2638.704 Annual Agency Ethics Training

Annual Training for Alternate Confidential Filers

The interim regulation clarifies that employees exempted from confidential financial disclosure reporting pursuant to OGE-approved alternative procedures in accordance with 5 CFR 2634.905(c) must also receive annual ethics training from their agencies pursuant to § 2638.704(b)(4). That section requires agencies to provide annual ethics training to all employees required to file confidential (nonpublic) financial disclosure reports under subpart I of 5 CFR part 2634 as well as any supplemental regulation or addendum thereto of the concerned agency. This is based in turn upon section 301(c) of Executive Order 12674, which explicitly includes confidential filers among those categories of employees for whom agencies must provide annual ethics briefings. Under another OGE executive branch regulation, § 2634.905(c) of this chapter, an individual employee or class of employees (including special Government employees) who are otherwise subject to the confidential reporting requirements of 5 CFR part 2634 may be excluded from all or a portion of the confidential reporting requirements if they are subject to an agency alternative procedure approved by OGE under § 2634.905(c). The Office of Government Ethics believes that agencies should still provide annual ethics training to such employees in accordance with § 2638.704. Because of concern over the potential for a conflict of interest in their official positions, these employees are still obligated by their agency to fulfill an alternate procedure for the prevention of any conflicts. They are therefore the type of employees meant to be covered by the annual training requirement contained in section 301(c) of Executive Order 12674 and this regulation. Based upon these considerations, OGE is therefore amending § 2638.704(b)(4) to explicitly include such employees among those who must receive annual ethics training from their agency. The amendment to that section also changes the "and" to an "or" in the main clause referring to confidential filing under agency supplemental regulations as well as 5 CFR part 2634 itself to clarify that any employees subject to confidential reporting pursuant to OGE-approved agency substitute affirmative disclosure systems are to be included in annual training.

Course Content

Another change made by the interim regulation concerns the course content requirements for annual agency ethics training, contained in the training regulation at § 2638.704(c). Some agencies had read the former course content requirements as requiring all executive branch agencies to provide repetitive training year after year on the same material. As OGE indicated in the preamble to the training regulation when it was published in April of 1992, this view is based on a misunderstanding of the nature of the requirement. Section 2638.704(c) as now amended retains language from its predecessor that states "* * * the emphasis and course content of annual agency ethics training courses may change from year to year * * *." The former section then went on to state the minimum requirements, that of a review of employee's responsibilities under part I of Executive Order 12674, as modified, and the Standards of Ethical Conduct (and any agency supplemental regulation) as well as a review of employees' responsibility under the conflict of interest statutes contained in 18 U.S.C. chapter 11. The preamble to the April 1992 final rule stated that, after the first session of annual training, this requirement could be met with a brief overview of the basic principles. Such an overview, given to employees who are familiar with their responsibilities under the statutes and the regulations, need serve only as a reminder of the basic principles, and could be accomplished in a very short period of time. The content of the rest of the training is entirely at agency discretion.

The structure of the annual ethics training is intended to allow agencies to vary their approach from year to year to keep the program interesting and also to best meet the needs of their employees. The Office of Government Ethics encourages innovation by agencies in providing training to their employees. Some agencies have been very active in following up on the flexibility provided to them for annual training. The Department of Justice, for example, is developing an interactive ethics computer game for use in its training. Several agencies, such as the Department of Defense and the U.S. Forest Service, are developing videotapes to supplement the OGE ethics training videotapes or to target the information provided to their employees. The Office of Government Ethics has consistently maintained that the minimum course content requirement contained in the regulation is intended to be a starting point from which agencies design and conduct their training, not a rigid requirement. However, because of continued confusion regarding the nature of this requirement, the interim regulation amends the language contained in § 2638.704(c) to state that a "reminder" of employees' responsibilities under the conflicts' statutes and the regulations will suffice to meet this requirement.

Presence of a Qualified Individual

The interim rule amendment deletes the general requirement, formerly contained in § 2638.704(d)(1), that annual training be presented with a qualified individual physically present during and immediately following the presentation. While the former § 2638.704(d)(1) used the term "available," both the text of the regulation and the preamble at the time of publication made it clear that OGE expected the qualified individual to be present at the training. 57 FR 11886, 11889 (April 7, 1992). The reason for this requirement, as explained in the preamble to the final rule, was to provide the best means for addressing employee questions and concerns raised by the training. Some agencies, particularly those whose duty sites are widely scattered, have voiced concern over their ability to meet this requirement. The former training regulation provided an exception, at § 2638.704(d)(2)(i), that allowed agencies to train covered employees without a qualified individual present under limited circumstances. This exception, however, was narrow in scope. Other limited exceptions were made for training provided to special Government employees and reserve officers.

Agency concern with this requirement, spurred on by legitimate concerns over the best use of limited agency resources, has caused OGE to move away from a strict presence requirement for the annual ethics training over the past year, so long as the employee retains some form of access to a qualified individual during

and immediately following the training. During the course of reviewing agency written plans for annual ethics training, OGE has approved certain agency procedures that, while they did not provide for actual physical presence of the qualified individual, did meet the goal of giving employees immediate and easy access to the qualified individual. For example, OGE approved an agency's training plan that called for the use of a video conferencing arrangement where the qualified individual could respond to employee questions directly as part of the training even though the qualified individual was not going to be physically present where the training was to be given. In another OGE-approved arrangement, an agency plan called for training to be provided through a satellite video broadcast, with a qualified individual on standby at the time of the training to answer questions over the telephone. These plans were approved because of the evolution of OGE's opinion on the desirability of a strict interpretation of the training regulation as it existed. The Office of Government Ethics has come to conclude that, while in-person training is often the most effective means of providing training, providing the "best" means of training may not be a realistic standard for all agencies in these times of fiscal restraints. The question therefore becomes one of setting a standard that agencies are able to meet while simultaneously meeting the goals of the ethics training program.

This interim regulation meets this standard by deleting the general requirement that a qualified individual be physically present during and following annual ethics training. The interim regulation retains the requirement that the annual training generally be provided verbally, which now can be done either in person or by recorded means. Written materials, standing alone, generally will not meet this requirement. This is necessary to comply with section 301(c) of Executive Order 12674, as modified by Executive Order 12731, which requires agencies to provide covered employees with an annual ethics "briefing." The interim regulation thus permits and encourages agencies to take advantage of technology in meeting this requirement. This could include, but is not limited to, use of video conferencing, telephone conferencing, audio or video cassettes, or computer-based training. Agencies will be required to have "qualified individuals," as defined in subpart G, develop any materials or lessons used in the training. Agencies will also be required to remind employees receiving annual ethics training of the names and phone numbers of ethics officials at their agency. This will provide employees with a point of contact should they need to seek clarification of issues raised in the course of the training or in their day-to-day work. Thus the interim regulation provides a standard that both encourages agencies to be creative in the means that they choose to provide the required training and is a realistic means of providing covered employees with the information that they need concerning the ethics and conflict of interest rules that govern their conduct.

The interim regulation retains the exception, at § 2638.704(d)(2)(i), permitting agencies to provide annual ethics training to a particular employee or group of employees by means of written materials when the Designated Agency Ethics Official, or his or her designee, makes a written determination that circumstances make it impractical to provide training to the employee or group of employees in accordance with § 2638.704(d)(1). This section has been slightly reworded to reflect the changes made to § 2638.704(d)(1). Because § 2638.704(d)(1) now permits agencies to provide annual ethics training without the presence of a qualified individual, language referring to such training has been deleted from § 2638.704(d)(2)(i). Like it predecessor, this exception is limited. Mere inconvenience to the agency, standing alone, will not justify a written determination under this section. As a practical matter, OGE does not expect this exception to be widely used because of the many options now available to agencies in providing annual ethics training to their employees. Section 2638.702(a)(ii), which requires agencies to include the number of employees to be trained under this exception in the agencies' written plan for annual ethics training, has also been reworded somewhat to reflect the changes made in § 2638.704(d)(2)(i).

The interim regulation also preserves the two exceptions, at 5 CFR 2638.704(d)(2)(ii) and 2638.704(d)(2)(iii), permitting agencies to use written materials in providing annual ethics training to special Government employees and to officers in the uniformed services who serve on active duty for 30 or fewer consecutive days. As with § 2638.704(d)(2)(i), discussed above, these sections have been slightly rewritten to reflect the changes made in § 2638.704(d)(1). Corresponding changes have been made to § 2638.704(a)(3)(iii), which requires agencies to include an estimate of the number of employees to be provided annual ethics training in accordance with these exceptions with their written plan for annual ethics training.

The interim regulation also expressly states two limited exceptions to the requirement that agencies provide covered employees with a minimum of one hour of official duty time for annual ethics training. These exceptions, found at §§ 2638.704(d)(2)(ii) and 2638.704(d)(2)(iii), waive the official duty hour requirement only for training provided to covered employees who are either: Special Government employees who are expected to work fewer than 60 days in a calendar year; or officers in the uniformed services who serve on active duty for 30 or fewer consecutive days. Thus, agencies may send a written summary of the ethics restrictions applicable to a special Government employee who will serve for a limited time on an advisory committee prior to the employee's actual dates of service. This avoids a rigid requirement that agencies provide training for a predefined period of time. This should enable agencies to communicate the ethics restrictions applicable to these employees while giving agencies flexibility in how they apply the limited number of hours that these employees actually serve.

The interim regulation also deletes obsolete language throughout the training regulation. This language generally pertained to the start-up phase of the requirements imposed by subpart G, and is no longer necessary. For example, the language at former § 2638.702(a)(3) stating that the first agency written plans for annual ethics training were due by August 1992, has been deleted. Finally, OGE is adding a cross-reference to the detailed subpart G ethics training requirements in § 2638.203(b)(6). Section 2638.203(b) lists the duties of the Designated Agency Ethics Officials; the responsibility to ensure that their agency has an education program for agency employees on ethics and standards of conduct matters has always been listed at § 2638.203(b)(6). The interim regulation rewords the language of this subsection to explicitly state that the education program for agency employees must be developed and conducted in accordance with subpart G of 5 CFR part 2638.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to section 553 (b) and (d) of title 5 of the United States Code, I find good cause for waiving the general notice of proposed rulemaking and 30-

day delay in effectiveness. Because the changes made by this interim regulation will enable agencies to more efficiently use their resources to provide required Government ethics orientation and training to their employees, it is essential to the administration of the executive branch ethics program that the changes made by this interim regulation become effective as soon as possible. Making the rule retroactive to January 1, 1994, enables agencies to complete all required ethics training for calendar year 1994 under one set of procedures. For these reasons, the notice and delay in effectiveness are being waived as impracticable, unnecessary, and contrary to the public interest. However, this is an interim rule with provision for a 60-day comment period. The Office of Government Ethics will review any comments received during the comment period, and consider any modifications to this rule which appear warranted.

Executive Order 12866

In promulgating this interim rule amending the executive branch-wide Government ethics training regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These interim rule amendments have not been reviewed by the Office of Management and Budget under that Executive order, as they are not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim rule will not have a significant economic impact on a substantial number of small businesses because it affects only Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this interim rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: March 9, 1994.

Donald E. Campbell,

Deputy Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2638 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2638—[AMENDED]

1. The authority citation for part 2638 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart B—Designated Agency Ethics Official

2. Section 2638.203 is amended by revising paragraph (b)(6) to read as follows:

§ 2638.203 Duties of the designated agency ethics official.

* * * * *

(b) * * *

(6) An education program for agency employees concerning all ethics and standards of conduct matters is developed and conducted in accordance with subpart G, Executive Agency Ethics Training Programs, of this part.

* * * * *

Subpart G—Executive Agency Ethics Training Programs

3. Section 2638.702 is amended by revising the introductory texts of paragraphs (a)(2) and (a)(3) as well as paragraphs (a)(3)(ii) and (a)(3)(iii) to read as follows:

§ 2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics.

(a) * * *

(2) Ensure the availability of qualified individuals to meet the annual ethics training requirements of § 2638.704 of this subpart. For the purposes of this subpart, the following shall be considered qualified individuals:

* * * * *

(3) Furnish to the Office of Government Ethics by August 31 of each year a written plan for annual ethics training by the agency for the following calendar year. Each training plan shall include:

* * * * *

(ii) An estimate of the number of agency employees to whom the annual ethics training course will be provided by means of written materials under the exception provided at § 2638.704(d)(2)(i) of this subpart, together with a written description of the basis for allowing an exception;

(iii) Estimates of the number of special Government employees and the number of officers in the uniformed services to whom the annual ethics training course will be presented by means of written materials under the exceptions provided at § 2638.704(d)(2)(ii) and (iii) of this subpart;

* * * * *

4. Section 2638.703 is revised to read as follows:

§ 2638.703 Initial agency ethics orientation.

(a) Each new agency employee who enters on duty shall, within 90 days of the date of his or her entrance on duty, be given:

(1) Except as provided in paragraph (b) of this section, a copy of part 2635 of this chapter, Standards of Ethical Conduct for Employees of the Executive Branch, and any supplemental regulation of the concerned agency;

(2) The names, titles, office addresses, and telephone numbers of the Designated Agency Ethics Official and other agency ethics officials available to answer questions regarding the employee's ethical responsibilities; and

(3) A minimum of one hour of official duty time for the purpose of permitting the employee to review the written materials furnished pursuant to this section. If the agency provides an ethics training course during official duty time, including annual ethics training provided under § 2638.704, or a nominee or other new entrant receives ethics training provided by the Office of Government Ethics or the White House Office, the period of official duty time set aside for individual review may be reduced by the time spent in training.

(b) An agency may meet the requirement of paragraph (a)(1) of this section by:

(1) Furnishing each employee a copy of part 2635 of this chapter for the purposes of review only, provided that copies of the complete text of part 2635 are retained and readily accessible in the employee's immediate office for use by several employees; or

(2) Providing employees with materials that summarize part I of Executive Order 12674, as modified by Executive Order 12731, 3 CFR, 1990 Comp., p. 306, and part 2635 of this chapter. In order to ensure that employees have access to all of the information contained in part I of Executive Order 12674, as modified, and part 2635, an agency using this alternative must ensure that copies of

the complete text of part 2635 are retained and readily accessible in the employees' immediate office area.

5. Section 2638.704 is amended by revising paragraphs (a), (b)(4), (c) and (d) to read as follows:

§ 2638.704 Annual agency ethics training.

(a) *Annual ethics training.* Executive branch agencies must provide each employee identified in paragraph (b) of this section with ethics training every calendar year. This training must meet the content requirements contained in paragraph (c) of this section and the presentation requirements contained in paragraph (d) of this section. Except as provided in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, employees must be provided a minimum of one hour of official duty time for this training.

(b) * * *

(4) Employees required to file confidential (nonpublic) financial disclosure reports under subpart I of part 2634 of this chapter or any supplemental regulation or addendum of the concerned agency (agency employees who are excluded from the confidential financial disclosure requirements through the use of an alternative procedure approved by the Office of Government Ethics pursuant to § 2634.905(c) of this chapter must also receive annual ethics training from their agency pursuant to this paragraph);

* * * * *

(c) *Course content.* Agencies are encouraged to vary the emphasis and course content of annual agency ethics training courses from year to year as necessary within the context of their ethics programs. However, each training course must include, as a minimum:

(1) A reminder of the employees' responsibilities under part I of Executive Order 12674, as modified, the Standards of Ethical Conduct for Employees of the Executive Branch, part 2635 of this chapter, and any supplemental regulation thereto by the concerned agency;

(2) A reminder of the employees' responsibilities under the conflict of interest statutes contained in 18 U.S.C. chapter 11; and

(3) The names, titles, office addresses, and telephone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employees' ethical responsibilities.

(d) *Course presentation.* The training course shall be presented in accordance with the following requirements:

(1) Except as provided in paragraph (d)(2) of this section, annual ethics training shall be presented verbally, either in person or by telecommunications, computer-based methods or recorded means. A qualified individual, as defined in § 2638.702(a)(2) of this subpart, shall:

(i) Present the training, if the training is presented in person; or

(ii) Prepare the recorded materials or presentation, if the training is presented by telecommunication, computer-based methods or recorded means.

(2) An agency may provide annual ethics training by means other than those specified in paragraph (d)(1) of this section under the following circumstances:

(i) Where the Designated Agency Ethics Official, or his or her designee, has made a written determination that circumstances make it impractical to provide training to a particular employee or group of employees in accordance with paragraph (d)(1) of this section. In such cases, annual ethics training may be provided by means of written materials, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review written materials;

(ii) In the case of special Government employees covered by paragraph (b) of this section, an agency may meet the annual training requirement by distribution of written materials, or by other means at the agency's discretion. For special Government employees who are expected to work fewer than 60 days in a calendar year, the requirement that the employee be provided with one hour of official duty time for annual ethics training is waived; and

(iii) In the case of officers in the uniformed services who serve on active duty for 30 or fewer consecutive days and who are covered by paragraph (b) of this section, an agency may meet the annual training requirement by distribution of written materials, or by other means at the agency's discretion. For these officers, the requirement that the officer be provided with one hour of official duty time for annual ethics training is waived.

[FR Doc. 94-6006 Filed 3-15-94; 8:45 am]

BILLING CODE 6345-01-U-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV93-959-1FIR]

South Texas Onions; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an amended interim final rule that increased the level of authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the South Texas Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210-682-2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1993-94 fiscal period, which began August 1, 1993, and ends July 31, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 97 producers of South Texas onions under this marketing order, and approximately 38 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $80,000 for personnel, office, and compliance expenses were recommended in a mail vote completed August 4, 1993. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $80,000 were published in the **Federal Register** as an interim final rule September 28, 1993 (58 FR 50509). That interim final rule added § 959.234, authorizing expenses for the Committee, and provided that interested persons could file comments through October 28, 1993. No comments were filed.

The Committee subsequently met on November 9, 1993, and unanimously recommended increases of $2,500 for personnel expenses and $125,000 for compliance activities in the recently approved 1993–94 budget. The compliance increase will provide for funds to operate road guard stations surrounding the production area. The Committee also unanimously recommended $210,000 in market development activities and $105,600 in production research. These expenditures represent increases over last year's budget of $65,000 for market development and $11,412 for production research. Under this amended budget, expense items for the 1993–94 fiscal period are as follows: $37,472 for personnel, $29,028 for office expenses, $141,000 for compliance activities, $210,000 for market development, and $105,600 for production research.

The initial 1993–94 budget, published on September 28, 1993, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of $0.10 per 50-pound container or equivalent of onions, $0.03 more than last year's assessment rate. This rate, when applied to anticipated shipments of approximately 5 million 50-pound containers or equivalents, will yield $500,000 in assessment income, which, along with $23,100 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1993, were $346,415, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the **Federal Register** on January 11, 1994 (59 FR 1452). That interim final rule amended § 959.234 to increase the level of authorized expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through February 10, 1994. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1993–94 fiscal period began on August 1, 1993. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Accordingly, the amended interim final rule revising § 959.234 which was

published at 59 FR 1452 on January 11, 1994, is adopted as a final rule without change.

Dated: March 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6139 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 985

[FV93–985–2FR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1994–95 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1994–95 marketing year. These quantities are established in order to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West.

EFFECTIVE DATE: June 1, 1994, through May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127 or Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, Room 369, Portland, Oregon 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 [7 CFR part 985], regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1994–95 marketing year, which begins on June 1, 1994. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately eight spearmint oil handlers subject to regulation under the order and approximately 259 producers of spearmint oil in the regulated production area. Of the 259 producers, 157 producers hold "Class 1" (Scotch) oil allotment base, and 144 producers hold "Class 3" (Native) oil allotment base. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for 75 percent of the annual U.S. production of spearmint oil.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1994–95 marketing year at its October 6, 1993, meeting. The Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 spearmint oil in a vote of 6 in favor and 2 opposed. The members voting in opposition favored the establishment of a lower salable quantity and allotment percentage. The Committee recommended the establishment of a salable quantity and allotment percentage for Class 3 spearmint oil in an unanimous vote.

This final rule establishes a salable quantity of 723,326 pounds and an allotment percentage of 41 percent for Scotch oil, and a salable quantity of 897,388 pounds and an allotment percentage of 46 percent for Native oil. This action limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1994–95 marketing year, which begins on June 1, 1994. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The salable quantity and allotment percentage for each class of spearmint oil for the 1994–95 marketing year are based upon the Committee's recommendation and the following data and estimates:

(1) "Class 1" (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1994—122,187 pounds. This number is

derived by subtracting the estimated 1993–94 marketing year trade demand of 814,589 pounds from the 1993–94 marketing year total available supply of 936,776 pounds.

(B) Estimated trade demand (domestic and export) for the 1994–95 marketing year—830,000 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1992, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1994 regulated production—707,813 pounds. This number is the difference between the estimated 1994–95 marketing year trade demand and the estimated carry-in on June 1, 1994.

(D) Total allotment base for Scotch oil for the 1994–95 marketing year—1,764,209 pounds.

(E) Computed allotment percentage—40.12 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—41 percent.

(G) The Committee's recommended salable quantity—723,326 pounds.

(2) "Class 3" (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1994—0 pounds. This number is derived by subtracting the estimated 1993–94 marketing year trade demand of 914,715 pounds from the 1993–94 marketing year total available supply of 914,715 pounds.

(B) Estimated trade demand (domestic and export) for the 1994–95 marketing year—944,513 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1992, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1994 production—944,513 pounds. This number is the difference between the estimated 1994–95 marketing year trade demand and the estimated carry-in on June 1, 1994.

(D) Total allotment base for Native oil—1,950,843 pounds.

(E) Computed allotment percentage—48.42 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—46 percent.

(G) The Committee's recommended salable quantity—897,388 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended salable quantity of 723,326 pounds and allotment percentage of 41 percent for Class 1 spearmint oil is based on anticipated 1994–95 marketing year supply and trade demand.

The Committee's recommended salable quantity of 897,388 pounds and allotment percentage of 46 percent for Class 3 spearmint oil is less than the Committee's estimated 1994–95 marketing year trade demand of 944,513 pounds and computed allotment percentage of 48.42 percent. The 1994–95 marketing year estimated trade demand represents an average of the trade demand over the last 13 years. During the past several years, sales of Native spearmint oil have fluctuated. The Committee reduced the salable quantity and allotment percentage to allow for the possibility of below average sales during the 1994–95 marketing year. This action was taken to prevent wide fluctuations in salable quantities and allotment percentages established in subsequent years. Wide fluctuations in yearly established salable quantities and allotment percentages could make it difficult for producers to plan farming operations.

The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantity. Alternatively, the Committee may offer to sell spearmint oil from the Class 1 and Class 3 reserve pools to meet any increased market demand. The estimated reserve pools for Class 1 and Class 3 spearmint oil currently stand at 950,000 pounds and 1,400,000 pounds, respectively. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1993–94 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from improved returns.

The establishment of these salable quantities and allotment percentages allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. This final rule will provide spearmint oil producers with information on the amount of oil which should be produced for next season.

A proposed rule on this issue was published in the **Federal Register** on December 21, 1993 [58 FR 67378]. That proposed rule provided a 30-day comment period which ended January 20, 1994. No comments were received. The salable quantities and allotment percentages established by this final rule are identical to those contained in the proposed rule.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the Committee's recommendations and other relevant information presented, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new section 985.213 is added to read as follows: Section 985.213 Salable quantities and allotment percentages—1994–95 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1994, shall be as follows:

(a) "Class 1" (Scotch) oil—a salable quantity of 723,326 pounds and an allotment percentage of 41 percent.

(b) "Class 3" (Native) oil—a salable quantity of 897,388 pounds and an allotment percentage of 46 percent.

Dated: March 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6138 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[Docket No. FV93-989-4FIR]

Raisins Produced From Grapes Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenditures and established an assessment rate under Marketing Order No. 989 for the 1993–94 fiscal period. Authorization of this budget enables the Raisin Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California raisins are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins handled during the 1993–94 crop year, from August 1, 1993, through July 31, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of California raisins under this marketing order, and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California raisin producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected acquisitions of California raisins. Because that rate will be applied to actual acquisitions, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met October 5, 1993, and unanimously recommended a 1993–94 budget of $579,060, which is $11,940 less than the previous year. Increases of $9,200 for executive salaries, $1,100 for fieldman salaries, $2,500 for payroll taxes, $200 for group retirement, $4,000 for group medical insurance, $1,900 for rent, $100 for audit fees, $800 for objective measurement survey, $9,760 in reserve for contingencies, and the addition of a $2,500 category for Valley weather service will be offset by decreases of $5,000 for office salaries, $2,000 for general insurance, $2,000 for Committee meeting expenses, and $30,000 for research and study for which no funding was recommended this year, and an increase of $5,000 in the amount of income paid to the Committee by the California Raisin Advisory Board (Board).

The Board is the administrative agency for the State marketing order under which the California raisin industry conducts its marketing promotion and paid advertising. Some of the Committee's employees also perform services for the Board. Pursuant to an agreement between the Committee and Board, the Board reimburses the Committee for the services Committee employees perform for the Board.

Major expense items include $230,000 for executive salaries, $90,000 for office salaries, $42,600 for fieldmen salaries, and $75,000 for Committee travel. Also, $55,810 is budgeted for contingencies.

The Committee also unanimously recommended an assessment rate of $1.80 per ton, which is $0.20 less than last year. This rate, when applied to anticipated acquisitions of 321,700 tons, will yield $579,060 in assessment income, which will be adequate to cover anticipated expenses. Any unexpended funds from the crop year are required to be credited or refunded to the handlers from whom collected.

An interim final rule was published in the **Federal Register** on December 6, 1993 (58 FR 64107). That interim final rule added § 989.344 which authorized expenses and established the assessment rate for the Committee. That rule provided that interested persons could file comments through January 5, 1994. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1993–94 crop year began on August 1, 1993. The marketing order requires that the rate of assessment for the crop year apply to assessable raisins handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

Accordingly, the interim rule adding § 989.344 which was published at 58 FR 64107 on December 6, 1993, is adopted as a final rule without change.

Dated: March 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6137 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1250

[Docket No. PY–93–004]

RIN 0581–AA87

Amendment to Egg Research and Promotion Rules and Regulations

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Egg Research and Promotion Rules and Regulations by changing the State composition of the six geographic areas and reapportioning the membership on the American Egg Board. The Board approved these changes and requested that the Secretary amend the Rules and Regulations accordingly. These adjustments are based on changing geographic trends in egg production.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–720–3506.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 14 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provisions of such order or any obligations imposed in connection with such order are not in accordance with law; and requesting a modification of the order or an exemption therefrom. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after date of the entry of the ruling.

The AMS Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1250 have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581–0093 under the Paperwork Reduction Act of 1980.

Background

The Egg Research and Promotion Order (7 CFR 1250.301–1250.363) established pursuant to the Egg Research and Consumer Information Act, as amended (7 U.S.C. 2701 *et seq.*), provides in § 1250.328(d) that any changes in representation on the American Egg Board be determined by the percentage of total U.S. egg production in each of the six geographic areas. The Board is authorized 18 members, and representation in each of the 6 areas is based on egg production in the area. The Order further provides in § 1250.328(e) that the Board or designated person or agency shall conduct periodic reviews of production by geographic area at any time, not to exceed 5 years, to assure that representation on the Board, insofar as is practicable, is fair and equal.

During the development process of the Order in 1975, the 48 contiguous States of the United States and the District of Columbia were divided into 6 geographic areas for purposes of determining proportionate representation on the Board. The areas corresponded with those used by the National Agricultural Statistics Service, USDA, for some egg industry statistics.

The Order provides in § 1250.328(d) that Board membership in each area be determined by calculating the percentage of U.S. egg production in the area, multiplying that total by 18 (total Board membership), and rounding to the nearest whole number.

In 1984, a review of 1983 production statistics revealed that production trends had changed, and area membership was adjusted accordingly.

For the 1993 review, the American Egg Board's 1992 production data were reconciled with 1992 data from USDA to verify the shifts in production trends. The review showed that the West North Central and Western areas are no longer proportionately represented on the Board. However, due to rounding off, using the formula in the Order resulted in 19 members, exceeding the Order's 18-member limit.

Because of this incongruity, the Board submitted a recommendation to the Secretary in accordance with § 1250.328(e) of the Order to redistrict the six areas and reapportion the members and alternates. The

following changes are made accordingly:

Area	State composition		Membership	
	Current	Revisions	Current	Revisions
I—North Atlantic	Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, District of Columbia.	Add Virginia, West Virginia	3	None.
II—South Atlantic	Florida, Georgia, North Carolina, South Carolina, Virginia, West Virginia.	Add Alabama, Kentucky, Tennessee; Lose Virginia, West Virginia.	3	None.
III—East North Central	Illinois, Indiana, Michigan, Ohio, Wisconsin	Lose Illinois, Wisconsin	3	None.
IV—West North Central	Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.	Add Illinois, Wisconsin; Lose Kansas, Missouri.	2	Increase to 3.
V—South Central	Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas.	Add Colorado, Kansas, Missouri, New Mexico; Lose Alabama, Kentucky, Tennessee.	3	None.
VI—Western	Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.	Lose Colorado, New Mexico	4	Decrease to 3.

The change in membership is based on production in the newly formed areas and application of the formula in § 1250.328(d) of the Order, as follows:

Redistricted area	Reported cases	Percent of total production	Percent of total production times 18	Revised board membership[1]
I—North Atlantic	39,052,000	17.21	3.09	3
II—South Atlantic	38,118,000	16.79	3.02	3
III—East North Central	41,201,000	18.15	3.27	3
IV—West North Central	36,508,000	16.08	2.90	3
V—South Central	36,083,000	15.89	2.86	3
VI—Western	36,011,000	15.87	2.86	3
Total U.S. production	226,973,000	99.99	18.00	18

[1] Based on rounding to the nearest whole number [§ 1250.328(d)].

Comments

A proposed rule was published in the **Federal Register** (58 FR 65939) on December 17, 1993. Comments on the proposed rule were solicited from interested parties until January 18, 1994. No comments were received.

List of Subjects in 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 7, CFR part 1250 is amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended, 7 U.S.C. 2701–2718.

2. Section 1250.510 is revised to read as follows:

§ 1250.510 Determination of Board Membership.

(a) Pursuant to § 1250.328 (d) and (e) of the Order, the 48 contiguous States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States)—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia; Area 2 (South Atlantic States)—Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee; Area 3 (East North Central States)—Indiana, Michigan, and Ohio; Area 4 (West North Central States)—Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin; Area 5 (South Central States)—Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, and Texas; Area 6 (Western States)—Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

(b) Board representation among the 6 geographic areas is apportioned to reflect the percentage of United States egg production in each area times 18 (total Board membership). The number of members of the Board, beginning with the 1995–96 term, are: Area 1—3, Area 2—3, Area 3—3, Area 4—3, Area 5—3, Area 6—3. Each member will have an alternate appointed from the same area.

Dated: March 8, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–6144 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Part 1942

RIN 0575–AB68

Community Facility Loans and Grants

AGENCY: Farmers Home Administration and Rural Development Administration, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations that are utilized by the Rural Development Administration (RDA) in

administering Community Facility Loans and Grants. This action is necessary to implement provisions of the Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs for the fiscal year ending September 30, 1994 (the Act). The Act provides up to $15 million in RDA grant funds for water and waste disposal (WWD) facilities in rural Alaskan villages. The WWD grant funds authorized by the Act are to be made available to remedy the dire sanitation conditions that exist in rural Alaskan villages.

DATES: This final rule is effective on March 16, 1994. Written comments must be received on or before May 16, 1994.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations and Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th St. and Independence Ave., SW., Washington, DC 20250. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Development Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

We are issuing this rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information complied by the Department, we have determined that this rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.760, Water and Waste Systems For Rural Communities and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." RDA has determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900 Subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the information collection requirements included in this rule have been approved through 7 CFR 1942–A. The assigned OMB control number is 0575–0015. This rule does not revise or impose any new information collection or recordkeeping requirements from those approved by the Office of Management and Budget.

Background

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking because they are merely following the specific directions of the Act and no discretion is left with the agency as to how to use the funds appropriated for this purpose.

The Act provides up to $15,000,000 of the amount appropriated for WWD grants for projects to remedy the dire sanitation conditions that exist in rural Alaskan villages. RDA grants are directed to Alaskan villages that have a median household income that does not exceed 110 percent of the statewide nonmetropolitan median household income. The statewide nonmetropolitan median household income for Alaska is $39,804. The Act further provides that the grants are limited to 50 percent of the development cost of a project. The other 50 percent must be from a State or local contribution. The RDA grant funds can be used by rural Alaskan villages to construct or improve water or waste disposal facilities to serve the residents of these villages. New or improved water or waste disposal systems would solve a major health problem that has burdened the rural parts of Alaska, inhabited primarily Alaskan Natives. The lack of clean, running water and sanitary facilities have led to severe health problems for many of the villages residents.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Grant programs—Housing and community development, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

2. Section 1942.386 is added to read as follows:

§ 1942.386 Rural Alaskan villages.

(a) *General.*

(1) This section contains regulations for providing grants to remedy the dire sanitation conditions in rural Alaskan villages using funds specifically made available for this purpose.

(2) Unless specifically modified by this section, grants will be made, processed, and serviced in accordance with this subpart.

(b) *Definitions.* (1) *Dire sanitation condition.* For the purpose of this section, a dire sanitation condition exists where:

(i) Recurring instances of a waterborne communicable disease have been documented; or

(ii) No community-wide water and sewer system exists and individual residents must haul water to or human waste from their homes and/or use pit privies.

(2) *Rural Alaskan village.* A rural Alaskan community which meets the definition of a village under State statutes and does not have a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(c) *Eligibility.* (1) The applicant must be a rural Alaskan village.

(2) The median household income of the village cannot exceed 110 percent of the statewide nonmetropolitan household income.

(3) A dire sanitation condition must exist in the village.

(4) The applicant must obtain 50 percent of project development costs from State or local contributions. The local contribution can be from loan funds authorized under subpart A of this part.

(d) *Grant amount.* Grants will be made for up to 50 percent of the project development costs.

(e) *Use of funds.* Grant funds can be used to pay reasonable costs associated with providing potable water or waste disposal services to residents of rural Alaskan villages.

(f) *Construction.* (1) If the State of Alaska is contributing to the project costs, the project does not have to meet the construction requirements of this subpart.

(2) If a loan is made in accordance with subpart A of this part for part of the local contribution, all of the requirements of that subpart apply

Dated: February 24, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94-6024 Filed 3-15-94; 8:45 am]

BILLING CODE 3410-07-U

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91-006F-TA]

RIN 0583-AB34

Nutrition Labeling of Meat and Poultry Products; Technical Amendments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Confirmation of interim rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is confirming interim regulations amending its final nutrition labeling regulations. FSIS is taking this action to improve the clarity and accuracy of the regulations, and to provide regulations that parallel the Food and Drug Administration's (FDA) nutrition labeling regulations to the maximum extent possible.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been reviewed under Executive Order 12866.

Background

On January 6, 1993, FSIS published in the **Federal Register** (58 FR 632) final regulations on nutrition labeling for meat and poultry products. FSIS's nutrition labeling regulations parallel, to the maximum extent possible, FDA's nutrition labeling regulations promulgated under the Nutrition Labeling and Education Act. FSIS published its final regulations on nutrition labeling simultaneously with FDA's publication.

After the publication of FSIS's final regulations on nutrition labeling, FSIS received several comments from various interested parties contending that portions of FSIS's regulations were unclear, contained technical, unintended consequences in a specific provision, or were not parallel to FDA's nutrition labeling regulations. Those portions included provisions related to: (a) Providing nutrition labeling by alternate means for packages that have a total surface area available to bear labeling of less than 12 square inches; (b) the saturated fat criterion for the "lean" definition; and (c) the use of nutrient content claims on infant and toddler foods.

After considering these comments and conducting an in-depth review of FDA's final nutrition labeling regulations, FSIS believed that its final regulations were inconsistent with FDA's regulations in certain areas where uniformity should exist. FSIS also determined that several provisions were inadvertently omitted in its final regulations.

Accordingly, FSIS issued an interim final rule in the **Federal Register** on September 10, 1993. The interim final rule set forth technical amendments (58 FR 47624) to the FSIS nutrition labeling regulations to provide more well-defined regulations that reflect accuracy and clarity regarding the nutrition labeling of meat and poultry products. The amendments consisted of clarifications that are essential to understanding and complying with published provisions, changes that are necessary to avoid technical, unintentional consequences in specific provisions, and additional provisions that were inadvertently omitted. FSIS announced in the interim final rule that there would be a 30-day comment period, and that the Agency would carefully consider all comments received before finalizing the interim rule.

Interim Final Rule

In its interim final rule, FSIS allowed for nutrition labeling to be provided by alternate means for packages that have a total surface area available to bear labeling of less than 12 square inches. Accordingly, FSIS added provisions at 9 CFR 317.400(d) and 381.500(d) to permit manufacturers to provide an address or telephone number on the package for consumers to write or call for nutrition information, provided that the labels for these products bear no nutrition claims or nutrition information. These provisions do not affect the exemption for individually wrapped packages of less than ½ ounce net weight.

Also, in its interim final rule, FSIS added a small business exemption provision that was inadvertently omitted from its final nutrition labeling regulations. The provision at 9 CFR 317.400(a) and 381.500(a) states that the calculation of poundage shall be based on the most recent 2-year average of business activity.

FSIS defined "insignificant amount" in the final nutrition labeling regulations as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, and protein, it is an amount less than 1 gram. In its interim final rule, FSIS revised the definition of "insignificant amount" at 9 CFR 317.309(g)(1) and 381.409(g)(1) to include sugars as an amount less than 1 gram. FSIS determined that sugars is another nutrient with a caloric contribution that is consistent with that for total carbohydrate, dietary fiber, and protein. Therefore, when used in reference to the simplified format, an insignificant amount of sugars is that amount which is less than 1 gram.

FSIS made reference in the final nutrition labeling regulations to a retailer providing nutrition information on the label of single-ingredient, raw products without referring to a manufacturer. In the preamble to its final regulations, FSIS made no distinction between products packaged in official establishments and those packaged at retail level. However, to clarify any misunderstanding regarding these provisions, in its interim final rule, FSIS modified 9 CFR 317.345(a)(1)

and 381.445(a)(1) to include reference to a manufacturer.

In its interim final rule, FSIS also amended table 1 of 9 CFR 317.312(b) and 381.412(b) to include product categories for plain meats and meat sticks and plain poultry and poultry sticks with reference amounts of "55 g." These product categories were inadvertently omitted from the final rule.

Also, for purposes of clarification and to more fully harmonize with FDA requirements, FSIS, in its interim final rule, amended table 2 at 9 CFR 317.312(b) and 381.412(b) by moving the lasagna examples to the category of mixed dishes measurable with a cup and also adding meat and poultry filled pasta as further examples of products in this category. FSIS also revised footnote 4 to table 2 at 9 CFR 317.312(b) and 381.412(b) by adding the following words at the end: "except for products in which both the solids and liquids are customarily consumed."

In its interim final rule, FSIS modified the "lean" definition to reflect the change in the saturated fat definition. The final regulations defined saturated fat as the sum of all fatty acids containing no double bonds. Inclusion of all fatty acids with no double bonds in the definition of saturated fat can inflate the level of saturated fat by approximately 15 percent. To offset this unintended effect, FSIS increased the saturated fat criterion for the "lean" definition from less than 4 grams to 4.5 or less grams.

In addition, in its interim final rule, FSIS clarified the provisions concerning nutrient content claims on foods for infants and children under 2 years of age by removing the language "except that nutrient content claims may not be made on products intended specifically for use by infants and toddlers less than 2 years of age" from 9 CFR 317.313(a) and 381.413(a). FDS believes that the complete prohibition of nutrient content claims on foods for infants and children under 2 years of age may have been overly broad. FSIS agrees with this position.

It was FSIS's intent to allow percentage labeling of vitamins and minerals on foods intended for use by infants and children less than 2 years of age, as provided for by FDA at 21 CFR 101.13(q)(3). Therefore, in its interim final rule, FSIS amended 9 CFR 317.313(q)(3) and 381.413(q)(3) to allow percentage labeling of vitamin and minerals on such foods.

In cross-referencing FDA's final regulations, FSIS inadvertently omitted paragraphs (e) and (f) as contained in 21 CFR 101.66, Label statements relating to usefulness in reducing or maintaining body weight. Generally, for meat and poultry products, "sugar free" claims are not particularly relevant. However, to harmonize with FDA regulations, FSIS, in its interim final rule, added provisions regarding the labeling of products as "sugar free" and "no added sugar," and the use of label terms suggesting low calorie or reduced calorie foods. FSIS amended 9 CFR 317.380 and 281.480 to incorporate the provisions of 21 CFR 101.66(e) and (f).

Discussion of Comments

FSIS received no comments in response to the interim final rule. Therefore, FSIS is adopting the interim final rule as published in the **Federal Register** on September 10, 1993 (58 FR 47624).

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Final Rule

For the reasons discussed in the preamble:

§ 317.309, 317.312, 317.313, 317.345, 317.362, 317.380, 317.400 [Amended]

1. In part 317, the amendments to § 317.309(g)(1); Table 1 and 2 in § 317.312(b); § 317.313 (a) and (q)(3); § 317.345(a)(1); § 317.362(c)(1); § 317.380; and § 317.400 (a)(1)(iii) and (d) published on September 10, 1993 (58 FR 47624), are confirmed as final.

§ 381.409, 381.412, 381.413, 381.445, 381.426, 381.480, 381.500 [Amended]

2. In part 381, the amendments to § 381.409(g)(1); Tables 1 and 2 in § 381.412(b); § 381.413 (a) and (q)(3); § 381.445(a)(1); § 381.462(c)(1); § 381.480; and § 381.500 (a)(1)(iii) and (d) published on September 10, 1993 (58 FR 47624), are confirmed as final.

Done at Washington, DC, on March 9, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6013 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–163–AD; Amendment 39–8857; AD 94–06–10]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–8 series airplanes, that currently requires the incorporation of specific maximum brake wear limits into the maintenance inspection program. That action was prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by that AD are intended to prevent loss of braking effectiveness during a high energy RTO. This amendment requires that a new part number be permanently marked on certain brakes when modified to meet the new brake wear limits.

DATES: Effective April 15, 1994.

ADDRESSES: Information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5338; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 93–09–10, Amendment 39–8576 (58 FR 29347, May 20, 1993), which is applicable to all McDonnell Douglas Model DC–8 series airplanes, was published in the **Federal Register** on December 22, 1993 (58 FR 67723). That action proposed to require that a new part number be permanently marked on certain brakes when modified to meet the new brake wear limits.

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the three comments received.

All commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 337 McDonnell Douglas Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry were affected by AD 93–09–10, and would continue to be affected by this supersedure of that AD. It takes approximately 80 work hours per airplane to accomplish the actions currently required by AD 93–09–10, and the average labor rate is $55 per work hour. (There are 8 brakes per airplane.) The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is approximately $5,600 per airplane. Based on these figures, the current cost impact of the AD 93–09–10 on U.S. operators is estimated to be $2,220,000, or $10,000 per airplane.

The total cost figure indicated above is presented as if no operator has yet accomplished the requirements of AD 93–09–10 (or this supersedure of that AD). However, because AD 93–09–10 was effective on June 21, 1993, and operators were given 180 days to comply with it, the FAA assumes that the majority of affected operators have already accomplished the requirements of that AD.

The only foreseeable additional costs that may be imposed by this supersedure of AD 93–09–10 would be the cost of reidentifying (permanently marking) any modified brakes that were previously marked by a color code marking. The costs associated with that procedure are expected to be minimal.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing amendment 39–8576 (58 FR 29347, May 20, 1993), and by adding a new airworthiness directive (AD), amendment 39–8857, to read as follows:

94–06–10 McDonnell Douglas: Amendment 39–8857. Docket 93–NM–163–AD. Supersedes AD 93–09–10, Amendment 39–8576.

Applicability: All Model DC–8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after June 21, 1993 (the effective date of AD 93–09–10, Amendment 39–8576), inspect the main landing gear brakes having the part numbers indicated below to determine wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake that is within this limit.

Douglas brake part No.	Bendix part No.	Maximum wear limit (inches)
5610206–5001	150787–1	0.7
	150787–2	0.7
5713612–5001	151882–1	0.7
	151882–2	0.7
5773335–5001	154252–1	0.5
5773335–5501	154252–2	0.5
5759262–5001	2601412–1	0.5
	*2601412–2	0.75

*Brakes having this part number include part number 2601412–1 brakes that have been modified and permanently marked in accordance with McDonnell Douglas Service Bulletin 32–181, Revision 2, dated August 25, 1993.

(b) Within 180 days after June 21, 1993, incorporate the maximum brake wear limits specified in paragraph (a) of this AD into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

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

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

(e) This amendment becomes effective on April 15, 1994.

Issued in Renton, Washington, on March 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6069 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–AWP–21]

Modification of Class D Airspace; Mojave, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Mojave, CA. This Class D airspace reconfiguration accommodates the safe and efficient handling of various types of aircraft operating at Mojave Airport, CA, and provides a corridor of airspace for the north-south transit of visual flight rules (VFR) aircraft between the Mojave Class D airspace and Restricted Area R–2515.

EFFECTIVE DATE: 0901 U.T.C., July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530,

Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On December 17, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class D airspace at Mojave, California. The FAA proposed that the vertical limits of the airspace be raised from 4,300 feet mean sea level (MSL) to 4,800 feet MSL and the lateral limits be increased from a 3-mile radius to a 4.3-mile radius. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, the Department of the Air Force commented that a ½-mile corridor should be established between R–2515 and the Mojave Class D airspace to allow for transit of VFR aircraft north and southbound along U.S. Highway 58. These aircraft would not be required to communicate with the Mojave tower. Further study revealed that, by letter of agreement between the Air Force and Mojave Tower, the ½ mile corridor has existed in practice and serves the VFR pilot well. Therefore, the FAA is further modifying the Mojave Class D airspace by excluding airspace ½-mile wide between the Class D airspace and R–2515. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; June 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class D airspace at Mojave, California, to provide controlled airspace from the surface up to and including 4,800 feet MSL within a 4.3-mile radius of the Mojave, CA Airport, excluding that airspace east of a line ½-mile west of and parallel to the R–2515 boundary.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

AWP CA D Mojave, California [Revised]

Mojave Airport, CA
(lat. 35°03'30" N, long. 118°90'03" W)

That airspace extending upward from the surface to and including 4,800 feet MSL within a 4.3-mile radius of Mojave Airport, excluding that airspace east of a line ½-mile west of and parallel to Restricted Area R–2515. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on February 14, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–6101 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

30 CFR Part 250

RIN 1010–AB66

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Correction

AGENCY: Minerals Management Service, Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the Federal Register on September 24, 1993 (58 FR 49924). The regulations related to the new Outer Continental Shelf (OCS) reporting forms used for collecting information related to oil and gas and sulphur drilling and production in the OCS.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Jo Ann Lauterbach, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published by MMS on August 25, 1993 (58 FR 44762), which addressed data and information to be made available to the public. This rule ensured that the items of data and information submitted on Forms MMS–1866, Request for Reservoir Maximum Efficient Rate (MER); MMS–1867, Request for Well Maximum Production Rate (MPR); MMS–1868, Well Potential Test Report; MMS–1869, Quarterly Oil Well Test Report; and MMS–1870, Semiannual Gas Well Test Report, were made available for public inspection and clearly identified in the regulations.

Another final rule was published by MMS on September 24, 1993 (58 FR 49924), which amended the regulations governing the OCS reporting forms to reflect new form numbers and a change in the reporting interval for well tests of oil-well completions. This rule also amended § 250.18(d) which was published on August 25, 1993, to include the items identified on the new OCS reporting forms that would not be available for public inspection. However, the amendments to § 250.18(d) made on September 24, 1993, did not agree with the changes made in the August 25, 1993, final rule. Therefore, this rule corrects § 250.18(d) so there is no confusion as to the time periods involved or the items identified on the forms that are not to be released to the public.

Need for Correction

As published, the final regulations at § 250.18(d) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Accordingly, 30 CFR part 250 is corrected by making the following correcting amendments:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.18, paragraph (d) is revised to read as follows:

§ 250.18 Data and information to be made available to the public.

* * * * *

(d) Data and information identified on Forms MMS–123 through MMS–128 are protected as follows:

(1) On Form MMS–123, Application for Permit to Drill, the following items of data and information shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier:

(i) Item 17, Well Location at Total Depth (Estimated);

(ii) Item 24, Total Depth (Proposed), MD and TVD;

(iii) Item 25, Attachments.

(2) On Form MMS–124, Sundry Notices and Reports on Wells, Item 36, Describe Proposed or Completed Operations, shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier.

(3) On Form MMS–125, Well Summary Report, the following data and information shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier, except that Item 78, Summary of Porous Zones, and Item 85, Geologic Markers, shall not be released when the well goes on production unless the period of time specified in paragraph (b) of this section has expired.

(i) Item 17, Well Location at Total Depth (Surveyed);

(ii) Item 24, Total Depth (Surveyed), MD and TVD;

(iii) Item 34, Well Status/Type Code;

(iv) Item 37, Well Location at the Producing Zone (Surveyed);

(v) Item 46, Top (MD);

(vi) Item 47, Bottom (MD);

(vii) Item 48, Top (TVD);

(viii) Item 49, Bottom (TVD);

(ix) Item 50, Reservoir Name;

(x) Item 51, Name(s) of Producing Formation(s) This Completion;

(xi) Item 52, Hole Size;

(xii) Item 53, Casing Size;

(xiii) Item 54, Casing Weight;

(xiv) Item 55, Grade;

(xv) Item 56, Setting Depth (MD);

(xvi) Item 57, Cement Type;

(xvii) Item 58, Quantity of Cement (FT^3);

(xviii) Item 59, Hole Size;

(xix) Item 60, Tubing Size;

(xx) Item 61, Tubing Weight;

(xxi) Item 62, Grade;

(xxii) Item 63, Setting Depth (MD);

(xxiii) Item 64, Packer Setting Depth (MD);

(xxiv) Item 65, Hole Size;

(xxv) Item 66, Liner Size;

(xxvi) Item 67, Liner Wt.;

(xxvii) Item 68, Grade;

(xxviii) Item 69, Top (MD);

(xxix) Item 70, Bottom (MD);

(xxx) Item 71, Cement Type;

(xxxi) Item 72, Cement Quantity (Ft^3);

(xxxii) Item 73, Top (MD);

(xxxiii) Item 74, Bottom (MD);

(xxxiv) Item 75, Type of Material;

(xxxv) Item 76, Material Quantity;

(xxxvi) Item 77, List of Electric and Other Logs Runs, Directional Surveys, Velocity Surveys, and Core Analysis;

(xxxvii) Item 78, Summary of Porous Zones: Show all zones containing hydrocarbons; all cored intervals; and attach all drill stem and well potential tests;

(xxxviii) Item 79, Formation;

(xxxix) Item 80, Top MD;

(xl) Item 81, Top TVD;

(xli) Item 82, Bottom MD;

(xlii) Item 83, Bottom TVD;

(xliii) Item 84, Description, Contents, Etc.;

(xliv) Item 85, Geologic Markers;

(xlv) Item 86, Top MD;

(xlvi) Item 87, Top TVD.

(4) On Form MMS–126, Well Potential Test Report and Request for Maximum Production Rate (MPR), Item 101, Static Bottomhole Pressure, is not available to the public until 2 years after submittal. All other data and information on Form MMS–126 are available to the public upon commencement of production.

(5) On Form MMS–127, Request for Reservoir Maximum Efficient Rate (MER), the following data and information are not available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section:

(i) Item 124, Upper ϕ Cut Off;

(ii) Item 125, Lower ϕ Cut Off;

(iii) Item 126, Upper k Cut Off;

(iv) Item 127, Lower k Cut Off;

(v) Item 128, G/O Interface;

(vi) Item 129, W/O Interface;

(vii) Item 130, G/W Interface;

(viii) Item 131, A_g;

(ix) Item 132, A_o;

(x) Item 133, V_o;

(xi) Item 134, V_g;

(xii) Item 135, H_o;

(xiii) Item 136, h_o;

(xiv) Item 137, H_g;

(xv) Item 138, H_g;

(xvi) Item 139, ϕ_c;

(xvii) Item 140, S_w;

(xviii) Item 141, S_g;

(xix) Item 142, S_o;

(xx) Item 143, B_{oi};

(xxi) Item 144, B_{gi};

(xxii) Item 145, N;

(xxiii) Item 146, G;

(xxiv) Item 147, K_h;

(xxv) Item 148, K_v;

(xxvi) Item 149, Avg Well Depth;

(xxvii) Item 150, R_{io};

(xxviii) Item 151, R_{ig};

(xxix) Item 152, $R_{io}N$;

(xxx) Item 153, $R_{ig}G$;

(xxxi) Item 154, $N_p(2)/N$;

(xxxii) Item 155, $G_p(2)/G$;

(xxxiii) Item 156, Degrees API @ 60°F;

(xxxiv) Item 157, SG;

(xxxv) Item 158, R_{si};

(xxxvi) Item 159, μ_{oi};

(xxxvii) Item 160, μ_o;

(xxxviii) Item 161, T_{avg};

(xxxix) Item 162, P_i;

(xl) Item 163, P_iDATE;

(xli) Item 164, P_{ws};

(xlii) Item 165, P_{ws}DATE;

(xliii) Item 166; P_b;

(xliv) Item 167; P_d;

(xlv) Item 168, Datum Depth.

(6) All data and information on Form MMS–128 are available for public inspection.

* * * * *

Dated: February 1, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 94–6041 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–MR–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 93–13A]

Procedures for Copyright Restoration of Certain Motion Pictures and Their Contents In Accordance With the North American Free Trade Agreement

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulation with request for comments.

SUMMARY: The Copyright Office is issuing interim regulations to establish procedures governing the filing of Statements of Intent for the restoration of copyright protection in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement (NAFTA) and the statute implementing it. The NAFTA Implementation Act authorizes the Copyright Office to establish procedures whereby potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office on or before December 31, 1994, will have copyright protection restored effective January 1, 1995.

DATES: These interim regulations are effective March 16, 1994. Comments should be in writing and received on or before May 16, 1994.

ADDRESSES: If sent by mail, fifteen copies of written comments should be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. If hand delivered, fifteen copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 407, First and Independence Avenue SE., Washington, DC 20024. In order to ensure prompt receipt of these time sensitive documents, the Office recommends that the comments be delivered by private messenger service.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Policy Planning Advisor, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707–8350. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On January 10, 1994, the Copyright Office notified the public of the provisions in NAFTA with regard to the restoration of copyright protection for certain works, 59 FR 1408 (1994). To be eligible for copyright restoration, a motion picture or any work included in a motion picture either:

1. Must have been first fixed in Mexico or Canada and entered the public domain in the United States because of first publication anywhere on or after January 1, 1978, and before March 1, 1989, without the required copyright notice;

2. Or, regardless of where it was fixed, must have entered the public domain in the United States because of first publication in Mexico or Canada on or after January 1, 1978, and before March 1, 1989, without the required copyright notice.

Further, for copyright to be restored in an eligible work, a complete and timely Statement of Intent must be filed with the Copyright Office by the potential copyright owner or an authorized agent.

These interim regulations set out the procedures that potential copyright owners must follow if they wish to have copyright protection for their works restored in the United States. To restore copyright, potential copyright owners must file Statements of Intent with the Copyright Office on or before December 31, 1994, and these Statements must contain the information set out in these regulations. The regulations also detail the procedures the Copyright Office will use to process Statements of Intent and create a record for the public.

I. Background

The North American Free Trade Agreement entered into force on January 1, 1994. The NAFTA Agreement and the NAFTA Implementation Act (Pub. L. 103–182) provide for the restoration of copyright for certain works that are currently in the public domain in the United States. New section 104 sets out the conditions for restoring protection:

Classes of works eligible. Two types of works are eligible for copyright restoration: (1) Motion pictures; and (2) works included in motion pictures (such as an underlying work—a novel or play on which a motion picture was based—or the original screenplay or original musical score of a motion picture).

Dates of publication and public domain status. To be eligible for restoration, the motion picture, or the work included in a motion picture, must meet two criteria: (1) The work must have been first published on or after January 1, 1978, and before March 1, 1989; and (2) the work must have fallen into the public domain in the United States because, at the time of its first publication, it failed to meet the requirements of the U.S. copyright law for publication with notice of copyright (17 U.S.C. 401, 402, 403, 405) as they existed at that time.

Place of first fixation or publication. Assuming they meet the other criteria, the following two kinds of works are eligible for copyright restoration: (1) Published works that were first fixed in Canada or Mexico, regardless of where they were first published; and (2) works first published in Mexico or Canada, regardless of where they were first fixed. A motion picture, or a work included in a motion picture, meeting these requirements is entitled to receive copyright protection under title 17 for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with the required notice. 17 U.S.C. 104A(a)(1993).

Potential copyright owners of qualifying works must file a Statement of Intent with the Copyright Office between January 1, 1994 (the date on which the Agreement entered into force), and December 31, 1994, to notify the public of their intent to restore copyright protection for these works in the United States. After January 1, 1995, the Copyright Office will publish in the **Federal Register** a list of the works which are determined to be properly qualified for protection and for which complete Statements of Intent have been filed. The restoration of copyright protection for eligible works will be effective on January 1, 1995.

The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works without liability for a period of one year following the Copyright Office's publication in the **Federal Register** of the list of works for which Statements of Intent have been received.

The copyright restoration provisions apply to a "motion picture" or any work included in a motion picture. Section 101 of title 17 defines motion pictures to include audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Thus, for example, the restoration provisions apply to feature films, short films, documentaries, silent films, television films, television series, and television programs, as well as works contained in these "motion pictures."

To be eligible for copyright restoration, a motion picture or any work included in a motion picture either:

1. Must have been first fixed [1] in Mexico or Canada and entered the public domain in the United States because of first publication [2] anywhere on or after January 1, 1978, and before March 1, 1989, without the required copyright notice;

2. Or, regardless of where it was fixed, must have entered the public domain in the United States because of first publication in Mexico or Canada on or after January 1, 1978, and before March 1, 1989, without the required copyright notice.

Further, for copyright to be restored in an eligible work, a complete and timely Statement of Intent must be filed with the Copyright Office by the potential copyright owner or an authorized agent.

Although the Copyright Office has authority to charge a fee for the processing of NAFTA Statements of Intent under 17 U.S.C. 708, it has decided not to do so at this time. However, it reserves the right to charge a fee in the future if the Office's duties are broadened under the NAFTA or a similar agreement.

The filing of an effective Statement of Intent will not give any of the legal benefits or presumptions that a voluntary copyright registration now provides under U.S. copyright law. The Statement of Intent is submitted only for the purposes of the NAFTA copyright restoration provisions. Any work for which copyright is restored may be registered on and after January 1, 1995, in accordance with title 17, upon the submission of the proper copyright application, filing fee, and an appropriate deposit of the work. The Copyright Office will not accept applications for copyright registration for these works before January 1, 1995; only Statements of Intent may be filed before then.

After January 1, 1995, the Copyright Office encourages potential copyright owners to make a voluntary copyright registration to obtain the legal and commercial advantages made available by registration. These include certain evidentiary benefits; availability of statutory damages; and the creation of a complete registration record in the Copyright Office's online database.

[1] See 17 U.S.C. 101. For example, a "fixed" motion picture would be completed and embodied in a copy, such as on film stock or videotape. Also see the definitions provided in these interim regulations.

[2] See 17 U.S.C. 101. The place of first publication would be the place where copies were first sold, leased, loaned or offered for sale, by for example, the distribution of videotape copies or film prints. Also, see the definitions provided in these interim regulations.

Also, see Article 3(4) of the Berne Convention for the Protection of Literary and Artistic Works which permits simultaneous publication, that is, within 30 days of its first publication if published in two or more countries. For example, if a motion picture was first published (between January 1, 1978 and March 1, 1989) within 30 days in two countries, and one of these countries is Mexico or Canada, it would be eligible for the NAFTA copyright restoration.

II. Explanation of Interim Regulations

Procedures for Filing an Effective Statement of Intent

Potential copyright owners or their agents must file Statements of Intent with the Copyright Office on or before December 31, 1994, in order for a Statement to be effective. No fee is required. The Statement of Intent must be in English and should be typed or clearly printed by hand on 8½-inch by 11-inch white paper. To be complete, a Statement of Intent must contain all of the information required in items 1 through 6 below, including the entire "certification statement" and the signature of the potential copyright owner or authorized agent.

A complete Statement should clearly indicate at the top of the first page that the potential copyright owner is submitting: A Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement (NAFTA). All statements must be mailed to the Copyright Office at: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

All of the information required in items 1 through 6 below must be contained in a Statement of Intent. Otherwise the Copyright Office will correspond with the party submitting the Statement to correct omissions. Should that party continue to fail to include any of the required items (1 through 6), copyright restoration cannot be effected for that particular work. In addition to the required information, the Office encourages the potential copyright owner to provide other "optional" information that should be useful in providing information to the public about any work for which copyright is restored.

The required and optional information for a Statement of Intent is:

(1) *Title* (Required Information)

The title of the work or works for which copyright restoration is sought. If multiple works are listed in a single Statement of Intent, each individual work must be clearly and separately identified in items 1 through 6 of the Statement. For series and episodes, these titles must be clearly identified by a title or number.

Explanation of item #1: Only motion pictures and their contents (as defined in 17 U.S.C. 104A and 101) are eligible for copyright restoration. Potential copyright owners can submit the titles of any number of works for which they are seeking restoration on a single Statement of Intent. Assuming that the exploitation of the contents in a motion picture was legally authorized at the time the motion picture was made, submission of the title of the motion picture will suffice for the restoration of copyright protection for the works included in it.

Optional information for item #1 includes alternative titles (for example, the American release title of a motion picture if different from the foreign title); the original producer and/or director of the motion picture; and the format or physical description of the work as first published (for example, running time, number of reels, and whether the work is on film, videotape, videodisc, or another medium). This descriptive material will help identify similarly titled films or rereleases.

(2) *Nation of First Fixation* (Required Information)

Explanation of item #2: To be eligible for copyright restoration a work must have been first fixed in Mexico or Canada, or, if first fixed in any other nation, it must have been first published in Mexico or Canada. For example, a work may be eligible for restoration if it was first fixed before 1978 in the United States but later published in Mexico or Canada between January 1, 1978, and March 1, 1989.

Optional information for item #2 would include the year date of first fixation.

(3) *Nation of First Publication* (Required Information)

Explanation of item #3: To be eligible for copyright restoration the work must have been first published in Mexico or Canada if it was first fixed in a nation other than Mexico or Canada. If a work remains unpublished in 1994, the NAFTA copyright restoration provisions are not applicable because the work is already protected under the copyright law of the United States regardless of the nationality or domicile of its author. The duration of unpublished works is governed by 17 U.S.C. 302 and 303.

(4) *Date of First Publication* (Required Information)

Explanation of item #4: To be eligible for copyright restoration a work must have been first published on or after January 1, 1978, and before March 1, 1989, and must have entered the public domain in the United States for failure to comply with the copyright notice

requirements of the U.S. Copyright Code. For example, the date of first publication would be the date of a film's release, or the date of its first offering for rental or sale.

(5) *Name and Address* (Required Information)

The name and mailing address of the potential copyright owner of work, and a telephone and telefax number, if available.

Explanation of item #5: The name and mailing address (the telephone and telefax numbers, if available) of the potential copyright owner will be used to create a readily available public record at the Library of Congress. This information will serve to identify the copyright owner of works for which copyright has been restored, to provide notice to the public that these works will have copyright protection for the remainder of their term, and to facilitate licensing and other uses of these works by the general public.

Optional information for item #5 would include the name of the original copyright owner of the work, if it is different from the potential copyright owner; and for works contained in motion pictures, the potential owner or owners of those works, if different from the potential copyright owner submitting a Statement of Intent. Separate Statements of Intent may be submitted by the potential copyright owner(s) of the underlying works, if different from the owner of the motion picture.

(6) *Certification Statement and Signature* (Required Information)

The following dated certification statement must be included in its entirety along with the signature of the potential copyright owner or authorized agent:

I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Explanation of item #6: The entire certification statement must be reproduced on each Statement of Intent to attest that the person signing the statement understands the copyright restoration provisions and the consequences of false statements of material facts. A complete Statement of Intent must be signed and dated by the potential copyright owner or an authorized agent.

III. Sample Statement of Intent

As an Appendix, the Copyright Office provides a sample Statement of Intent which may be used by potential copyright owners or their authorized agents. This Appendix will not appear in the Code of Federal Regulations. The sample Statement includes both the required information that must be provided for the Statement of Intent to be effective and the additional optional information which is not required. If provided, the optional information, clearly identified in this sample, will greatly enhance the Copyright Office records. The Office encourages potential copyright owners to use this suggested format for their submissions to ensure that all necessary information is provided and to avoid correspondence.

IV. Copyright Office Procedures for Handling Statements of Intent

A timely Statement of Intent will be reviewed by the Copyright Office for the required information listed in items 1 through 6. If the Statement does not give the required information, the Copyright Office will ask the potential copyright owner or authorized agent to submit the missing information. Complete and timely Statements of Intent will be entered into the Copyright Office's records and will be readily accessible to the public. The Copyright Office will publish a list of all the titles of eligible works for which effective Statements of Intent have been made in the **Federal Register** as soon as possible after January 1, 1995, and will make it available to the public after that date. Statements of Intent submitted after December 31, 1994, will not be accepted for inclusion in the Copyright Office's database or for the **Federal Register** notice in 1995. Copyright restoration is automatic and requires no further action by the Copyright Office.

Appendix

Statement of Intent To Restore Copyright Protection in the United States in Accordance With the North American Free Trade Agreement (NAFTA)

1. Title of work(s): _____
(For multiple works complete items 1 through 6 for each separate work.)

1a. Include series and episode title(s)/number(s), if any _____

1b. If this Statement does not cover the entire motion picture, specify the underlying work covered, *e.g.*, screenplay, music, etc.

1c. (Optional) Alternative titles (for example, U.S. release title, if different from foreign title) _____

1d. (Optional) Original producer and/or director _____

1e. (Optional) Format or physical description of work as first published (running time, reels, etc.)_____
Film_____ Videotape_____
Videodisc_____ Other (describe)

2. Nation of first fixation—Mexico ( )
Canada ( ) Other nation (specify):_____

2a. (Optional) Year of first fixation:_____

3. Nation of first publication—Mexico ( )
Canada ( ) Other nation (specify):_____

4. Date of first publication: _____
(month/day/year)

5. Name and mailing address of potential copyright owner of work:
Name: _____
Address: _____
(Street or Post Office Box, City/State, Country)
Telephone_____ Telefax_____

6. Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Signature: _____ Date: _____
(Potential copyright owner or authorized agent)

List of Subjects in 37 CFR Part 201

Copyright, Restoration of copyright for certain works in accordance with the North American Free Trade Agreement

Interim Regulations

For the reasons set out in the Preamble, section 37 CFR chapter II is amended in the manner set forth below

PART 201—[AMENDED]

1. The authority citation for part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702; § 201.31 is also issued under Public Law 103–182, 107 Stat. 2115.

2. A new § 201.31 is added to read as follows:

§ 201.31 Procedures for copyright restoration in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement.

(a) *General.* This section prescribes the procedures for submission of Statements of Intent pertaining to the restoration of copyright protection in the United States for certain motion pictures and works embodied therein as required in 17 U.S.C. 104A(a). On or after January 3, 1995, the Copyright Office will publish in the **Federal Register** a list of works for which

potential copyright owners have filed a complete and timely Statement of Intent with the Copyright Office.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Effective filing.* To be effective a Statement of Intent must be complete and timely.

(2) *Eligible work* means any motion picture that was first fixed or published in Mexico or Canada, and any work included in such motion picture that was first fixed or published with this motion picture, if the work entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by 17 U.S.C. 401, 402, or 403, the absence of which has not been excused by the operation of 17 U.S.C. 405, as such sections were in effect during that period.

(3) *Fixed* means a work 'fixed' in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is 'fixed' for purposes of this title if a fixation of the work is being made simultaneously with its transmission. 17 U.S.C. 101

(4) *Potential copyright owner* means the person who would have owned any of the exclusive rights comprised in a copyright in the United States in a work eligible for copyright restoration under NAFTA, if the work had not fallen into the public domain for failure to comply with the statutory notice requirements in effect at the time of first publication, or any successor in interest to such a person.

(5) *Published* means distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

(c) *Forms.* The Copyright Office does not provide Statement of Intent forms for the use of potential copyright owners who want to restore copyright protection in eligible works.

(d) *Requirements for effective Statements of Intent.* (1) The document should be clearly designated as a "Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement".

(2) Statements of Intent must include: (i) The title(s) of the work(s) for which copyright restoration is sought; (ii) nation of first fixation; (iii) nation of first publication; (iv) date of first publication; (v) name and mailing address (and telephone and telefax, if available) of the potential copyright owner of the work; (vi) the following certification (in its entirety); signed and dated by the potential copyright owner or authorized agent:

I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

(3) Statements of Intent must be received in the Copyright Office on or before December 31, 1994.

(4) Statements of Intent must be in English and either typed or legibly printed by hand, on 8 1/2 inch by 11 inch white paper.

(e) *Fee.* The Copyright Office is not requiring a fee for the processing of Statements of Intent.

(f) *Effective date of restoration of copyright protection.* (1) Potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office will have copyright protection restored in these works effective January 1, 1995.

(2) The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works without liability for a period of one year following the Copyright Office's publication in the **Federal Register** of the list of the works determined to be properly qualified for protection and for which complete and timely Statements of Intent have been filed.

(g) *Registration of works whose copyright has been restored.* After January 1, 1995, the Copyright Office encourages potential copyright owners to make voluntary copyright registration in accordance with 17 U.S.C. 408 for works that have had copyright restored in accordance with NAFTA.

Dated: March 8, 1994.

Barbara Ringer,

Acting Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–6122 Filed 3–15–94; 8:45 am]

BILLING CODE 1410–07–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN18–1–5906 FRL–4830–3]

Approval and Promulgation, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the State Implementation Plan (SIP) revision submitted by the State of Minnesota for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (program). The implementation plan was submitted by the State to satisfy the mandate of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this action; additional information is available at the address indicated.

DATES: This final rule will be effective May 16, 1994 unless notice is received by April 15, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments can be mailed to William L. MacDowell, Air and Radiation Division, (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3509.

Copies of the State's submittal and USEPA's technical support document are available for inspection during normal business hours at the following locations: U.S. Environmental Protection Agency (AE–17J), Region 5, Air Enforcement Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3509, Office of Air and Radiation (OAR), Docket and Information Center, (Air Docket 6102), Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 260–7548 and Mr. Leo Raudys,

Program Development Section, Air Quality Division, Minnesota Pollution Control Agency, 520 LaFayette Road, St. Paul, Minnesota 55155–3898.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, U.S. Environmental Protection Agency (AE–17J), Region 5, Air Enforcement Branch 77 West Jackson Boulevard, Chicago, Illinois 60604–3509, telephone (312) 353–3849.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (program), and submit this program as a revision to the federally approved SIP. In addition, the CAA directs the United States Environmental Protection (USEPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a program are set out in section 507 of the CAA. In February 1992, USEPA issued "Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments," in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The Minnesota Pollution Control Agency (MPCA), on November 9, 1992, submitted a SIP revision to USEPA. To gain full approval, the MPCA's submittal must provide for each of the following program elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of the State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

The Minnesota legislation charged the Commissioner of the MPCA to establish a SBAP to provide direct and timely technical assistance to small businesses. The SBAP plan was submitted to the USEPA as a SIP revision on November 9, 1992. Full implementation of the SBAP begins in November 1994. However, elements of the program are being implemented earlier. For example, the Compliance Advisory Council which is established by legislation, and has program oversight responsibilities, held its first meeting in September 1993. An ombudsman was hired in August 1993, and the SBAP has a total of 3 full-time employees currently assisting small businesses. The Minnesota Technical Assistance Program (MnTAP), established in 1984 at the University of Minnesota, while not yet available for air pollution control purposes, will provide non-regulatory assistance and act as an information clearinghouse, on an as needed basis, to help the MPCA to implement the SBAP. MnTAP will provide technical expertise to the MPCA to implement the SBAP. MnTAP will provide technical expertise to the MPCA to evaluate air pollution control regulations and source control procedures affecting small sources.

Section 507(a) sets forth six requirements [1] that States must meet to have an approvable Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The first requirement in the CAA is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and activities to encourage lawful cooperation among such sources and other persons to further compliance with the CAA. The MPCA has met this requirement by providing that the SBAP, develop and prepare information packets which describe in layperson's terms the compliance and technical information relevant to a small business stationary source's obligation under the Act; identify appropriate information dissemination and outreach mechanisms, and help to disseminate technical and compliance information to small businesses.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The MPCA has met the requirement by requiring the SBAP to identify and develop needed and appropriate printed resources to provide information on pollution prevention opportunities for specific small business source categories or processes which have proposed standards; and identify appropriate mechanisms to disseminate the above information to small businesses, including news letters, trade associations, Small Business Development Centers, Chambers of Commerce, pollution prevention conference, and cooperative extension. The SBAP has planned workshops scheduled for early 1994, as one of the mechanisms for informing small businesses of the need for pollution prevention and emissions control.

The third requirement is to develop a compliance assistance program, for small business stationary sources, which assists small businesses in determining applicable requirements and in receiving permits in a timely and efficient manner. The MPCA's SBAP plan includes a procedure to refer businesses to appropriate air quality staff for cases of rule identification, understanding, interpretation, permit needs, and permit procedures; and provides a procedure to require the MPCA staff to assist the SBAP with emission control or emission prevention information needed by small businesses

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard The Minnesota SBAP plan is designed to meet this requirement by providing direct access of the small business owner or operator with the SBAP staff and making available information applicable to control technologies and legal rights. The plan includes opportunities for small businesses to attend workshops focused on selected source categories, and will include pre-printed source material and forms to optimize the technical and compliance assistance services provided by the SBAP staff.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act,

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The MPCA SIP meets this requirement by: holding information workshops requiring the SBAP to develop and maintain a list of qualified auditors, based upon criteria established by the SBAP in coordination with MPCA Air Quality Division technical staff and MnTAP.

The sixth requirement is to develop procedures for consideration of requests for a small business stationary source for modification of any work practice or technological method of compliance, or the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The MPCA addresses this requirement by committing the SBAP to develop administrative procedures, by November 15, 1994, to handle requests of this nature. Existing Minnesota statutes require the MPCA, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses: the establishment of performance standards required in the rule, and exempting small businesses from any or all requirements of the State rule. The USEPA believes this responds to the spirit of the guidance yet any such streamlining of existing rules or development of new rules affecting compliance to avoid unreasonable burden on small businesses will be required to go through the public processes. An adequate opportunity will exist for comment by the public and by USEPA.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The Minnesota legislation: requires the MPCA Commissioner to appoint an ombudsman, specifies the duties of the office, insures independence of action, and details the candidates qualifications. In this case, the Commissioner, MPCA, placed the ombudsman in the Environmental Analysis Office (EAO) of the MPCA. The MPCA SIP states that the ombudsman, hired in August 1993, has authority, under section 8, subdivision (3) of the Small Business Air Quality Compliance Assistance Act, to act independently of the MPCA. The EAO is responsible for implementing the Minnesota Environmental Review Program (MERP). The function of MERP is to avoid and minimize damage to Minnesota's environmental resources caused by public and private development by requiring that proposed actions which have the potential for significant environmental effects undergo special review procedures in addition to any other required approvals and permits. The USEPA believes that the ombudsman has sufficient authority, and is adequately located for technical and program support purposes, to monitor the small business stationary source technical and environmental compliance assistance program.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The Minnesota legislation is consistent with these guidelines and satisfies the requirement by establishing the Minnesota Small Business Air Quality Compliance Assistance Advisory Council, referred to in the plan as the Compliance Advisory Council. The requirements for the council are listed in the State legislation of April 29, 1992. The legislature however, increased the membership of the Council by requiring the participation of two additional state agencies: the Director of the Minnesota Office of Waste Management or the Director's designee, and the Commissioner of Department of Trade and Economic Development or the Commissioner's designee. The legislature's action to increase the size of the Council is considered to be within the scope of the CAA and is satisfactory to the USEPA because the CAA requires the size of the CAP to be not less than 7 individuals, specifying the minimum number rather than the maximum.

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to USEPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The Minnesota legislation and plan charge the council with carrying out all but the last of these responsibilities. The last of these responsibilities is found in the plan as a responsibility of the SBAP program staff to carry out. Since the SBAP staff will be supervised by the ombudsman, the USEPA believes this is sufficient to satisfy this requirement.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals,

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Minnesota has established a mechanism in the SBAP plan for ascertaining the eligibility of a source to receive assistance under the program, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. The USEPA believes this mechanism, which includes the criteria noted above, corresponds with the Acts' requirements and the Agency's guidelines.

The State of Minnesota has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The State of Minnesota has provided for exclusion from the small business stationary source definition, after consultation with the USEPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, USEPA believes that the State program must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes

III. The USEPA's Action

In this action, USEPA is approving in final the SIP revision submitted by the State of Minnesota. The State of Minnesota has submitted a SIP revision implementing each of the program elements required by section 507 of the CAA. For each of the three essential elements of the Program: the Small Business Assistance Program, the element is currently operational or the State has submitted a schedule for that element indicating implementation by November 15, 1994. The USEPA is therefore approving this submittal. This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 6 of Executive Order 12866 for a period of two years. USEPA 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 USEPA's request.

Because USEPA considers this action noncontroversial and routine, we are approving it without proposal. The action will become effective on May 16, 1994. However, if the USEPA receives notice April 15, 1994 that someone wishes to submit substantive and critical comments, then USEPA will publish: (1) A document that withdraws this action; and (2) a document that begins a new rulemaking by proposing the action and establishing a comment period.

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

By this action, USEPA is approving in final a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the USEPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Dated: January 14, 1994.

William E. Muno,

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 Y—[Amended]

2. Section 52.1220 is amended by adding paragraph (c)(28) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(28) On November 9, 1992, the State of Minnesota submitted the Small Business Stationary Source Technical and Environmental Compliance Assistance plan. This submittal satisfies the requirements of section 507 of the Clean Air Act, as amended.

(i) Incorporation by reference.

(A) Minnesota Laws Chapter 546, sections 5 through 9 enacted by the Legislature, and signed into Law on April 29, 1992.

* * * * *

[FR Doc. 94–5907 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[IN36–1–6182; FRL–4849–3]

Approval and Promulgation of a State Implementation Plan for Photochemical Assessment Monitoring; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving a revision to the Indiana State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements for enhanced ozone monitoring in the Clean Air Act (Act) and regulations promulgated pursuant to the Act. These regulations require the State to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of photochemical assessment monitoring stations (PAMS) by November 12, 1993.

DATES: This final rule will be effective May 16, 1994 unless notice is received by April 15, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the SIP revision and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Mark Palermo at (312) 886–6082, before visiting the Region 5 Office.) US Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark Palermo, Regulation Development Section (AR–18J), Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(1) of the Act, as amended in 1990, requires that the USEPA promulgate rules for enhanced monitoring of ozone, oxides of nitrogen (NO_x), and volatile organic compounds (VOC) no later than 18 months after the date of the enactment of the 1990 Amendments. In addition, the Act requires that following the promulgation of the rules relating to enhanced ambient monitoring, the State must commence actions to adopt and implement a program based on these rules, including a revision to each SIP affecting areas classified serious and above for ozone. See also the April 16, 1992 General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (General Preamble), 57 FR 13498, 13515.

On February 12, 1993, USEPA promulgated regulations providing for the establishment and maintenance of the PAMS program (58 FR 8452). Section 58.40(a) of 40 CFR part 58

requires the State to submit a photochemical assessment monitoring network description, including a schedule for implementation, to the Administrator within 6 months after promulgation, or by August 12, 1993. Further, § 58.20(f) requires the State to provide for the establishment and maintenance of a PAMS network within 9 months after promulgation of the final rule or November 12, 1993.

On August 12, 1993 the Lake Michigan Air Directors Consortium submitted a regional PAMS network description, including a schedule for implementation, under the signature of the State Air Directors for the four States of Illinois, Indiana, Michigan and Wisconsin (the States). This submittal is currently being reviewed by the USEPA and is intended to satisfy the requirements of § 58.40(a).

On November 15, 1993 Indiana submitted to the USEPA a revision to the Indiana ozone SIP providing for the establishment and maintenance of the PAMS network and requested its approval. A letter finding the submittal complete was sent to the State on January 19, 1994. The November 15, 1993, Indiana PAMS SIP revision request is intended to meet the requirements of Section 182(c)(1) of the Act and effect compliance with 40 CFR part 58 by implementing the rules for PAMS. The Indiana Department of Environmental Management (IDEM) held a public hearing on the Indiana PAMS SIP revision request on December 14, 1993. IDEM submitted the transcript of the hearing on January 19, 1994.

II. Analysis of State Submittal

The November 15, 1993 Indiana PAMS SIP revision request would incorporate PAMS into the ambient air quality monitoring network of State and Local Ambient Monitoring Stations/ National Ambient Monitoring Stations (SLAMS/NAMS). The State will establish and maintain PAMS as part of the overall ambient air quality monitoring network.

The criteria used to review the Indiana PAMS SIP revision request are derived from section 182 (c)(1) of the Act, 40 CFR part 58 (as promulgated on February 12, 1993 (58 FR 8452)), the *Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR Part 58* (EPA–450/4–78–038, OAQPS, November 1979), the September 2, 1993 memorandum from G.T. Helmes of the U.S. EPA, Office of Air Quality Planning and Standards (OAQPS), entitled *Final Boilerplate Language for the PAMS SIP Submittal*, and the April 16, 1992 General Preamble.

The regional PAMS network submitted by the States on August 12, 1993 is currently being reviewed by USEPA. A joint network description and implementation schedule is permitted and encouraged by 40 CFR 58.40(a)(3) for States where a State's PAMS network requires monitoring stations in different States and/or Regions.

Since network descriptions may change annually, they are not part of the SIP, as recommended by the *Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR 58.* However, the network description is negotiated and approved during the annual review via the grant process under section 105 of the Act, as required by 40 CFR 58.20(d), 58.25, 58.36 and 58.46.

The November 15, 1993 submittal would incorporate PAMS into the overall ambient air quality monitoring network. It would provide Indiana with the authority to establish and operate the PAMS sites, secure funds for PAMS and provide the USEPA with authority to enforce the implementation of PAMS (under the section 105 grant process), since their implementation is required by the Act.

The September 2, 1993 memorandum from OAQPS entitled *Final Boilerplate Language for the PAMS SIP Submittal* provides that the PAMS SIP revision request, at a minimum, should provide for the monitoring of criteria and non-criteria pollutants, as well as meteorological parameters; provide that a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, be made available for public inspection during the public notice and/or comment period for the SIP revision request or, alternatively, provide that, on request, information concerning the State's plans for implementing the rules be made publicly available; make reference to the fact that PAMS will become a part of the State and local air monitoring stations (SLAMS) network; and, allow for sampling via methods approved by USEPA which are not Federal Reference Methods or equivalent.

The Indiana PAMS SIP revision request provides that the network will measure ambient levels of ozone, NO_x, speciated VOC, including hydrocarbons and carbonyls and meteorological data. During the public comment period and hearing, Indiana provided a copy of the proposed alternative regional PAMS network description, including a schedule, to the public. The Indiana PAMS SIP revision request provides that each station in the air quality surveillance network provided for and described in the network description will be termed a SLAMS. Finally, the Indiana PAMS SIP revision request provides that the methods used in PAMS will meet the criteria established by 40 CFR 58.41, the quality assurance requirements as contained in 40 CFR part 58, appendix A, and the monitoring methodology requirements contained in appendix C.

III. Final Rulemaking Action

The USEPA approves the Indiana rule revision for PAMS as part of the Indiana SIP for ozone.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on May 16, 1994. However, if we receive notice by April 15, 1994 that someone wishes to submit adverse comments, then USEPA will publish: (1) A document that withdraws the action; and (2) a document that begins a new rulemaking by proposing the action and establishing a comment period. 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. Under the revised tables this action remains classified as a Table 3. 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 USEPA 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.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities

include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This SIP approval involves a monitoring network that will be operated by the IDEM and does not impose any new regulatory requirements on small businesses. Therefore, I certify that it does not have a significant economic impact on any small entities.

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 May 16, 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: March 1, 1994.

Valdas V. Adamkus,

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 P—Indiana

2. Section 52.777 is amended by adding paragraph (e) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(e) Approval—The Administrator approves the incorporation of the photochemical assessment ambient monitoring system submitted by Indiana on November 15, 1993 into the Indiana State Implementation Plan. This submittal satisfies 40 CFR 58.20(f), which requires the State to provide for the establishment and maintenance of photochemical assessment monitoring stations (PAMS) by November 12, 1993.

[FR Doc. 94–5905 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[NM–19–1–6069; FRL–4847–7]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County Permitting Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP) which includes Albuquerque/Bernalillo County Regulation Number 20, entitled *Authority-to-Construct Permits*, and the Supplement pertaining to general new source review (NSR) in Albuquerque/Bernalillo County, New Mexico. This SIP approval action makes federally enforceable the revised City/County general NSR regulation (outside the boundaries of Indian lands), and allows the EPA to revoke the construction moratorium for nonattainment areas in Albuquerque/Bernalillo County. This construction moratorium was put in place by the Governor of New Mexico on May 20, 1980.

DATES: This final rule will become effective on May 16, 1994, unless notice is received by April 15, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION:

Background

Albuquerque/Bernalillo County Regulation 20, a portion of Albuquerque's complete NSR permitting program, was initially approved by the EPA on April 10, 1980, at 45 FR 24460, as a part of the 1979 New Mexico SIP submittal to the EPA. A construction moratorium for nonattainment areas was put in place by the Governor of New Mexico on May 20, 1980. On this date, the Governor committed the State of New Mexico to not issue permits to stationary sources located in nonattainment areas. This construction ban has continued in Albuquerque/Bernalillo County as outlined in 40 CFR 52.1627(a) and 52.1628, in reference to the carbon monoxide nonattainment status of Bernalillo County, and in reference to the County not having a complete federally approved NSR permitting program.

The EPA in this action can now revoke the construction ban for Albuquerque/Bernalillo County because of two developments. The first development focuses on the FR notice of January 25, 1991 (56 FR 2852). This notice announced that the 1990 Clean Air Act Amendments (CAAA) repealed the provisions of section 110(a)(2)(I) of the Clean Air Act as amended in 1977. The 1977 provisions had required the EPA to impose a construction moratorium in nonattainment areas that failed to submit plans meeting all of the requirements of part D of the 1977 Clean Air Act (CAA). The 1990 CAAA, however, contained a savings clause, new CAA section 110(n)(3), that preserved certain existing construction moratoriums (i.e., relating to the establishment of a permit program and relating to sulfur dioxide (SO_2) attainment status). Therefore, the EPA interpreted the provisions of the 1990 CAAA as repealing by operation of law, as of the date of enactment of the 1990 CAAA (November 15, 1990), all construction moratoriums that the EPA had imposed under the 1977 CAA (section 110(a)(2)(I)) for any reason other than failure to submit an approvable NSR program or failure to demonstrate timely attainment of the SO_2 National Ambient Air Quality Standards (NAAQS). Albuquerque/Bernalillo County is currently classified attainment for the SO_2 NAAQS, and with the approval of revised Regulation 20, along with Regulations 29 and 32 (i.e., the Prevention of Significant Deterioration (29) and Nonattainment NSR (32) permitting regulations approved in separate FR actions at 58 FR 67330 and 58 FR 67326 (December

21, 1993), respectively), the Albuquerque/Bernalillo County NSR permitting program has now been brought up to date and found to be approvable by the EPA. Thus, the construction ban can be revoked for Albuquerque/Bernalillo County.

Analysis of City/County Submission

A. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing (see also section 110(l) of the CAA). Also, the EPA must determine whether a submittal is complete, and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the City of Albuquerque held public hearings on February 10, 1993, and on May 12, 1993, to entertain public comment on proposed revisions to Regulation 20 and its narrative supplement, respectively. No public comments were received. Following the public hearings, Regulation 20 and its narrative supplement were adopted by the Albuquerque/Bernalillo County Air Quality Control Board and submitted as a SIP revision to the EPA by cover letter from the Governor dated July 22, 1993.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter datedSeptember 10, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

B. Review of Revisions to Regulation 20

Albuquerque/Bernalillo County filed revisions to Regulation 20 with the State of New Mexico Records and Archives Center on February 26, 1993. The revisions to Regulation 20 were adopted in order to update the currently approved Albuquerque/Bernalillo County permit program, and to allow for revoking the construction ban referenced in 40 CFR 52.1627(a) and 52.1628. Regulation 20 sets forth certain emissions thresholds requiring a pre-construction permit (e.g., 10 pounds per hour or 25 tons per year), stipulates required contents of permit applications, outlines public participation requirements, and addresses performance testing procedures. It is important to note that the revisions to Regulation 20 are minor and noncontroversial, resulting in a clarification of nonattainment area permit requirements, a re-defining of "potential emission rate" as "pre-controlled emission rate," and other minor clarifications. For further details on both the requirements and the revisions of Regulation 20, please reference the Technical Support Document (TSD). Copies of the TSD can be obtained from the EPA Region 6 office listed above.

Final Action

The EPA is approving a revision to the New Mexico SIP to include revisions to Albuquerque/Bernalillo County Regulation Number 20, entitled *Authority-to-Construct Permits*, as filed with the State Records and Archives Center on February 26, 1993. The EPA is also approving the SIP narrative entitled *Supplement Pertaining to General New Source Review; Albuquerque/Bernalillo County, New Mexico; May 12, 1993.* This SIP approval action makes federally enforceable the revised City/County general NSR regulation (outside the boundaries of Indian lands), and allows the EPA to revoke the construction ban codified at 40 CFR 52.1627(a) and 52.1628.

The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective May 16, 1994, unless, by April 15, 1994, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective [Insert date 60 days from date of publication].

With respect to all of the statutory changes discussed in this action, the EPA plans to undertake national rulemaking in the near future to adopt clarifying changes to its permitting regulations. Upon final adoption of those regulations, the EPA will call upon States with approved permitting programs, including Albuquerque, to make corresponding changes in their SIPs. Based on the above evaluation, the EPA is approving the revised Albuquerque/Bernalillo County Regulation 20 and its narrative Supplement as a strengthening of the New Mexico (Albuquerque/Bernalillo County) SIP.

Miscellaneous

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

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 16, 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)).

Executive Order

This action has been classified as a table three 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 notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived table two and three 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 two and three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 onSeptember 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 28, 1994.

W.B. Hathaway,

Acting Regional Administrator (6A).

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 GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(54) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(54) A revision to the New Mexico SIP addressing the Albuquerque/Bernalillo County Permitting Program was submitted by the Governor of New Mexico by cover letter dated July 22, 1993.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Regulation Number 20–Authority-to-Construct Permits, Section 20.00, "Purpose;" Section 20.01, "Applicability;" Section 20.02, "Fees for Permit Application Review;" Section 20.03, "Contents of Applications;" Section 20.04, "Public Notice and Participation;" Section 20.05, "Permit Decisions and Appeals;" Section 20.06, "Basis for Permit Denial;" Section 20.07, "Additional Legal Responsibilities on Applicants;" Section 20.08, "Permit Conditions;" Section 20.09, "Permit Cancellation;" Section 20.10, "Permittee's Notification Obligations to the Department;" Section 20.11, "Performance Testing Following Startup;" Section 20.12, "Emergency Permits;" Section 20.13, "Nonattainment Area Requirements;" Section 20.14, "Definitions Specific to Authority-to-Construct Permit Regulations;" and Table One, "Significant Ambient Concentrations," as filed with the State Records and Archives Center on February 26, 1993.

(ii) Additional material.

(A) The Supplement Pertaining to General New Source Review in Albuquerque/Bernalillo County, New Mexico, as approved by the Albuquerque/Bernalillo County Air Quality Control Board onMay 12, 1993.

3. Section 52.1627 is revised to read as follows:

§ 52.1627 Control strategy and regulations: Carbon monoxide.

Part D disapproval. The Bernalillo County carbon monoxide plan is disapproved for failure to meet the resource requirements of section 172 of the Clean Air Act.

§ 52.1628 [Removed and Reserved]

4. Section 52.1628 is removed and reserved.

[FR Doc. 94–5906 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 417, and 473

[BPD–694–F]

RIN 0938–AE93

Medicare Program; Aggregation of Medicare Claims for Administrative Appeals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: Medicare beneficiaries and, under certain circumstances, providers, physicians and other entities furnishing health care services may appeal adverse determinations regarding certain claims for benefits payable under part A and part B of Medicare. For administrative appeals at the carrier or intermediary hearing level or administrative law judge (ALJ) level and for any subsequent judicial review, the amount remaining in dispute must meet or exceed threshold amounts set by statute. Section 1869(b)(2) of the Social Security Act permits claims to be aggregated to reach the ALJ hearing threshold amounts. This final rule establishes a system of aggregation under which individual appellants have one set of requirements for aggregating claims and two or more appellants have a different set of requirements for aggregating claims.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Olenick, (410) 966–4472.

SUPPLEMENTARY INFORMATION:

Background

Statutory Basis

Section 1869(b) of the Social Security Act (the Act) grants Medicare beneficiaries who are dissatisfied with certain Medicare determinations the right to a hearing before an administrative law judge (ALJ) and the right to judicial review. The Social Security Administration (SSA) makes determinations concerning entitlement to Medicare. Other determinations concerning payment are made initially by Medicare contractors. Fiscal intermediaries make most part A and some part B determinations; carriers make most part B determinations. Our regulations generally address appeals of claims arising under part A at 42 CFR part 405, subpart G, and appeals of claims under part B at 42 CFR part 405, subpart H.

Utilization and quality control peer review organizations (PROs) also make certain types of part A and part B determinations. Section 1155 of the Act establishes beneficiary rights to hearings and judicial review of certain Medicare issues (mostly inpatient hospital service denials) adjudicated initially by PROs. Our regulations address this subject at 42 CFR part 473, subpart B.

For enrollees of health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs), the HMO, CMP or HCPP is responsible for making initial determinations. Section 1876(c)(5)(B) of the Act establishes beneficiary rights to ALJ hearings and judicial review of certain part A and part B claims submitted by or on behalf of enrollees of HMOs, CMPs or HCPPs. Our regulations address this subject at 42 CFR 417.600 to 417.638.

For the following discussion, the term "provider" refers to a hospital, skilled nursing facility, home health agency, hospice program or comprehensive outpatient rehabilitation facility that has in effect an agreement to participate in Medicare. See section 1861(u) of the Act and 42 CFR 400.202.

The term "supplier" is defined in 42 CFR 400.202 and means a physician or other practitioner, or an entity other than a provider, who furnishes health care services under Medicare. Although "supplier" encompasses physicians, our usual phraseology is "physician or supplier."

Under section 1879(d) of the Act, a physician or supplier who accepted assignment or a provider of services has the same appeal rights as that of an individual beneficiary under certain limited circumstances when the issue in dispute involves medical necessity, custodial care, or home health denials involving the failure to meet homebound or intermittent skilled nursing care requirements. Moreover, by regulation, we have provided that a physician or supplier that has taken assignment of a Medicare claim under part B has the same appeal rights as the beneficiary.

Under section 1842(l) of the Act, a physician who does not accept assignment must refund to the beneficiary any amounts collected for services found to be not reasonable and necessary. A refund is not required if the physician did not know and could not reasonably have been expected to know that Medicare would not pay for the services, or if the beneficiary was appropriately informed in advance that Medicare would not pay for the services and agreed to pay for them. With respect to a physician who is subject to the refund requirement, our regulations at 42 CFR 411.408 provide that if payment is denied for unassigned claims because the services are found to be not reasonable and necessary, the physician who does not accept assignment has the same appeal rights as the physician who submits claims on an assignment-related basis, as detailed in subpart H of part 405 and subpart B of part 473. (See 55 FR 24561, June 18, 1990.)

Omnibus Budget Reconciliation Act of 1986

Before the enactment of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86) (Public L. 99–509), section 1869 of the Act provided for ALJ hearings and judicial review of claims for entitlement to Medicare parts A and B and of disputes over claims for benefits under part A. There was no provision for ALJ hearings or judicial review for disputes over the amount of part B benefits, except under section 1876 of the Act pertaining to HMO, CMP and HCPP denials, and concerning certain PRO matters as authorized by section 1155 of the Act. Instead, as specified in section 1842(b)(3)(C) of the Act, Medicare carriers (or, if appropriate, intermediaries) provided fair hearings on claims for part B benefits when the amount remaining in controversy was $100 or more. (Before receiving a fair hearing, beneficiaries must receive an initial determination and review of their claims. Carriers perform initial determinations and reviews of claims for part B benefits in accordance with 42 CFR part 405, subpart H.)

Section 9341 of OBRA '86 amended section 1869 of the Act to permit hearings before ALJs and judicial review of claims for benefits under part B. The law provided that, for a part B ALJ hearing, the amount in controversy must be at least $500 and, for judicial review, the amount in controversy must be at least $1000. It did not change the existing amount in controversy requirements ($100 and $1000, respectively, under the Medicare part A provisions and $200 and $2000, respectively, under the PRO provisions) for ALJ hearings and judicial review.

Section 9341 of OBRA '86 further provided that in determining the amount in controversy, the Secretary, by regulations, must permit claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals. This aggregation provision applies to requests for ALJ hearings of both part A and part B claims brought under section 1869 of the Act.

Under OBRA '86, the right to an ALJ hearing and judicial review for part B claims as well as the right to aggregate under section 1869(b)(2) of the Act apply to claims for items and services furnished on or after January 1, 1987.

The Omnibus Budget Reconciliation Act of 1990

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public L. 101–508) provided that the Secretary would carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under section 1869(b)(2). The study would be conducted in at least four carrier areas. The Secretary would report on the results of the study and any recommendations to the Senate Finance Committee and the Committees on Energy and Commerce and Ways and Means of the House of Representatives by December 31, 1992.

Aggregation Before OBRA '86

Before OBRA '86, the statute was silent on the issue of aggregating claims to meet the threshold amounts to establish a right to part A or part B hearings. We had, however, provided for beneficiaries to aggregate certain part A claims in our regulations at 42 CFR 405.740 and 405.745. Our regulations at 42 CFR 405.741 also provide that the presiding officer at the hearing (that is, the ALJ) determines whether the $100 threshold is met. The current regulations for part A claims do not allow a provider to aggregate claims involving more than one beneficiary.

Before OBRA '86, we had also provided for the aggregation of part B claims to reach the amount in controversy required for a hearing before a carrier hearing officer. In 42 CFR 405.820(b) (redesignated as § 405.817 in this rule), we permit a beneficiary to aggregate any and all part B claims for treatment or medical equipment or supplies (or both) furnished to him or her. A physician or supplier may aggregate any and all claims accepted on an assignment-related basis for services or supplies he or she provided to one or more beneficiaries. Each such claim must have completed all prior levels of appeal and the request for subsequent appeal of each such claim must be timely filed. The regulations do not address whether claims may be aggregated together by two or more appellants to meet the minimum amount in controversy needed for appeal.

Proposed Rule

On June 20, 1991, we published a proposed rule that described how we would implement the OBRA '86 provision amending section 1869(b)(2) of the Act concerning aggregation of claims (56 FR 28353). In the absence of specific legislative history, we concluded at that time that the OBRA '86 aggregation provision did not provide a basis for permitting two or more appellants to aggregate their claims to meet the threshold amount in controversy for administrative or judicial appeal. We based our conclusion, in part, on our assessment that section 1869 of the Act in all respects applies to claims filed by individuals. Because the OBRA '86 aggregation provision amended section

1869 of the Act, it was our view that individual appeals alone were affected. Therefore, we proposed that only an individual appellant could aggregate his or her own claims to reach the jurisdictional minimums for appeal. Moreover, in our view, the OBRA '90 provision, in which the Congress directed the Secretary to conduct a pilot study to investigate the effect of permitting aggregation of claims by two or more appellants, suggested that the Congress had not yet decided to provide for aggregation of claims by multiple appellants.

The specific statutory language of the OBRA '86 aggregation provision directs the Secretary to issue regulations to permit aggregation under the limited circumstances specified (that is, if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals) to reach the threshold amounts in controversy for ALJ hearings. Upon initial consideration of this provision, we believed it would be appropriate to have a uniform aggregation policy for all levels of administrative appeal. Therefore, we proposed to rescind our current regulations governing carrier hearings under part B to conform them with the more narrow aggregation rules contained in OBRA '86. We also proposed minor revisions to our current part A aggregation rules, to make them consistent with the OBRA '86 aggregation requirements. We devised procedural rules to be followed for determining the amount in controversy and we described what actions were required of individuals and providers to aggregate claims to meet the amount in controversy threshold. We also proposed definitions of: "Delivery of similar or related services," "services," "common issues of law and fact," "common issues of law," "common issues of fact," and "mutually exclusive bases for appeal."

Comments and Responses

We received comments from 21 commenters on our proposed rule. The commenters included an intermediary/carrier association, a carrier, seven provider associations or their legal counsel, five medical associations or their legal counsel, five beneficiary advocacy organizations, one PRO and one provider. Below we discuss the comments and our responses.

Comment: A number of commenters expressed direct opposition to our assertion that the Congress did not intend for more than one appellant to aggregate their claims. The commenters presented various reasons why they believed that the Congress intended to permit aggregation by groups of individuals and providers.

Response: We reexamined our proposed aggregation policy in light of the public comments submitted in response to the proposed rule and are revising our position to take the comments into account. Our revised position also takes into account a February 5, 1992, district court decision in favor of a group of anesthesiologists who contended that they should be able to aggregate their claims on the basis of "common issues of law and fact arising from services furnished to two or more individuals" (*Moore* v. *Sullivan*, 785 F. Supp. 44 (S.D.N.Y. 1992)).

Section 1869(b)(2) of the Act states, in pertinent part, that "(i)n determining the amount in controversy, the Secretary, under regulations, *shall allow* * * *" claims to be aggregated under the criteria outlined in that section (emphasis added). Thus, although the plain wording of the statute makes it clear that the Secretary will provide for aggregation of claims in the situations provided in the statute, it does not limit the Secretary's authority to allow aggregation in additional, unspecified circumstances as well. Thus, we believe that the statute affords the Secretary considerable discretion in devising an aggregation policy, as long as she allows aggregation in the circumstances outlined in the statute.

Consistent with this interpretation, we have concluded that in drafting section 1869(b)(2) of the Act, the Congress did not necessarily mean to overhaul the current aggregation system for appeals raised by individual beneficiaries and providers. Rather, we believe that the Congress intended to provide an additional avenue for reaching the amount in controversy to provide for group adjudication of issues arising from claims that, because they involve fairly small amounts, may never be adjudicated beyond the intermediary or carrier level. However, in providing for this additional access to the appeals process by two or more appellants, the Congress recognized that such appeals would only be an efficient use of the administrative and judicial appeals process if the underlying claims presented common issues that, if resolved, would be decisive for all the claims included in the appeal. Therefore, the Congress required that such appeals involve "similar or related services" or "common issues of law and fact."

As a result of our reexamination of this issue, we have decided to permit aggregation of claims by two or more appellants at the ALJ level. In order for two or more appellants to aggregate their claims, the claims must involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals. Although the Congress expanded the part B appeals process to also include judicial review of part B claims, the statute does not require the courts to follow the administrative aggregation rules established by the Secretary for determining the amount in controversy. However, the courts may wish to use the administrative rules as a reference point for determining the amount in controversy at the judicial level. Therefore, we are providing in our regulations that, when a civil action is filed, the Secretary may assert that the aggregation provisions contained in 42 CFR part 405, subparts G and H, may be applied to determine the amount in controversy for judicial review.

(We note that under our interpretation of section 1869(b)(2) of the Act, two or more beneficiaries will not be able to aggregate their claims under the criterion involving "delivery of similar or related services to the same individual," because the provision describes services to only one individual. Moreover, two or more providers/suppliers may avail themselves of this provision only if they are providing similar or related services to the same patient. However, this limitation is of little practical consequence, since, under the first prong of the bifurcated system of aggregation we are establishing with this regulation, an individual appellant (either a beneficiary or a provider/supplier) may aggregate all claims relating to the same patient without having to demonstrate that the services provided are either similar or related.)

In order to effectuate this interpretation we are establishing one set of requirements for aggregating claims for individual appellants and another set of requirements for aggregating claims when two or more appellants together seek to aggregate their claims. The system will work as follows:

Individual Appellants

Our approach for individual part A appellants (including individual HMO, CMP, HCPP or PRO appellants (hereafter, references to HMOs will include CMPs and HCPPs)) will permit an individual who files an appeal to aggregate two or more part A claims (in a specified time period), regardless of issue, to meet the requisite

jurisdictional minimum for an ALJ hearing. Also, an individual who files a part B appeal will be permitted to aggregate two or more part B claims (in a specified time period), regardless of issue, to meet the jurisdictional minimums for a carrier hearing and ALJ hearing.

This approach expands the existing aggregation policy currently applied to part A appellants. (Existing aggregation policy for individual part A appellants is limited to the following circumstances: Items or services furnished to a patient of a provider arising from a single continuous period of treatment and any series of posthospital home health visits.) It is also consistent with the aggregation policy currently existing for part B appellants in that it allows appellants to aggregate two or more claims regardless of issue. (However, consistent with the provision in the proposed rule dated June 20, 1991 (56 FR 28355), we are requiring in the final rule that, for all claims to be aggregated, the request for appeal must be timely filed; see §§ 405.740(a) and 405.817(a).)

Two or More Appellants

Two or more part A appellants will be permitted to aggregate their part A claims together (in a specified time period) to meet the requisite jurisdictional minimum for an ALJ hearing. Similarly, two or more part B appellants will be permitted to aggregate their part B claims together (in a specified time period) to meet the jurisdictional minimum for an ALJ hearing. However, two or more appellants may aggregate their claims only if the claims involve the delivery of similar or related services to the same individual or common issues of law and fact arising from services furnished to two or more individuals.

To reflect these changes, we are revising the text of §§ 405.740, 405.742, 405.820 (redesignated as § 405.815), and 405.827 that we proposed in our June 20, 1991 rule. Sections 405.740 and 405.817 contain our procedures for determining the amount in controversy and for aggregating claims. We are not making final §§ 405.742 and 405.827 that we included in the proposed rule (the relevant contents have been incorporated elsewhere) and we are removing current § 405.741.

Comment: Because section 1869(b)(2) of the Act applies only to aggregation for ALJ hearings, the current liberal rules for individual appellants to aggregate claims at carrier fair hearings should be retained.

Response: As stated in our previous response, we will permit individual part A or part B appellants to aggregate their claims regardless of issue to reach the minimum amounts in controversy needed for a carrier hearing or ALJ hearing. (However, consistent with the provision in the proposed rule dated June 20, 1991 (56 FR 28355), we are requiring in the final rule that, for all claims to be aggregated, the request for appeal must be timely filed; see §§ 405.740(a) and 405.817(a).)

Although we are essentially retaining the current aggregation rules for individual part B appellants, we are not allowing two or more appellants to aggregate their claims together at the carrier hearing level. Rather, we are providing in the final rule that two or more appellants may aggregate their claims together beginning at the ALJ hearing level. We are adopting this approach because, as noted by the commenters, the statute does not require that proceedings conducted under section 1842(b)(3)(C) of the Act (carrier hearings) utilize the aggregation provisions in section 1869(b)(2) of the Act. For this reason, we are also not making final the provision in § 405.832(d) of the proposed regulation text. That provision would have authorized an ALJ to review a carrier hearing officer's dismissal of a hearing request based on the section 1869(b)(2) aggregation criteria to determine whether those criteria had been properly applied.

Comment: The definitions of "common issues of law and fact" and "delivery of similar or related services" are inconsistent with the statute and unnecessarily restrictive and burdensome.

Response: We have reevaluated the definitions of "common issues of law and fact" and "delivery of similar or related services" in light of the comments received and the general lack of practical experience in applying these criteria.

Many of the public comments received on this issue persuasively demonstrated that the proposed definitions were too narrow to encompass many case scenarios that present common decisional issues. For example, one of the commenters noted that the requirement that similar services may only be those "with the same procedural terminology and code" is excessively strict. For instance, claims for echocardiography services such as standard echocardiography (CPT 93307), doppler echocardiography (CPT 93320) and doppler color-flow echocardiography (CPT 93321) may be "similar or related services" that could be aggregated under the statute. This same commenter believed that "common issues of law and fact" should be defined to permit aggregation on the basis of broad categorical issues such as level of care, the type of action taken by the contractor (for example, downcoding), or the involvement of one or more physicians in the patient's care even though CPT codes, sites of service, and diagnoses may differ. While we agree that the definition of common issues of law and fact published in our proposed rule was overly restrictive, we do not agree with this suggestion.

Aggregation on the basis of broad categorical issues would render the aggregation requirements virtually meaningless in many instances. We believe that the key concept in determining "common issues of law and fact" is the materiality of the alleged common facts. For example, a group of claims denied under section 1862(a)(1) of the Act as not medically reasonable and necessary because a certain procedure is considered experimental would present "common issues of law and fact" if the procedure had been performed for the same reason for each patient but not if it had been performed for different purposes. A procedure may be considered experimental for purposes of treating one particular condition or diagnosis but not for the treatment of a second condition or diagnosis. Facts establishing medical necessity in the first instance would not establish medical necessity in the second instance. Consequently, although the situation might present common issues of law, common issues of fact would not be present.

In our view, both "similar or related services" and "common issues of law and fact" require that the appeal present common issues, which when resolved will have some decisional impact on the aggregated claims. In order to further this statutory goal and rather than attempt to anticipate every situation that would warrant aggregation, we have decided to provide more general definitions for these terms, which are as follows: "Delivery of similar or related services," with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for an ALJ hearing, means like or coordinated services or items provided to the same beneficiary by the appellants. "Common issues of law and fact," with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for an ALJ hearing, occur when the claims sought to be aggregated arise from a similar fact pattern material to the reason the claims are denied and the

claims are denied or reduced for similar reasons.

This approach will provide adjudicators with more flexibility and discretion to decide if the criteria for aggregation under section 1869(b)(2) of the Act have been met in a particular case. (Some commenters suggested that the proposed regulations did not give adjudicators enough discretion in applying the statutory terms.) In any event, we intend to monitor in the future the application of these definitions by adjudicators and we will consider providing more precise definitions via rulemaking if experience shows this is warranted.

Comment: The procedural rules for aggregating claims, requiring appellants to identify claims by type of item or service and to explain the basis for the aggregation, go beyond the capacity of the average appellant and represent an impediment to appeal.

Response: We agree that the documentation requirements should be modified. Sections 405.742(a) and 405.827(a) of the proposed rule imposed strict documentation requirements on an appellant seeking to aggregate claims. For instance, we proposed to require an appellant to identify each claim by the type of item or service, the person or entity that furnished the item or service and the amount being contested. Also, we proposed to require the appellant to describe why claims are either "similar or related" or involve "common issues of law and fact." In light of the comments received, we are not making final the stringent documentation requirements and are establishing the following standard procedural requirements:

- The appellant(s) must specify the claims that he or she seeks to aggregate. The burden is clearly on the appellant in this situation to identify the claims sought for aggregation. Otherwise, the appellant risks having his case dismissed for failure to meet the amount in controversy. In other words, in considering a request for hearing or review, carrier hearing officers, ALJs and the Appeals Council must consider claims identified by the appellant to determine whether the requisite amount in controversy is met, but they need not aggregate other pending cases not included in the appellant's request for hearing. In addition, although we are not requiring that appellants describe in their requests for hearing why the claims they seek to aggregate involve "similar or related services" or "common issues of law and fact," we note that it is in the appellant's interest to address these issues in the appeal, as well as any other aspects of the case he or she believes were decided incorrectly.
- In order for all claims to be aggregated, the request for appeal must be timely filed with respect to all claims included in the appeal. For example, a carrier hearing officer issues an adverse hearing decision that is received by the beneficiary on June 5. As a result of this decision, $300 remains in controversy. On a separate matter, the hearing officer issues an adverse decision, which is received by a different beneficiary on July 10. As a result of the July decision, $400 remains in controversy. The beneficiaries believe that their decisions involve common issues and because, individually, neither of their cases meet the $500 minimum required for an ALJ hearing, they seek to aggregate their claims together ($300+$400=$700) to obtain jurisdiction before an ALJ. In this hypothetical situation, a request for an ALJ hearing that includes these two claims may be made no later than August 4. A request for ALJ hearing filed, for example, on September 1, would fail because the 60-day appeal period for the June 5 decision would have lapsed and there would only be $400 remaining in controversy. Therefore, when individual appellants seek to aggregate their claims under § 405.740(a) or § 405.817(a), or when two or more appellants seek to aggregate their claims together under section 1869(b)(2) of the Act, they must be aware of the appropriate timeframe for appealing to an ALJ (60 days from the previous administrative determination) and proceed accordingly.
- In order for claims to be aggregated at a carrier hearing or an ALJ hearing, the claims must have completed all prior levels of appeal. For example, two beneficiaries seek to aggregate their part B claims in a request for ALJ hearing under section 1869(b)(2) of the Act. The ALJ may aggregate only those claims for which a beneficiary or other party has received an initial determination, a review determination and a carrier hearing decision. This requirement is consistent with the general rule contained throughout subparts G and H of part 405 that appellants must complete all prior steps in the appeals process before proceeding to the next level.
- In general, an appellant may not aggregate part A and part B claims together to meet the requisite amount in controversy for a carrier hearing or ALJ hearing. Section 1869(b)(2) of the Act recognizes a distinct appeals process for part A and for part B and provides different rules for each. Part A and part B claims are processed independently of one another and follow different appeals processes. As such, we think it is clearly impermissible for an appellant to aggregate part A and part B claims together.

There is one notable exception to the general rule described above. HMO determinations may involve a combination of part A and part B services; the part A and part B claims involved in such determinations are not processed independently of one another. Therefore, an HMO appellant is permitted to aggregate part A and part B claims together. We are revising § 417.630 of the regulations to provide that HMO appellants may combine both part A and part B services in their appeals to reach the amount in controversy. (This provision was previously codified at § 417.260(b)(4), a regulation that was obsoleted on October 17, 1991 (56 FR 51985).)

Comment: The proposed rule implements a statutory change to section 1869 of the Act and, as such, should not apply to: (1) The separate and distinct appeals process for HMOs under section 1876 of the Act, or (2) the appeals process involving PRO determinations under section 1155 of the Act.

Response: We agree with this comment to the extent that the aggregation criteria under section 1869(b)(2) of the Act should not apply to the HMO appeals process. For enrollees of HMOs, the HMO is responsible for making the initial determinations. Section 1876(c)(5)(B) of the Act establishes beneficiary rights to ALJ hearings and judicial review of certain part A and part B claims submitted by or on behalf of HMO enrollees. HCFA regulations address this subject at 42 CFR 417.600 to 417.638.

The Congress specifically amended section 1869 of the Act to provide for the aggregation of claims by two or more appellants in very specific circumstances; that is, if the claims involve the delivery of similar or related services to the same individual or common issues of law and fact. The Congress did not similarly amend section 1876 of the Act to provide for such aggregation in the HMO setting. Accordingly, we do not believe that HMO appellants should be afforded the aggregation rights specified in section 1869 of the Act. We are modifying the regulation text in § 417.630(b) to state specifically that the aggregation provisions contained in section 1869(b)(2) do not apply to HMO appeals.

On the other hand, we believe that the aggregation criteria under section 1869(b)(2) of the Act should apply to the

PRO appeals process. PROs issue determinations under title XI of the Act relating to quality of care, medical necessity and appropriateness of setting and the appeals process for these determinations is governed by section 1155 of the Act. The PROs also issue limitation of liability determinations under section 1879 of the Act and the appeals process for such determinations is governed by section 1869(b) of the Act. Given this policy, a case decided by a PRO may involve, in essence, two separate determinations, one for the substantive coverage issue under section 1155 of the Act and the other for the limitation of liability issue under section 1869(b) of the Act. Having an adjudicator apply different aggregation rules to each issue in a case would make the situation unnecessarily complex. Therefore, we are revising the regulation to allow multiple appellants to aggregate claims decided by PROs under the criteria in section 1869(b)(2), regardless of whether the claim is decided under title XI or title XVIII. However, we also note that PRO appellants may only aggregate those claims under section 1869(b)(2) that they have standing to appeal under the rules provided in part 473.

In the HMO regulations at 42 CFR 417.630 and in the PRO regulations at § 473.44, we are also specifying in the final rule (by cross-reference to the appropriate provisions in part 405, subparts G and H) that individual HMO and PRO appellants (as opposed to group appellants) are permitted to aggregate their claims in the same manner provided to individual appellants who appeal claims under section 1869 of the Act. Thus, an individual appellant challenging a determination by an HMO or a PRO may aggregate two or more claims regardless of the issues involved. We are making these changes to provide a consistent, across-the-board procedure for an individual appellant seeking to aggregate his or her claims to reach the minimum amount in controversy needed for an ALJ hearing. Because this is a liberalization of the current rules, we do not anticipate any objections from any members of the beneficiary/provider community concerning this policy.

Comment: Section 9341 of OBRA '86 does not provide that a carrier hearing must always precede an ALJ hearing. Section 1842(b)(3)(C) of the Act was amended to provide for carrier hearings when the amount in controversy is "at least $100, but less than $500." Therefore, for amounts in controversy of $500 or more following a carrier's review determination, a claimant should be able to appeal directly to an ALJ.

Response: As we announced in the preamble to the proposed rule (56 FR 28354 (June 20, 1991)), this rule was intended to establish criteria for determining the amount in controversy thresholds for both Part A and B ALJ hearings. Although we captioned § 405.820 (now redesignated § 405.815) as "Right to hearing," we did not intend for this regulation to provide all of the procedural requirements necessary to establish the right to an ALJ hearing. Those requirements will be addressed in a separate regulation document. In the meantime, to the extent not superseded by this or other regulations, Part B ALJ hearings and Appeals Council review are conducted pursuant to the procedures outlined in HCFA and SSA's **Federal Register** notice of June 1, 1988 (53 FR 20023).

In order to clarify the scope of § 405.815, we have revised the caption to read "Amount in controversy for carrier hearing, ALJ hearing and judicial review" and have made other clarifying changes to the regulation text. However, because, under current procedures, we continue to require that appellants complete the carrier fair hearing process before proceeding to an ALJ hearing, we briefly address the commenters' concerns about the legality of this requirement.

We disagree with the commenters' conclusion concerning the requirements of the statute. We believe that the Secretary has the authority under the Medicare statute to require that claimants whose claims exceed $500 complete all prior stages of the administrative appeals process, including a carrier fair hearing, before obtaining an ALJ hearing.

We note that the Secretary's position on this point is supported by the decision of the U.S. Court of Appeals for the Second Circuit in *Isaacs* v. *Bowen*, 865 F.2d 468 (2nd Cir. 1989), which considered the effect of the statutory provision cited by the commenters. In 1987, HCFA amended its Medicare Carriers Manual to require that a carrier fair hearing must precede an ALJ hearing regardless of the amount in controversy. Following this revision, the Congress held hearings concerning the Medicare appeals process and enacted the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, which addressed the carrier fair hearing procedures in two respects. First, the language of section 1842(b)(3)(C) of the Act describing the monetary amounts for a carrier fair hearing was changed by substituting the phrase "less than $500" for the phrase "not more than $500." Second, the Congress authorized the General Accounting Office to conduct a cost-effectiveness study of the Secretary's requirement for carrier hearings before proceeding to an ALJ hearing. In light of these provisions, which were enacted after the Congress had heard testimony concerning HCFA's decision to require carrier hearings in all circumstances, the Court of Appeals for the Second Circuit found that the Congress by its actions had ratified the manual provision.

Comment: A single overpayment determination may involve a large number of claims and several different issues. The overpayment in its entirety should be considered as a "common issue of law and fact" and therefore all claims contained therein should be aggregable.

Response: An overpayment determination made to an individual person or entity will fall under the first prong of our bifurcated approach. That is, an individual appellant may aggregate all appealable claims included in a single overpayment determination regardless of the issues involved. (However, the appellant may only aggregate those claims included in the overpayment determination that the appellant has standing to appeal under the rules provided in part 405, subparts G and H, part 417 or part 473, as applicable.) Thus, the section 1869(b)(2) criterion of "common issues of law and fact," applicable to two or more appellants who seek to aggregate their claims together, does not apply in this situation.

Comment: Physicians in a multi-specialty group practice would be prohibited from aggregating claims together. An exception to the proposed rule should be made for physicians in the same group practice whose claims are billed and paid in the name of the group.

Response: In light of the approach we are taking in the final rule, we believe the concerns raised by the commenter no longer apply. Physicians in a multi-specialty group practice would not be prohibited from aggregating their claims together as long as those claims involve "similar or related services" or "common issues of law and fact."

As previously stated, the proposed rule did not permit two or more appellants to aggregate their claims together and limited the rights of individual appellants to aggregate their claims on the basis of "similar or related services" or "common issues of law and fact." The final rule establishes a bifurcated system of aggregation whereby: (1) Individual appellants may aggregate two or more claims regardless

of issue and (2) two or more appellants may aggregate their claims together if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.

If a multi-specialty group of physicians: (1) Has one billing number, (2) bills Medicare under that number, (3) uses a uniform charge structure and (4) typically appeals as a single entity (rather than having its physicians appeal individually), we believe that the aggregation rules pertaining to individual appellants should apply. Therefore, in this situation, the multi-specialty group would be able to submit claims from two or more of its physicians in a single appeal request (the filing time limit would have to be met for the particular level of appeal) without having to demonstrate that the claims involve common issues.

Comment: A non-participating physician may accept or reject assignment on claims at his or her discretion. Because the proposed rule permits a non-participating physician under section 1842(l) of the Act to aggregate unassigned claims for appeal purposes, the non-participating physician should be able to aggregate assigned claims with his or her unassigned claims if "common issues of law and fact" or "delivery of similar or related services" are involved.

Response: We agree with this comment. The determining factor in the situation posed is not whether a non-participating physician's claims are assigned or unassigned, but whether the claims are appealable. Under the first prong of our bifurcated approach, an individual appellant may aggregate all appealable claims regardless of issue. Therefore, a non-participating physician may aggregate assigned claims with unassigned claims providing that he or she has standing to appeal the claims under the rules in part 405, subpart H, part 417 or part 473, as applicable. The section 1869(b)(2) criteria of "common issues of law and fact" and "delivery of similar or related services," applicable to two or more appellants who seek to aggregate their claims together, do not apply in this situation.

Comment: One commenter suggested that the regulations should afford adjudicators more discretion to determine whether "common issues of law and fact" exist based upon evidence presented by the entity seeking a hearing.

On the other hand, another commenter believed that giving the carrier hearing officer the power to determine the criteria for aggregation gives too much discretion to these officials.

Response: As stated in a previous response, we have reevaluated the definition of "common issues of law and fact" in light of the comments received and the general lack of practical experience in applying this criterion. In our view, the statute requires commonality of law and fact so that the appeal will present common issues, which, when resolved, will have some decisional impact on aggregated claims. In order to further this statutory goal and rather than attempt to anticipate every situation that would warrant aggregation, we have decided to provide a more general definition for this term. This approach will provide adjudicators with more flexibility and discretion to determine if the criteria for aggregation under section 1869(b)(2) of the Act have been met in a particular case.

The concern raised by the second commenter is no longer an issue because carrier hearing officers will not be applying the criteria in section 1869(b)(2) of the Act to determine whether the bases for aggregation have been met.

Comment: If the hearing officer dismisses the request to aggregate claims to meet the $100 requirement, then certainly the $500 requirement would not be met for a Part B ALJ appeal. A dismissal by a carrier hearing officer should not be subject to further appeal rights.

Response: Under the proposed rule, the only issue in a carrier hearing officer dismissal that the ALJ could review was the applicability of the criteria in section 1869(b)(2) of the Act; that is, "delivery of similar or related services" and "common issues of law and fact." In light of the approach to aggregation that we are taking in the final rule, carrier hearing officers will not be considering section 1869(b)(2) criteria. Therefore, we are not making final the proposed regulation text that would have allowed ALJ review of a carrier hearing officer's dismissal of a hearing request.

Comment: One commenter believes the requirement that "at each review level the filing time limit must be met for all claims to be aggregated" creates a chilling effect on the ability of home health agencies (HHAs) to aggregate claims.

Response: As stated in previous responses, the proposed rule provided for aggregation only by individual appellants and only under the circumstances described in section 1869(b)(2) of the Act, that is, if the claims involve the delivery of similar or related services to the same individual or common issues of law and fact arising from services furnished to two or more individuals. Accordingly, the proposed rule might have significantly limited an HHA's ability to aggregate claims. However, the final rule permits an individual appellant, such as an HHA, to aggregate two or more claims regardless of issue. (However, the HHA, like all appellants, may only aggregate those claims that it has standing to appeal under the rules provided in part 405, subparts G and H, part 417 or part 473, as applicable.) As a result, the effect of the new bifurcated approach should be to facilitate aggregation of claims by HHAs such that the time limits for appeal will not be significant barriers.

Section 1869(b)(1) of the Act incorporates by reference the provisions of section 205(b) of the Act relating to hearings under the Medicare program. Section 205(b)(1) of the Act mandates that an individual must request an ALJ hearing within 60 days after receipt of the previous decision. Therefore, Part A and Part B Medicare appellants are obliged to appeal claims within this timeframe. We believe that allowing appellants to aggregate claims beyond this timeframe would dilute this requirement.

Comment: Three commenters had concerns about our proposed requirement that claims with mutually exclusive bases for appeal could not be aggregated. One thought that this requirement could prohibit a supplier from aggregating claims denied or only partially paid because of carrier error; another thought that "mutually exclusive" means incompatible and that our examples do not show incompatibility. The latter commenter also thought the definition to be unclear, invalid and unnecessary because of our definition of "common issues of law." The third commenter thought the requirement should be relaxed if not eliminated and that at the very least physicians should not be prohibited from appealing claims denied for more than one reason.

Response: We agree with the commenters that the definition for "mutually exclusive bases for appeal" is overly restrictive and difficult to apply. Upon further review, we have decided to eliminate this term to provide more flexibility to an ALJ in applying the criteria for multiple appellant aggregation under section 1869(b)(2) of the Act.

Comment: The proposed rule sets forth a definition of "delivery of similar or related services" to mean, among other things, services provided to a

single beneficiary during the same continuous course of treatment or continuous period of medical care. One commenter believes we should develop more precise definitions of "continuous course of treatment" and "continuous period of medical care" to avoid inconsistent carrier application of the aggregation rule.

Response: In light of the comments received questioning the definition of "delivery of similar or related services" and our lack of practical experience in applying it (and other terms), we have decided to provide a more general definition for this term. This approach will provide adjudicators with more flexibility and discretion to decide if this criterion for aggregation by multiple appellants under section 1869(b)(2) of the Act has been met in a particular case. As stated previously, we intend to monitor in the future the application of this definition by adjudicators and we will consider providing more precise definitions via rulemaking if experience shows this is warranted.

Comment: As recommended by the House Budget Committee in its Report accompanying OBRA '86 (H.R. Rep. No. 727, 99th Cong., 2nd Sess., 95–96 (1986)), ALJs with specific knowledge of the Medicare program should be assigned to review carrier hearing decisions. Also, HCFA should issue a new set of aggregation rules to enhance physician access to appropriate due process through fair hearings and administrative appeals.

Response: The portion of this comment that addresses who will hear Medicare cases is beyond the scope of this regulation. With respect to the second portion of the comment, the commenter believes that the proposed rule places undue burdens on physicians who want to appeal Medicare claims and suggests generally that physicians are being placed at a disadvantage under the aggregation rules. Although we disagree with the commenter's assessment of the proposed rule, in light of the bifurcated approach to aggregation that we are taking in the final rule, we believe the commenter no longer should have any concerns in this regard. An individual physician who accepts assignment has the same appeal rights as a beneficiary; he or she is able to aggregate two or more assigned claims from one or more beneficiaries without having to demonstrate that the claims involve common issues. Moreover, two or more physicians may aggregate their claims together to meet the minimum amount needed for appeal if the claims involve "common issues of law and fact" or, if the claims involve services to a single beneficiary, they involve "similar or related services."

Comment: Section 4113 of OBRA '90 directed the Secretary to conduct a study of the "effects of permitting the aggregation of claims that involve common issues of law and fact furnished * * * to two or more individuals by two or more physicians within the same 12-month period." The proposed rule stated that the study mandated by the Congress confirms, for the present, that the Congress did not require the Secretary to provide for aggregation by two or more appellants. One commenter believed that the Congress had already accepted the premise that two or more appellants could aggregate their claims together and the study was merely a response to a proposed House bill that would have extended the period in which claims could be aggregated from 60 days to 12 months.

Response: In the absence of specific legislative history, we took the position in the proposed rule that the OBRA '86 aggregation provision did not provide a basis for permitting two or more appellants to aggregate their claims together to meet the minimum amount in controversy needed for a particular level of appeal. It was our view that the OBRA '90 provision, in which the Congress directed the Secretary to conduct a pilot study to investigate the effect of permitting aggregation by two or more appellants, suggested that the OBRA '86 aggregation provision should apply only to individual appellants.

As discussed previously, we have changed our position from the proposed rule to provide for aggregation by two or more appellants under the statutory criteria for aggregation specified in section 1869(b)(2) of the Act. The study itself has been completed and a report is being prepared.

Comment: The proposed rule provides that a single provider may combine claims from several different beneficiaries if common issues of law and fact are involved. The commenter, a PRO, is concerned that this could place an added and unnecessary burden on the PRO appeals system.

Response: As we stated in a previous response, we are applying the section 1869(b)(2) aggregation provision to the PRO appeals process. Therefore, two or more PRO appellants will be permitted to aggregate their appealable claims together on the basis of "similar or related services" or "common issues of law and fact." However, any aggregation under section 1869(b)(2) will take place in connection with a request for an ALJ hearing or judicial review and, consequently, should not result in any significant burden on PROs.

In the final rule we are expanding the aggregation rights for individual appellants under part A. As a result, an individual provider appellant would be able to aggregate two or more claims of one or more beneficiaries. However, it has been our experience that the amount in controversy ($200) for an ALJ hearing has not been a particular obstacle in PRO appeals even when a single claim is being adjudicated.

Comment: One commenter noted that the proposed rule did not address whether claims of several different beneficiaries, each meeting the minimum amount in controversy needed for appeal, could be consolidated into a single hearing for reasons of economy and efficiency.

Response: This comment is beyond the announced scope of this regulation. In the second full paragraph on p. 28357 of the preamble to the proposed rule, we state that "We emphasize that the purpose of these regulations is to provide criteria for aggregation of claims in order to meet the amount in controversy requirements (that is, the jurisdictional threshold) for appealing Medicare claims. These rules are not meant to address procedures (or alter existing provisions) concerning the conduct of hearings once the required amount in controversy is established or to address the *discretion of the presiding officer to join claims in a single hearing for administrative purposes*" (emphasis supplied).

Summary of Revisions

Below we describe changes we are making, as discussed above in the responses to comments, to both the regulations as they currently appear in the Code of Federal Regulations and to the rules we proposed on June 20, 1991.

A. Definitions (§§ 405.701 and 405.802)

1. We are adding a definition of "appellant", to designate the beneficiary, provider or other person or entity appealing a determination of benefits under part A (§ 405.701) or part B (§ 405.802), to facilitate the implementation of our bifurcated system of aggregation by providing a single, consistent term identifying the person or entity that has filed the appeal in a part A or part B claim. The term merely identifies the individual that filed the appeal; designation as an "appellant" does not convey the right to appeal the issue in question.

2. We are not making final the proposed definitions of "common issues of * * * fact" and "common issues of law" because they are overly restrictive

and difficult to apply. We are revising the proposed definition of "common issues of law and fact" to provide a more general application of this term and to provide ALJs with more flexibility in applying this criterion for aggregation.

3. We are revising the proposed definition of "delivery of similar or related services" to provide a more general application of this term and to provide ALJs with more flexibility in applying this criterion for aggregation.

4. We are not making final the proposed definition of "mutually exclusive bases of appeal" because it is overly restrictive and difficult to apply.

5. We are not making final the proposed definition of "services" because we believe that the definition of services in § 400.202 is sufficient.

B. Principles for Determining the Amount in Controversy (§ 405.740)

We are modifying the proposed principles for determining the amount in controversy and revising the current rules to say specifically that two or more appellants may aggregate their claims together to meet the amount in controversy requirements if the claims at issue are appealed on time and involve common issues of law and fact. Further, two or more providers may aggregate their claims together if the claims involve the delivery of similar or related services to the same individual. We are also providing that individual appellants may aggregate their claims without having to demonstrate that the claims involve common issues.

C. Determinations of Amount in Controversy (§ 405.741)

We are not making final the proposed section. The proposed provisions are no longer relevant because of our revised policy, and we have incorporated the current provision—that the presiding officer will determine whether the amount in controversy is $100 or more—into § 405.740.

D. Procedural Rules for Aggregating Claims (Proposed § 405.742)

This section is not included in the final rule as the now relevant portions are in § 405.740. The provision at proposed § 405.742(c), which would have required a reconsideration by the appropriate entity before a hearing, is not included because the concept is repeated elsewhere in the subpart.

E. Definitions (§ 405.802)

1. We are adding the definition of "appellant" for the reasons explained above under the discussion of § 405.701.

2. The definition of "carrier" is revised to include intermediaries authorized to make determinations with respect to part B provider services, obviating our need to add the phrase "intermediaries where appropriate" everywhere we proposed.

F. Notice of Review Determination and Effect of Review Determination (§§ 405.811 and 405.812)

We are revising these sections to update the cross-references. We are also specifying that the hearing referred to is a carrier hearing and changing the tense of the sentences to present tense in accordance with our current style.

G. Amount in Controversy for Carrier Hearing, ALJ Hearing and Judicial Review (Proposed § 405.820)

We are revising the proposed § 405.820 by redesignating it as § 405.815, changing its heading, and moving the contents of paragraphs (b) and (d) with appropriate changes to §§ 405.820 and 405.821, respectively. Paragraph (c) of the current § 405.820 will be § 405.821(b).

H. Principles for Determining the Amount in Controversy (§ 405.817)

We are adding this new section. It contains, as does § 405.740, our procedures and policies for determining the amount in controversy and for aggregating claims. Most of this section was derived from proposed § 405.827, which is not included in this final rule.

I. Request for a Carrier Hearing (§ 405.821)

We are revising the current contents of this section to include those portions of proposed § 405.827 that remain relevant; that is, § 405.827 (c) and (d).

J. Procedural Rules for Aggregating Claims (Proposed § 405.827)

We are not including this section in the final rule as we have revised our policy and placed that policy as well as unrevised procedures in other sections, as explained above. Paragraph (d), concerning exhaustion of administrative remedies, is covered elsewhere in the subpart.

K. Dismissal of Request for Carrier Hearing (§ 405.832)

We are not revising paragraph (d) as proposed because carrier hearing officers will not be making determinations concerning aggregation on the basis of "delivery of similar or related services or "common issues of law and fact."

L. Right to a Hearing (§ 417.630)

We are revising the cross-references in this section because of changes in this final rule. We are also adding a provision that members of HMOs who are appellants may combine both part A and part B services in their appeals. We are also specifying in a new paragraph (b) that the criteria for aggregating claims under section 1869(b)(2) of the Act do not apply to appeals under part 417.

M. Determining the Amount in Controversy (§ 473.44)

We are updating cross-references in this section. We are also specifying that the criteria for aggregating claims under section 1869(b)(2) of the Act, as implemented at §§ 405.740(b) and 405.817(b), apply to appeals under part 473.

N. We Are Revising the Headings of the Following Sections To Include the Word "Carrier"

§§ 405.822, 405.823, 405.824, 405.825, 405.830, 405.831, 405.832, 405.833, 405.834, 405.835, 405.841 and 405.860.

Paperwork Burden

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians, providers, and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule establishes in Medicare regulations an approach for aggregating Medicare claims by two or more

appellants to obtain the right to an ALJ hearing. It also provides easier access to the appeals process for an individual part A appellant, by providing these individuals with essentially the same aggregation rights that an individual part B appellant now has.

We believe that the system for aggregating claims by two or more appellants will provide for easier access to hearings but we do not expect it to be widely used. This is because an individual appellant (who is permitted to combine claims without having to demonstrate a basis for the aggregation) should usually be able to meet the appropriate jurisdictional thresholds on his or her own behalf without having to combine the claims of other appellants. We also believe that individuals concerned with privacy of their records or proceedings, or individuals not inclined to locate other potential appellants might choose not to avail themselves of this opportunity. For whatever reasons, only a few requests for hearing involving the aggregation of claims by multiple appellants have been submitted in response to the decision in *Moore* vs. *Sullivan*. Nor do we expect that the changes to the aggregation rules for individual part A appellants will significantly increase the volume of part A hearings. The Secretary certifies that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. This regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PRO), Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

A. Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. Subpart G is amended as follows:

Subpart G—Reconsiderations and Appeals Under Medicare Part A

a. The authority citation for subpart G is revised to read as follows:

Authority: Secs. 1102, 1151, 1154, 1155, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1320c–3, 1320c–4, 1395ff(b), 1395hh, 1395ii and 1395pp).

b. In § 405.701, the section heading is revised and a new paragraph (d) is added to read as follows:

§ 405.701 Basis, purpose and definitions.

* * * * *

(d) *Definitions.* As used in subpart G of this part, the term—

Appellant designates the beneficiary, provider or other person or entity that has filed an appeal concerning a particular determination of benefits under Medicare part A. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Common issues of law and fact, with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for a hearing, occurs when the claims sought to be aggregated are denied or reduced for similar reasons and arise from a similar fact pattern material to the reason the claims are denied.

Delivery of similar or related services, with respect to the aggregation of claims by two or more provider appellants to meet the minimum amount in controversy needed for a hearing, means like or coordinated services or items provided to the same beneficiary by the appellants.

c. Section 405.740 is revised to read as follows:

§ 405.740 Principles for determining the amount in controversy.

(a) *Individual appellants.* For the purpose of determining whether an individual appellant meets the minimum amount in controversy needed for a hearing ($100), the following rules apply:

(1) The amount in controversy is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the intermediary and less any deductible and coinsurance amounts applicable in the particular case.

(2) A single beneficiary may aggregate claims from two or more providers to meet the $100 hearing threshold and a single provider may aggregate claims for services provided to one or more beneficiaries to meet the $100 hearing threshold.

(3) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant only if the claims have previously been reconsidered and a request for hearing has been made within 60 days after receipt of the reconsideration determination(s).

(4) When requesting a hearing, the appellant must specify in his or her appeal request the specific claims to be aggregated.

(b) *Two or more appellants.* As specified below, under section 1869(b)(2) of the Act, two or more appellants may aggregate their claims together to meet the minimum amount in controversy needed for a hearing ($100). The right to aggregate under this statutory provision applies to claims for items and services furnished on or after January 1, 1987.

(1) The aggregate amount in controversy is computed as the actual amount charged the individual(s) for the items and services in question, less any amount for which payment has been made by the intermediary and less any deductible and coinsurance amounts applicable in the particular case.

(2) In determining the amount in controversy, two or more appellants may aggregate their claims together under the following circumstances:

(i) Two or more beneficiaries may combine claims representing services from the same or different provider(s) if the claims involve common issues of law and fact;

(ii) Two or more providers may combine their claims if the claims involve the delivery of similar or related services to the same beneficiary; or

(iii) Two or more providers may combine their claims if the claims involve common issues of law and fact with respect to services furnished to two or more beneficiaries.

(iv) In any of the circumstances specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, the claims may be aggregated only if the claims have previously been reconsidered and a request for hearing has been made within 60 days after receipt of the reconsideration determination(s). Moreover, in the request for hearing, the

appellants must specify the claims that they seek to aggregate.

(c) The determination as to whether the amount in controversy is $100 or more is made by the administrative law judge (ALJ).

(d) In determining the amount in controversy under paragraph (b) of this section, the ALJ also makes the determination as to what constitutes "similar or related services" or "common issues of law and fact."

(e) When a civil action is filed by either an individual appellant or two or more appellants, the Secretary may assert that the aggregation principles contained in this subpart may be applied to determine the amount in controversy for judicial review ($1000).

(f) Notwithstanding the provisions of paragraphs (a)(1) and (b)(1) of this section, when payment is made for certain excluded services under § 411.400 of this chapter or the liability of the beneficiary for those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the beneficiary for the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid pursuant to § 411.400 of this chapter or had such liability not been limited pursuant to § 411.402 of this chapter.

(g) Under this subpart, an appellant may not combine part A and part B claims together to meet the requisite amount in controversy for a hearing. HMO, CMP and HCPP appellants under part 417 of this chapter may combine part A and part B claims together to meet the requisite amounts in controversy for a hearing.

§ 405.741 [Removed]

d. Section 405.741 is removed.

2. Subpart H is amended as follows:

Subpart H—Appeals Under the Medicare Part B Program

a. The authority citation for subpart H is revised to read as follows:

Authority: Secs. 1102, 1842(b)(3)(C), and 1869(b) of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), 1395ff(b)).

b. The heading for subpart H is revised as set forth above.

c. Section 405.802 is revised to read as follows:

§ 405.802 Definitions.

As used in subpart H of this part, the term—

Appellant designates the beneficiary, assignee or other person or entity that has filed an appeal concerning a particular determination of benefits under Medicare part B. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Assignee means a physician or supplier who furnishes services to a beneficiary under Medicare part B and who has accepted a valid assignment executed by the beneficiary.

Assignment means the transfer by the assignor of his or her claim for payment to the assignee in return for the latter's promise not to charge more for his or her services than the carrier finds to be the reasonable charge or other approved amount.

Assignor means a beneficiary under Medicare part B whose physician or supplier has taken assignment of a claim.

Carrier means an organization which has entered into a contract with the Secretary pursuant to section 1842 of the Act and which is authorized to make determinations with respect to part B of title XVIII of the Act. For purposes of this subpart, the term carrier also refers to an intermediary that has entered into a contract with the Secretary under section 1816 of the Act and is authorized to make determinations with respect to part B provider services, as specified in § 421.5(c) of this chapter.

Common issues of law and fact, with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for an ALJ hearing, occurs when the claims sought to be aggregated are denied or reduced for similar reasons and arise from a similar fact pattern material to the reason the claims are denied.

Delivery of similar or related services, with respect to the aggregation of claims by two or more physician/supplier appellants to meet the minimum amount in controversy needed for an ALJ hearing, means like or coordinated services or items provided to the same beneficiary by the appellants.

Representative means an individual meeting the conditions described in §§ 405.870 through 405.871.

d. Section 405.811 is revised to read as follows:

§ 405.811 Notice of review determination.

Written notice of the review determination is mailed to a party at his or her last known address. The review determination states the basis of the determination and advises the party of his or her right to a carrier hearing when the amount in controversy is $100 or more as determined in accordance with § 405.817. The notice states the place and manner of requesting a carrier hearing as well as the time limit under which a hearing must be requested (see § 405.821).

e. Section 405.812 is revised to read as follows:

§ 405.812 Effect of review determination

The review determination is final and binding upon all parties to the review unless a carrier hearing decision is issued pursuant to a request for hearing made in accordance with § 405.821 or is revised as a result of reopening in accordance with § 405.841.

f. Section 405.820 is redesignated as § 405.815 and is revised to read as follows:

§ 405.815 Amount in controversy for carrier hearing, ALJ hearing and judicial review.

Any party designated in § 405 822 is entitled to a carrier hearing after a review determination has been made by the carrier if the amount remaining in controversy is $100 or more and the party meets the requirements of § 405.821 of this subpart. To be entitled to a hearing before an ALJ following the carrier hearing, the amount remaining in controversy must be $500 or more, and for judicial review following the ALJ hearing and Appeals Council Review, the amount remaining in controversy must be $1000 or more.

g. A new § 405.817 is added as follows:

§ 405.817 Principles for determining amount in controversy.

(a) *Individual appellants.* For the purpose of determining whether an individual appellant meets the minimum amount in controversy needed for a carrier hearing ($100) or ALJ hearing ($500), the following rules apply:

(1) The amount in controversy is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

(2) A single beneficiary may aggregate claims from two or more physicians/suppliers to meet the $100 or $500 thresholds. A single physician/supplier may aggregate claims from two or more beneficiaries to meet the $100 or $500 threshold levels of appeal.

(3) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant to meet the amount in controversy for a carrier hearing only if the claims have previously been reviewed and a request for hearing has been made within six

months after the date of the review determination(s).

(4) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant to meet the amount in controversy for an ALJ hearing only if the claims have previously been decided by a carrier hearing officer and a request for an ALJ hearing has been made within 60 days after receipt of the carrier hearing officer decision(s).

(5) When requesting a carrier hearing or an ALJ hearing, the appellant must specify in his or her appeal request the specific claims to be aggregated.

(b) *Two or more appellants.* As specified in this paragraph, under section 1869(b)(2) of the Act, two or more appellants may aggregate their claims together to meet the minimum amount in controversy needed for an ALJ hearing ($500). The right to aggregate under this statutory provision applies to claims for items and services furnished on or after January 1, 1987.

(1) The aggregate amount in controversy is computed as the actual amount charged the individual(s) for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

(2) In determining the amount in controversy, two or more appellants may aggregate their claims together under the following circumstances:

(i) Two or more beneficiaries may combine claims representing services from the same or different physician(s) or supplier(s) if the claims involve common issues of law and fact;

(ii) Two or more physicians/suppliers may combine their claims if the claims involve the delivery of similar or related services to the same beneficiary;

(iii) Two or more physicians/suppliers may combine their claims if the claims involve common issues of law and fact with respect to services furnished to two or more beneficiaries.

(iv) In any of the circumstances specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, the claims may be aggregated only if the claims have previously been decided by a carrier hearing officer(s) and a request for ALJ hearing has been made within 60 days after receipt of the carrier hearing officer decision(s). Moreover, in a request for ALJ hearing, the appellants must specify the claims that they seek to aggregate.

(c) The determination as to whether the amount in controversy is $100 or more is made by the carrier hearing officer. The determination as to whether the amount in controversy is $500 or more is made by the ALJ.

(d) In determining the amount in controversy under paragraph (b) of this section, the ALJ will also make the determination as to what constitutes "similar or related services" or "common issues of law and fact."

(e) When a civil action is filed by either an individual appellant or two or more appellants, the Secretary may assert that the aggregation principles contained in this subpart may be applied to determine the amount in controversy for judicial review ($1000).

(f) Notwithstanding the provisions of paragraphs (a)(1) and (b)(1) of this section, when payment is made for certain excluded services under § 411.400 of this chapter or the liability of the beneficiary for those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the beneficiary for the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid under § 411.400 of this chapter or had such liability not been limited under § 411.402 of this chapter.

(g) Under this subpart, an appellant may not combine part A and part B claims together to meet the requisite amount in controversy for a carrier hearing or ALJ hearing. HMO, CMP and HCPP appellants under part 417 of this chapter may combine part A and part B claims together to meet the requisite amount in controversy for a hearing.

h. Section 405.821 is revised to read as follows:

§ 405.821 Request for carrier hearing.

(a) A request for a carrier hearing is any clear expression in writing by a claimant asking for a hearing to adjudicate a claim when not acted upon with reasonable promptness or by a party to a review determination who states, in effect, that he or she is dissatisfied with the carrier's review determination and wants further opportunity to appeal the matter to the carrier.

(b) The hearing request must be filed at an office of the carrier or at an office of SSA or HCFA.

(c) Except when a carrier hearing is held because the carrier did not act upon a claim with reasonable promptness (see § 405.801), a party to the review determination may request a carrier hearing within six months after the date of the notice of the review determination. The carrier may, upon request by the party affected, extend the period for filing the request for hearing.

§§ 405.822, 405.823, 405.824, 405.825, 405.826, 405.830, 405.832, 405.833, 405.834, 405.835, 405.841, and 405.860 [Amended]

i. The headings of §§ 405.822, 405.823, 405.824, 405.825, 405.826, 405.830, 405.832, 405.833, 405.834, 405.835, 405.841, and 405.860 are amended by adding the word "carrier" before the word "hearing".

B. Part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874 and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Public Law 97–248 (42 U.S.C. 1395mm note); section 9312(c) of Public Law 99–509 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e) and 31 U.S.C. 9701.

2. Section 417.630 is revised to read as follows:

§ 417.630 Right to a hearing.

(a) Any party to the reconsideration who is dissatisfied with the reconsidered determination has a right to a hearing if the amount in controversy is $100 or more. The amount in controversy for an individual claimant, which can include any combination of part A and part B services, is computed in accordance with § 405.740(a) of this chapter for part A services and § 405.817(a) of this chapter for part B services. When the basis for the appeal is the refusal of services, the projected value of those services must be used in computing the amount in controversy.

(b) The criteria for aggregating claims available to two or more appellants under section 1869(b)(2) of the Act do not apply to appeals under this part.

PART 473—RECONSIDERATIONS AND APPEALS

C. Part 473 is amended to read as follows:

1. The authority citation for part 473 continues to read as follows:

Authority: Secs. 1102, 1154, 1155, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–3, 1320c–4, 1395cc, 1395hh, and 1395pp).

2. In § 473.44, paragraph (a) is revised to read as follows:

§ 473.44 Determining the amount in controversy for a hearing.

(a) After an individual appellant has submitted a request for a hearing, the ALJ determines the amount in controversy in accordance with § 405.740(a) of this chapter for Part A services or § 405.817(a) of this chapter for Part B services. When two or more appellants submit a request for hearing, the ALJ determines the amount in controversy in accordance with § 405.740(b) of this chapter for Part A services and § 405.817(b) of this chapter for Part B services.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 3, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 24, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–5791 Filed 3–15–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Deputy Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Diego (FEMA Docket No. 7076).	City of San Diego	September 2, 1993, September 9, 1993, San Diego Daily Transcript.	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, Eleventh Floor, San Diego, California 92101.	August 18, 1993.	060295
California: Stanislaus (FEMA Docket No. 7076).	Unincorporated areas .	September 10, 1993, September 17, 1993, Modesto Bee.	Mr. Nick Blom, Chairman, Stanislaus County, Board of Supervisors, 1100 H Street, Modesto, California 95354.	August 27, 1993.	060384
Kansas: Sedgwick (FEMA Docket No. 7080).	Unincorporated areas .	October 22, 1993, October 29, 1993, The Wichita Eagle.	The Honorable Mark F. Schroeder, Chairperson, County Commissioners, Sedgwick County, 1250 South Seneca Street, Wichita, Kansas 67213.	October 8, 1993.	200321
Kansas: Sedgwick (FEMA Docket No. 7080).	City of Wichita	October 22, 1993, October 29, 1993, The Wichita Eagle.	The Honorable Frank Ojile, Mayor, City of Wichita, City Hall, First Floor, 455 North Main Street, Wichita, Kansas 67202.	October 8, 1993.	200328
Louisiana: East Baton Rouge Parish (FEMA Docket No. 7080).	East Baton Rouge Parish.	October 8, 1993, October 14, 1993, The Advocate.	The Honorable Tom Ed McHugh, Mayor, City of Baton Rouge, East Baton Rouge Parish, P.O. Box 1471, Baton Rouge, Louisiana 70821.	September 16, 1993.	220058
Texas: Collin (FEMA Docket No. 7080).	City of Plano	October 22, 1993, October 29, 1993, The Dallas Morning News.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086.	October 1, 1993.	480140
Texas: Denton (FEMA Docket No. 7080).	City of Denton	September 9, 1993, September 16, 1993, Denton Record Chronicle.	The Honorable Bob Castleberry, Mayor, City of Denton, 215 East McKinney, Denton, Texas 76201.	September 2, 1993.	480194
Texas: Tarrant (FEMA Docket No. 7080).	City of Arlington	September 10, 1993, September 16, 1993, Fort Worth Star Telegram.	The Honorable Richard Greene, Mayor, City of Arlington, 101 West Abram Street, Box 231, Arlington, Texas 76004.	August 27, 1993.	485454
Texas: Tarrant (FEMA Docket No. 7080).	City of Bedford	September 2, 1993, September 9, 1993, Mid-Cities News.	The Honorable Rick Barton, Mayor, City of Bedford, P.O. Box 157, Bedford, Texas 76095–0157.	August 11, 1993.	480585
Texas: Tarrant (FEMA Docket No. 7080).	City of Fort Worth	October 1, 1993, October 7, 1993, Fort Worth Star Telegram.	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	September 16, 1993.	480596
Texas: Tarrant (FEMA Docket No. 7080).	City of Grapevine	September 24, 1993, September 30, 1993, Fort Worth Star Telegram.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76051.	August 20, 1993.	480598

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6080 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–F

44 CFR Part 65

[Docket No. FEMA–7085]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a

newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Deputy Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Windham County.	Town of Plainfield	December 30, 1993, January 6, 1994, The Norwich Bulletin.	Mr. Paul Sweet, First Selectman for the Town of Plainfield, 8 Community Avenue, Plainfield, Connecticut 06374–1299.	December 22, 1993.	090116B
North Carolina: Dare County.	Unincorporated Areas of Dare County.	January 6, 1994, January 13, 1994, The Coastland Times.	Mr. Robert V. Owens, Chairman of the Dare County Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954.	December 28, 1993.	375348D
Ohio: Franklin and Delaware.	City of Westerville	December 23, 1993, December 30, 1993, The Public Opinion.	Mr. David Lindimore, Manager of the City of Westerville, 21 South State Street, Westerville, Ohio 43081.	December 15, 1993.	390179F

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6077 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7087]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect

prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Deputy Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Oklahoma.	City of Oklahoma	December 10, 1993, December 17, 1993, The Daily Oklahoman.	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	November 18, 1993.	405378
Texas: Collin	City of Plano	December 24, 1993, December 31, 1993, The Dallas Morning News.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	December 13, 1993.	480140
Texas: Tarrant.	City of North Richland Hills.	December 2, 1993, December 9, 1993, Mid-Cities News.	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182.	November 19, 1993.	480607
Texas: Wichita.	City of Wichita Falls	January 19, 1994, January 26, 1994, Wichita Falls Times Record News.	The Honorable Mike Lam, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, Texas 76307.	December 20, 1993.	480662

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6078 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding location	# Depth in feet above ground. * Elevation in feet (NGVD)
ARKANSAS	
Conway (city), Faulkner County (FEMA Docket No. 7075)	
Little Creek:	
Approximately 2,300 feet downstream of U.S. Highway 286	*272
Approximately 200 feet upstream of East German Lane	*279
Just upstream of Mockingbird Lane	*285
Approximately 250 feet upstream of U.S. Highway 64	*296
Approximately 200 feet upstream of Siebenmorgen Road	*304
Gold Creek (East):	
At the confluence with Little Creek	*276
Approximately 500 feet upstream of Middle Road, at a private low water crossing	*278
Approximately 500 feet upstream of Wiggle Worm Road	*282
Just upstream of U.S. Highway 64	*292
Approximately 900 feet upstream of Runker Road	*301
Maps are available for review at City Hall, City of Conway, 1201 Oak Street, Conway, Arkansas.	
Faulkner County (unincorporated areas) (FEMA docket No. 7075)	
Little Creek:	
Approximately 2,300 feet downstream of U.S. Highway 286	*272
Approximately 200 feet upstream of East German Lane	*279
Just upstream of Mockingbird Lane	*285
Approximately 250 feet upstream of U.S. Highway 64	*296
Approximately 200 feet upstream of Siebenmorgen Road	*304
Gold Creek (East):	
At the confluence with Little Creek	*276
Approximately 500 feet upstream of Middle Road, at a private low water crossing	*278
Approximately 500 feet upstream of Wiggle Worm Road	*282
Just upstream of U.S. Highway 64	*292
Approximately 900 feet upstream of Runker Road	*301
Maps are available for review at Faulkner County Tax Assessor's Office, 806 Locust Street, Conway, Arkansas.	
HAWAII	
Hawaii County (unincorporated areas) (FEMA docket No. 7073)	
Keopu Drainageway:	
Approximately 525 feet upstream of Hualalai Road	*60
Approximately 1,110 feet upstream of Hualalai Road	*114
Approximately 1,150 feet downstream of Hawaii Belt Road	*135
Approximately 450 feet downstream of Hawaii Belt Road	*203

Source of flooding location	# Depth in feet above ground. * Elevation in feet (NGVD)
Waiaha Drainageway:	
Just downstream of Kuakini Highway	*164
Just upstream of Kuakini Highway	*170
Just downstream of Hawaii Belt Road	*357
Waiaha Drainageway Splitflow No. 2:	
Approximately 600 feet upstream of Keaubou-Kailua Middle Road	*254
Approximately 260 feet downstream of Hawaii Belt Road	*296
Just downstream of Hawaii Belt Road	*310
Maps are available for review at the Hawaii County Department of Public Works, Division of Engineering, 25 Aupuni Street, Hilo, Hawaii.	
IOWA	
New Vienna (city), Dubuque County (FEMA docket No. 7075)	
North Fork Maquoketa River:	
Approximately 1,900 feet downstream of the confluence of Coffee Creek	*988
At the confluence of Coffee Creek	*990
Approximately 200 feet upstream of State Highway 136	*995
At Maquoketa Street	*998
Approximately 1,300 feet upstream of Maquoketa Street	*999
Maps are available for review at City Hall, City of New Vienna, 7271 Columbus Street, New Vienna, Iowa.	
TEXAS	
Hardin County (unincorporated areas) (FEMA docket No. 7077)	
Gustan Street Ditch:	
Approximately 1,000 feet upstream of South Fannin Street	*43
Immediately upstream of South Ann Street	*44
Maps are available for review at Hardin County Floodplain, 300 Monroe Street, Kountze, Texas.	
Sourlake (city), Hardin County (FEMA docket No. 7077)	
Gustan Street Ditch:	
Approximately 1,000 feet upstream of South Fannin Street	*43
At Elm Street	*44
Approximately 200 feet upstream of Hartel Street	*47
Maps are available for review at 121 West Barkley Street, Sourlake, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6082 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding location	# Depth in feet above ground. * Elevation in feet (NGVD)
GEORGIA	
DeKalb County (unincorporated areas) (FEMA docket No. 7063)	
Peavine Creek:	
Approximately 1,800 feet upstream of Old Briarcliff Road	*846
Approximately 400 feet downstream of Oxford Road	*856
Approximately 1,025 feet upstream of Vickers Drive	*892
Approximately 100 feet downstream of Durand Falls Drive	*924
Maps available for inspection at the DeKalb County Courthouse, Drainage Division, Room 309, 120 West Trinity Place, Decatur, Georgia.	
MARYLAND	
Princess Anne (town), Somerset County (FEMA docket No. 7070)	
Manokin River	
Approximately 1.2 miles downstream of U.S. Route 13	*6
Approximately 0.7 mile upstream of State Route 675 (Somerset Avenue)	*6
Manokin Branch:	
At confluence with Manokin River	*6
Approximately 720 feet upstream of West Broad Street	*6
Wesley Branch:	
At State Route 363	*6
Approximately 1,660 feet upstream of State Route 363	*6
Maps available for inspection at the Municipal Building, 11786 Beckford Avenue, Princess Anne, Maryland.	
MICHIGAN	
Baldwin (township), Iosco County (FEMA docket No. 7073)	
Lake Huron/Tawas Bay:	
Along Tawas Bay shoreline, around Tawas Point, and north along Lake Huron shoreline, to approximately 4,800 feet due east of intersection of Baldwin Resort Road and Tawas Beach Road	*584
Lake Huron:	
Shoreline along Lake Huron from approximately 0.9 mile northeast of intersection of Scott Road and Forest Street, to approximately 1,900 feet southwest of intersection of Scott Road and Forest Street	*589
Shoreline 1,500 feet east of intersection of Baldwin Resort Road and U.S. Route 23	*587
Shoreline at Point au Sable	*584
Shoreline along Lake Huron from Tawas Point State Park to a point approximately 2.2 miles northeast along shoreline	*584
Shallow Flooding from Lake Huron:	
Approximately 1,500 feet east of intersection of Baldwin Resort Road and U.S. Route 23	#1
Approximately 3,800 feet northeast of intersection of U.S. Route 23 and Birchcrest Drive, approximately 190 feet northwest of Lake Huron shoreline	#2
Tawas River:	
At confluence with Tawas Lake	*588
At downstream corporate limits	*588
Tawas Lake:	
Entire shoreline	*588
Maps available for inspection at Township Hall, 1119 Monument Road, Tawas City, Michigan.	
Tawas City (city), Iosco County (FEMA docket No. 7073)	
Tawas Bay:	
From Town Line Road to a point approximately 3,200 feet north along Tawas Bay shoreline	*586
Shoreline 200 feet south of intersection of Hale Street and Lake Street	*587
Shoreline 650 feet north of intersection of Hale Street and Lake Street to the intersection of Fourth Avenue and Lake Street	*587
Shoreline between intersection of Wheeler Street and Lake Street and corporate limits with East Tawas	*587
Shallow flooding from Tawas Bay (Lake Huron):	
Area along Tawas Bay shoreline from intersection of Fourth Avenue and Lake Street to a point approximately 1,000 feet southwest	#1
Maps available for inspection at the City Manager's Office, City Hall, 815 Lake Street, Tawas City, Michigan.	
NEW YORK	
Dexter (village), Jefferson County (FEMA docket No. 7071)	
Black River.	
Approximately 0.6 mile downstream of State Route 180	*250
Approximately 0.4 mile upstream of Dexter Hydroelectric Dams	*266
Maps available for inspection at the Dexter Village Office, Lock Street, Dexter, New York.	
New York (city), Bronx, Queens, Kings, New York, and Richmond Counties (FEMA docket No. 7073)	
Sweet Brook:	
At confluence of Colon Tributary	*14
Approximately 1,000 feet downstream of Delmar Avenue	*95
Eltingville Tributary:	
At confluence with Sweet Brook	*39
From center of structure approximately 180 feet upstream of Wilson Avenue	*52
Arbutus Creek:	
At confluence with Arbutus Lake	*10
Approximately 780 feet upstream of Amboy Road	*56
Jansen Tributary:	
At confluence with Arbutus Creek	*25
Approximately 1,340 feet upstream of confluence with Arbutus Creek	*37
Denise Tributary:	
At confluence with Arbutus Creek	*15
Approximately 1,400 feet upstream of Jansen Street	*51
Lemon Creek:	
Approximately 100 feet downstream of Amboy Road	*13
Approximately 350 feet upstream of Rossville Avenue	*102
Sandy Brook:	
Approximately 360 feet upstream of Richmond Parkway	*42
Approximately 1,100 feet upstream of Bloomingdale Road	*85
Maps available for inspection at the New York Commission—Department of Environmental Protection, 59–17 Junction Boulevard, Elmhurst, New York, and the City Planning Office, Waterfront Division, 22 Reed Street, New York, New York.	
PENNSYLVANIA	
Texas (township), Wayne County (FEMA docket No. 7073)	
Lackawaxen River:	
Approximately 1,000 feet downstream of Park Street Bridge	*925
Approximately 1.1 mile upstream of Bear Swamp Road Bridge (upstream corporate limit)	*1,079
Maps available for inspection at the Texas Township Building, Bear Swamp Road, Honesdale, Pennsylvania.	
SOUTH CAROLINA	
Horry County (unincorporated areas) (FEMA docket No. 7073)	
Waccamaw River:	
Approximately 0.6 mile downstream of U.S. Route 501	*10
Approximately 2.2 miles upstream of the confluence of Stanley Creek	*17
Maps available for inspection at the Horry County Building Inspection Department, 801 Main Street, Room 121, Burroughs Complex, Conway, South Carolina.	
TENNESSEE	
Murfreesboro (city), Rutherford County (FEMA docket No. 7058)	
Bear Branch:	
At DeJarnett Lane (previously Oakland School Road)	*580
At Wenlon Road	*609
Maps available for inspection at the City Hall, 111 West Vine Street, Murfreesboro, Tennessee.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6079 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–P–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–376]

Radio Broadcast Service; AM Emission Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule; notification of compliance.

SUMMARY: Through this Public Notice, the Commission reminds AM radio licensees that effective June 30, 1994, the Commission will no longer employ a "presumptive compliance" policy whereby stations employing the NRSC audio reemphasis standard are presumed to comply with the NRSC–2 emission standard adopted in the First Report and Order in this proceeding (cited below). This document serves to remind licensees operating pursuant to the "presumptive compliance" provision that the temporary waiver period is coming to an end and that they must therefore resume an annual schedule of measuring their emitted spectra before June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Jim McNally, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

Deadline Nears for Determining Compliance With AM Emission Limits

In the First Report and Order in MM Docket No. 88–376, 54 FR 19572 (May 8, 1989), the Commission adopted a new emission standard for AM broadcast stations that was intended to reduce second adjacent channel interference and to improve reception quality in the AM service. However, the Commission noted concerns about the implementation and compliance costs associated with the new standard. While the Commission expressed doubts about such costs, it nevertheless adopted a temporary "presumptive compliance" policy by which stations employing the NRSC–1 audio reemphasis standard would be presumed to comply with the NRSC–2 emission standard until June 30, 1994. (Because the two standards were developed by the National Radio Systems Committee, they came to be known as NRSC–1 and NRSC–2.)

Licensees of AM broadcast stations operating pursuant to the "presumptive compliance" provision contained in § 73.44(e) of the Commission's Rules are reminded that they must resume an annual schedule of measuring their emitted spectra before June 30, 1994. As result of the § 73.44(e) temporary waiver period coming to an end, each station that has not been making measurements must do so by June 30, 1994 to comply with § 73.1590(a)(6). The procedure for measuring emissions is explained in § 73.44(a) and the emission limits are contained in § 73.44(b). No extension of the "presumptive compliance" policy is contemplated.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–6060 Filed 3–13–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 226

Defense Federal Acquisition Regulation Supplement; Preference for Local and Small Business

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with respect for public comments.

SUMMARY: The Department of Defense has amended the Defense Federal Acquisition Regulation Supplement to ensure that businesses located in the vicinity of a military installation that is being closed or realigned have the maximum practicable opportunity to participate in acquisitions that support the closure or realignment, including acquisitions for environmental restoration and mitigation.

DATES: Effective Date: March 8, 1994.

Comment Date: Comments on the interim DFARS rule should be submitted in writing to the address shown below on or before May 16, 1994 to be considered in the formulation of a final rule. Please cite DFARS Case 93–D324 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, Attn: Mrs. Alyce Sullivan, OUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2912 of the Fiscal Year 1994 Defense Authorization Act, Public Law 103–160, requires that qualified businesses located in the vicinity of a military installation, that is being closed or realigned under a base closure law, and small and small disadvantaged businesses (SDBs) be provided a preference, to the greatest extent practicable, in contracts that support the closure or realignment. This includes contracts awarded to carry out activities for the environmental restoration and mitigation at military installations to be closed or realigned.

The Director, Defense Procurement, issued Departmental Letter 94–004, March 8, 1994, to implement section 2912.

B. Regulatory Flexibility Act

The interim rule may have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule revises the current set aside order of precedence for the Department of Defense to ensure that businesses located in the vicinity of a military installation that is being closed or realigned have maximum practicable opportunity to participate in acquisitions that support the closure or realignment. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. Comments from small entities concerned the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 94–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. This action is necessary because section 2912 became effective upon enactment of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160), on November 30, 1993. However, pursuant to Public Law 98–577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 219 and 226

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

1. The authority for 48 CFR parts 219 and 226 continues to read as follows:

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

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 219.504(b) introductory text is revised to read as follows:

219.504 Set-aside order of precedence.

(b) The order of precedence for DoD is (except see 219.803(c) and 226.71)—

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

3. A new subpart 226.71 is added to read as follows:

Subpart 226.71—Preference for Local and Small Businesses

Sec.

226.7100 Scope of subpart.
226.7101 Definition.
226.7102 Policy.
226.7103 Procedure.

226.7100 Scope of subpart.

This subpart implements section 1912 of the fiscal year 1994 Defense Authorization Act, Public Law 103–160.

226.7101 Definition.

Vicinity, as used in this subpart, means the county or counties in which the military installation to be closed or realigned is located and all adjacent counties.

226.7102 Policy.

Businesses located in the vicinity of a military installation that is being closed or realigned under a base closure law, including 10 U.S.C. 2687, and small and small disadvantaged businesses shall be provided maximum practicable opportunity to participate in acquisitions that support the closure or realignment, including acquisitions for environmental restoration and mitigation.

226.7103 Procedure.

In making set-aside decisions under subpart 219.5 and FAR Subpart 19.5 for acquisitions in support of a base closure or realignment, the contracting officer shall—

(a) Determine whether there is a reasonable expectation that offers will be received from responsible business concerns located in the vicinity of the military installation that is being closed or realigned.

(b) If offers can not be expected from business concerns in the vicinity, proceed with section 8(a) or set-aside consideration as otherwise indicated in part 219 and FAR part 19.

(c) If offers can be expected from business concerns in the vicinity—

(1) Set aside the acquisition for small disadvantaged business only if one of the expected offers is from a small disadvantaged business located in the vicinity.

(2) Set aside the acquisition for small business only if one of the expected offers is from a small located in the vicinity.

[FR Doc. 94–5818 Filed 3–15–94; 8:45 am]

BILLING CODE 3810–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1808, 1809, 1810, 1814, 1815, 1816, 1817, 1824, 1825, 1831, 1832, 1835, 1837, 1842, 1845, 1846, 1847, 1852, and 1870

[NASA FAR Supplement Directive 89–14]

RIN 2700–AB35

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; and Reviewing the Reasonableness of Contractor and Subcontractor Compensation

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters, such as removal of NASA internal reporting requirements. This rule also sets forth the policies for reviewing the reasonableness of contractor and subcontractor compensation for service contracts, as well as the solicitation provision for obtaining such information. It also sets forth the requirement for the prenegotiation position memorandum to discuss excessive wages, if any are found.

EFFECTIVE DATE: This regulation will be effective March 31, 1994, except that the amendments to sections 1801.602–3, 1814.406–3, 1814.406–4, and 1816.603–3 are effective March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783–3238. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Removal of Requirement To Report Ratification Actions to Headquarters

As a result of a NASA Procurement Officers Conference in November 1993, this final rule removes the requirement in section 1801.602–3(b)(2) that NASA officials provide to NASA Headquarters a copy of each ratification of an unauthorized commitment along with documentation supporting the ratification. Ratifications at NASA have been reduced from 89 ratifications totalling $1.5 million in FY 90 to 27 ratifications totalling $114,000 in FY 93. On September 30, 1993, additional procedures to control ratifications were required in 48 CFR 1801.602–3(b)(1) (58 FR 51136 and 51137). Consequently, the reporting requirement in paragraph (b)(2) is no longer needed and will be eliminated.

Removal of Requirement To Report Certain Mistakes in Bids to NASA Headquarters

Sections 1814.406–3 and 1814.406–4 are revised to eliminate the requirement to forward to NASA Headquarters copies of determinations made under (FAR) 48 CFR 14.406–3(c) and 14.406–4(d), respectively.

Removal of Requirement To Report Certain Letter Contracts to NASA Headquarters

Section 1816.603–3(a) requires that letter contracts below the Master Buy Plan threshold (generally $25 million) be approved by the NASA Procurement Officer at each installation and that a copy of the approval and other information be provided to NASA Headquarters. This policy was established years ago to eliminate contractual problems and to reduce the large number of letter contracts prepared by NASA Centers. Based on data from our letter contracts status reports, the Centers are now writing very few letter contracts and the contractual problems have been eradicated.

With removal of paragraphs (a) (2) and (3), NASA installations will no longer need to report this information to NASA Headquarters for letter contracts under $25 million ($10 million in the case of some smaller installations).

Removal of Requirement for Contract Funding Report

Section 18–32.702–70(d) requires procurement officers to report by October 31 to the NASA Headquarters Financial Management Division (Code BFC) on the incremental funding waivers approved during the prior fiscal year. This final rule eliminates this internal NASA reporting requirement at the request of the NASA Center Procurement Officers in order to streamline operations. Procurement Officers will still maintain records of the waivers that they approve for incremental funding.

Addition of Coverage to NASA FAR Supplement on the Review of Contractor and Subcontractor Compensation for Reasonableness

On September 8, 1993, a proposed rule to amend the NFS to add policies for reviewing the reasonableness of contractor and subcontractor compensation was published in the **Federal Register** (58 FR 47244) for comment. All comments were reviewed. No changes have been made with the exception of deleting the word "support" in each case where it was used with "service contract," "service subcontracts," "service subcontractors," or "services." The Office of Management and Budget has approved this information collection (OMB Number 2700–0077) through November 30, 1996, under the Paperwork Reduction Act.

Miscellaneous Changes

This rule revises the list of contacts in section 1801.370. Subpart 4.6 is amended in order to revise the instructions to NASA contracting officers for completing NASA Form 507, Individual Procurement Action Report. A typographical correction is made in section 1817.504. Section 1832.402–1 is revised to correct the name of the SBIR program. Section 1832.705–2 is removed and 1832.705–270 is amended to require the contracting officer to place the Contract Funding clause in Section B of solicitations and contracts without modifying the FAR clause on Limitation of Funds. The following sections are amended in order to revise references to NASA Management Instructions and NASA Handbooks: 1804.402; 1804.404–70; 1808.802; 1808.1100; 1809.200; 1810.002; 1814.406–3; 1815.406–5; 1815.570; 1824.102; 1824.202; 1825.604; 1835.003; 1837.200; 1842.173; 1842.202–72; 1845.302–70; 1846.270; 1847.200–70; 1870.103, Appendix I, paragraphs 101.4. and 302.2.; and 1870.303, Appendix I, paragraphs 404.2.l., 602.2., 603.5.b., and 603.5.c. Paragraph (c) of the contract clause at 1852.237–71, Pension Portability, is amended to add, in place of the asterisk, a note that was inadvertently omitted. The note explains to NASA contracting officers the information that contracting officers may insert in paragraph (c).

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1801, 1804, 1808, 1809, 1810, 1814, 1815, 1816, 1817, 1824, 1825, 1831, 1832, 1835, 1837, 1842, 1845, 1846, 1847, 1852, and 1870

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1804, 1808, 1809, 1810, 1814, 1815, 1816, 1817, 1824, 1825, 1831, 1832, 1835, 1837, 1842, 1845, 1846, 1847, 1852, and 1870 are amended as follows:

1. The authority citation for 48 CFR parts 1801, 1804, 1808, 1809, 1810, 1814, 1815, 1816, 1817, 1824, 1825, 1831, 1832, 1835, 1837, 1842, 1845, 1846, 1847, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—PURPOSE, AUTHORITY, ISSUANCE

2. Section 1801.105 is amended in paragraph (a) by adding the following entry in numerical order in the table as follows:

1801.105 OMB approval under the Paperwork Reduction Act.

(a) * * *

NASA FAR supplement segment	OMB control No.
* * * * *	
18–31	2700–0077
* * * * *	

3. Section 1801.370 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(2)(i), (a)(2)(iv), (a)(5), and (b) to read as follows:

1801.370 Points of contact.

* * * * *

(a) * * *

(1) * * *

(i) FAR Council—Eichenlaub

(ii) FAR and NFS Substantive areas—

Area	Analyst(s)
Part 1:	
1.602–3	Whelan.
Balance of 1.6	Pesnell.
1.7	Pesnell.
All other subparts	Eichenlaub
Part 2	Beck.
Part 3	Muzio.
Part 4:	
4.1	Deback.
4.2	Beck.
4.4	Childs.
4.6	King/Beck.
4.7	Beck.
4.8	Childs.
4.9	Beck.
4.70	Whelan
4.71	Beck.
4.72	Deback.
4.73	Pesnell
Part 5	Muzio.
Part 6:	
6.5	LaBeau/Pesnell.
All other subparts	Pesnell.
Part 7	O'Neill.
Part 8:	
8.3	Whelan.
All other subparts	Childs.
Part 9:	
9.5	Muzio.
All other subparts	Whelan.
Part 10	Sudduth.
Part 11	Sudduth.
Part 12:	
12.1	Sudduth.
12.2	Whelan.
12.3	Muzio.
12.5	Whelan.
Part 13	O'Neill.
Part 14	O'Neill.
Part 15:	
15.1	Whelan.
15.4	Whelan.
15.5	Sudduth.
15.6	O'Toole.
15.7	Childs.
15.8	Walker/Eichenlaub.
15.9	Walker/Eichenlaub.
15.10	Brundage.
Part 16	Whelan.
Part 17	Sudduth.
Part 19	O'Neill.
Part 20	Muzio.
Part 22	Childs/Harding.
Part 23	Sudduth.
Part 24	Whelan.
Part 25:	
25.6	Sudduth.
All other subparts	Childs.
Part 27	Childs.
Part 28	Childs.
Part 29	Childs.
Part 30	Guenther/Eichenlaub.
Part 31	LeCren/Eichenlaub.
Part 32	Childs.
Part 33	Brundage.
Part 34	Whelan.

Area	Analyst(s)
Part 35	O'Neill.
Part 36	Pesnell/Stamper.
Part 37	Pesnell/Harding.
Part 39	O'Toole.
Part 42:	
42.7	Balinskas/Eichenlaub.
42.8	Balinskas/Eichenlaub.
42.10	Guenther/Eichenlaub.
42.12	King/Childs.
All other subparts	Pendleton/Childs.
Part 43	Pendleton/Pesnell.
Part 44	Jeshow/Childs.
Part 45	Whelan/Pendleton/ Wilchek.
Part 46	Childs/Jeshow.
Part 47	Childs/Brunner
Part 48	Wilson/Whelan.
Part 49	Whelan.
Part 50	Muzio.
Part 51	Childs.
Part 52	Childs/All analysts in assigned areas.
Part 53	Beck.
Part 70:	
70.1	Deback.
70.2	Deback.
70.3	O'Toole.
70.4	Sudduth.

(iii) Publication matters—Beck

* * * * *

(2) Grants and cooperative agreements

(i) All areas, including Federal Demonstration Project—Deback

* * * * *

(iv) Intellectual Property—Mannix

* * * * *

(5) Guidelines for Acquisition of Investigations (NHB 8030.6)—Deback

* * * * *

(b) Consolidated Contact List.

Name (code)	(202)
Balinskas, James A. (HC)	358–0445
Beck, David K. (HP)	358–0482
Brundage, Paul D. (HP)	358–0481
Brunner, Peter E. (JIB)	358–2289
Childs, William T. (HP)	358–0454
Deback, Thomas L. (HP)	358–0431
Eichenlaub, Carl E. (HP)	358–0483
Guenther, Anne C. (HC)	358–0003
Harding, Allan D. (JL)	358–2274
Jeshow, J. Ronald (HK)	(703) 274–4127
King, Bruce C. (HM)	358–0461
LaBeau, Michael D. (HS)	358–0433
LeCren, Joseph F. (HC)	358–0444
Mannix, John G. (GP)	358–2424
Muzio, David L. (HP)	358–0432
O'Bryant, Cynthia B. (HP)	358–2105
O'Neill, Deborah A. (HP)	358–0440
O'Toole, Thomas J. (HP)	358–0478
Pendleton, Larry G. (HK)	358–0487
Pesnell, James A. (HP)	358–0484
Rosen, Eugene D. (K)	358–2088
Smith, Phillip T. (BFC)	358–1026
Stamper, William C. (JXF)	358–1133
Sudduth, David S. (HP)	358–0485
Walker, Reginald W. (HC)	358–0443
Whelan, Thomas J. (HP)	358–0475
Wilchek, Billie E. (JLE)	358–2301
Wilson, Roger P. (HK)	358–0486

1801.602–3 [Amended]

4. Paragraph (b) of section 1801.602–3 is amended by removing paragraph (b)(2), removing the paragraph designation "(1)" from paragraph (b)(1) following "(b) Limitations.", and redesignating paragraphs (i) through (iv) as paragraphs (b) (1) through (4).

PART 1804—CONTRACT REPORTING

5. Section 1804.402 is amended by revising the first sentence to read as follows:

1804.402 General.

NASA industrial security policies and procedures are prescribed in NMI 1600.2, NASA Security Program. * * *

6. Section 1804.404–70 is amended by revising the third sentence to read as follows:

1804.404–70 Contract clause.

* * * Include in the solicitation and contract a properly executed DD Form 254, Contract Security Classification, in accordance with NMI 1600.2. * * *

7. Section 1804.671–3 is amended by revising the first sentence to read as follows:

1804.671–3 Submission due date.

The FACS report shall have information as of the last day of the month and shall arrive in NASA Headquarters not later than the close of business on the fifth work day following each month being reported. * * *

8. Section 1804.671–4 is amended by revising the seventh sentence of the introductory text to read as follows:

1804.671–4 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).

* * * Item numbers 2 through 7, 9, 15a, 20a, 51 through 61, and 66 are for Acquisition Management Subsystem (AMS) reporting at the installation level only. * * *

* * * * *

1804.671–4 [Amended]

9. Section 1804.671–4 is amended in paragraph (k) by republishing the paragraph heading and revising the first sentence to read as follows:

* * * * *

(k) *Item 8—Contractor identification code (CIC) number* (7 positions). This code is obtained from the publication "NASA Contractor Identification Codes," managed by the Headquarters Procurement Systems Division (Code HM). * * *

* * * * *

10. Section 1804.671–4 is amended in paragraph (n) by revising the entry for Code 24 and adding the following entry in numerical order to the table to read as follows:

* * * * *

(n) * * *

Code	Installation
•	•
24	Dryden Flight Research Center.
•	•
73	Space Station Program Office.
•	•

11. Section 1804.671–4 is amended in paragraph (r) by revising the last sentence to read as follows:

* * * * *

(r) * * * These procurements must have one of the following competitive PPC's: AX, AE, AF, BX, BE, BF, FX, FE, FF, GF, KX, KE, QX, QF, RS, RE, RF, UX, UF, TX, TE, TF, XX, XE, XD, ZX, ZE, or ZD.

* * * * *

12. Section 1804.671–4 is amended in paragraph (s) by removing "(other than reporting center's)" in both places (i.e., for Codes 25 and 26).

13. Section 1804.671–4 is amended in paragraph (u) by revising the entry for Code 08 and by adding the following entry in numerical order to the table to read as follows:

* * * * *

(u) * * *

Code	Contractor
•	•
08	Other nonprofit (Non-Minority). A non-minority nonprofit institution or organization that is a corporation, foundation, trust, or institution not organized for profit, and no part of its net earnings is applied to the profit of any private shareholder or individual.
•	•
18	Other nonprofit (Minority). A minority nonprofit institution or organization that is a corporation, foundation, trust, or institution not organized for profit, and no part of its net earnings is applied to the profit of any private shareholder or individual.
•	•

14. Section 1804.671–4 is amended by redesignating paragraphs (z) through (ttt) as paragraphs (bb) through (vvv), by redesignating paragraphs (v) through (y)

as paragraphs (w) through (z), by adding paragraphs (v) and (aa), by redesignating newly designated paragraph (oo)(7) as paragraph (oo)(8), by adding paragraph (oo)(7), and by revising newly designated paragraph (vv) to read as follows:

* * * * *

(v) *Item 16a—Women-owned business* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the business concern is a women-owned business. A women-owned business is one that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

* * * * *

(aa) *Item 20a—Contract/grant proposal number* (18 positions). Enter the contract/grant proposal number in this field. This field is optional and not reported to Headquarters.

* * * * *

(oo) * * *

* * * * *

(7) *Code G—Designated entities set-aside.* Report this code for awards set-aside for disadvantaged business, women-owned business, HBCU's, and other minority institutions. (This covers the 26 procurements authorized by the D&F signed by the Administrator on December 1, 1992.)

* * * * *

(vv) *Item 41—Reserved* (1 position).

* * * * *

15. Table 1804–1 is removed following section 1804.676, and a new table is added at the end of subpart 1804.6 reading as follows:

BILLING CODE 7510-01-P

TABLE 1804-1
POST-CICA PROCUREMENT PLACEMENT CODE MATRIX

TYPE OF PROCUREMENT REPORTING 8 LEVELS: IPAR REQUIRED (NF-507)		SOLICITATION PROCESS																
			COMPETITION AFTER EXCLUSION OF SOURCES		OTHER THAN FULL AND OPEN COMPETITION 10 U.S.C. 2304(c)													
$1 AND OVER: ALL CONTRACTS, GRANTS, AGREEMENTS AND CONSULTANT SERVICE PURCHASE ORDERS. OVER $25K: AWARDS TO OTHER GOVERNMENT AGENCIES AND DELIVERY ORDERS FOR ORDERING SUPPLIES AND SERVICES. MODIFICATIONS TO CONTRACTS.		FULL AND OPEN COMPETITION	ALTERNATIVE SOURCE	SET-ASIDES	(1) ONLY ONE RESP. SOURCE	(2) URGENCY	(3) MOBILIZATION OR R&D	(4) INTERNATIONAL AGREEMENT	(5) AUTHORIZED BY STATUTE	(6) NATIONAL SECURITY	(7) PUBLIC INTEREST	GRANTS	SPACE ACT AGREEMENTS	COOPERATIVE AGREEMENTS	INTRAGOVERNMENTAL	SMALL PURCHASES OF $2500 OR LESS	SMALL PURCHASES MORE THAN $2500	MISCELLANEOUS
EXTENT OF COMPETITION	LARGE BUSINESS																	
	Sealed Bid—Non FSS	AX	AE	AF	AL	AO	AP	AQ	AU	AV	AZ							
	Sealed Bid—FSS	AY																
	Neg. Competitive—Non FSS	BX	BE	BF	BL	BO	BP	BQ	BU	BV	BZ	BT	BH	BR		CC	BC	
	Neg. Competitive—FSS	BY																
	Neg. Noncompetitive				DL	DO	DP	DQ	DU	DV	DZ	DT	DH	DR		EC	DC	
	SMALL BUSINESS																	
	Sealed Bid—Non FSS	FX	FE	FF	FL	FO	FP	FQ	FU	FV	FZ							
	Sealed Bid—FSS	FY																
	Set-Asides —Negotiated			GF														
	SBIR			HS														
	Neg. Competitive—Non FSS	KX	KE		KL	KO	KP	KQ	KU	KV	KZ	KT	KH	KR		HC	KC	
	Neg. Competitive—FSS	KY																
	Neg. Noncompetitive				NL	NO	NP	NQ	NU	NV	NZ	NT	NH	NR		IC	NC	
	SBA 8(a)								PS									
	UNIVERSITIES																	
	Sealed Bid	QX		QF	QL	QO	QP	QQ	QU	QV	QZ							
	Neg. Competitive	RS	RE	RF	RL	RO	RP	RQ	RU	RV	RZ	RT	RH	RR		LC	RC	
	Neg. Noncompetitive				SL	SO	SP	SQ	SU	SV	SZ	ST	SW	SX		MC	SC	
	OTHER NON-PROFIT																	
	Sealed Bid	UX		UF	UL	UO	UP	UQ	UU	UV	UZ							
	Neg. Competitive	TX	TE	TF	TL	TO	TP	TQ	TU	TV	TZ	TT	TH	TR		OC	TC	
	Neg. Noncompetitive				WL	WO	WP	WQ	WU	WV	WZ	WT	WW	WX		PC	WC	
	WORK OUTSIDE U.S.																	
	Sealed Bid	ZX	ZE	ZD	ZL	ZO	ZP	ZQ	ZU	ZV	ZZ							
	Neg. Competitive	XX	XE	XD	XL	XO	XP	XQ	XU	XV	XZ	XT	XH	XR		VC	XC	
	Neg. Noncompetitive				YL	YO	YP	YQ	YU	YV	YZ	YT	YH	YR		ZC	YC	
	INTRAGOVERNMENTAL														98			
	MISCELLANEOUS	(Reserved for Accounting Transactions—Do Not Cite on Proc. Documents)																99

All small purchase order awards of $2,500 or less (No NF-507 required) shall cite one of the codes listed under "Small Purchases of $2,500 or less" on copy submitted to Accounting.

All small purchase order awards more than $2,500 but less than or equal to $25,000 (No NF-507 required) shall cite one of the codes listed under "Small Purchases More Than $2,500" on copy submitted to Accounting.

All small purchase order awards less than or equal to $25,000 (No NF-507 required) to "Disadvantaged Business Firms—Direct" shall cite PPC with second letter "M" on copy submitted to Accounting.

All small purchase order awards less than or equal to $25,000 (No NF-507 required) to "Women-owned Firms" shall cite PPC with second letter "W" on copy submitted to Accounting.

BILLING CODE 7510-01-C

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

16. Section 1808.802 is amended by revising the second sentence to read as follows:

1808.802 Policy.

* * * Approval of printing supplies or services in contracts shall be in accordance with NMI 1490.1, NASA Printing, Duplicating, and Copying Management Program. * * *

17. Section 1808.1100 is revised to read as follows:

1808.1100 Scope of subpart.

NASA procedures for leasing motor vehicles from GSA or commercial sources are contained in NMI 6000.5, Transportation Management.

PART 1809—CONTRACTOR QUALIFICATIONS

18. Section 1809.200 is revised to read as follows:

1809.200 Scope of subpart.

This subpart prescribes policies and procedures that, like those of (FAR) 48 CFR part 9, subpart 9.2, are to be followed in the use of qualified products lists for procurement of microcircuits as authorized by NMI 5320.5, Basic Policy for NASA Space Flight Program Electrical, Electronic, and Electromechanical (EEE) Parts, and NMI 5320.6, Implementation of NASA Standard Electrical, Electronic, and Electromechanical (EEE) Parts Program.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

19. In section 1810.002, the first sentence is revised to read as follows:

1810.002 Policy.

Implementation of the Metric Conversion Act of 1975, as amended, and (FAR) 48 CFR 10.002(c), shall be in accordance with the policy section of NMI 8010.2, Use of the Metric System of Measurements in NASA Programs.

* * *

PART 1814—SEALED BIDDING

20. Paragraph (a) of section 1814.406–3 is revised to read as follows:

1814.406–3 Other mistakes disclosed before award.

(a) Under the authority delegated by the Administrator in NMI 5101.8, Delegation of Authority To Take Actions in Procurement and Related Matters, the Associate Administrator for Procurement is authorized to permit the correction of bids under (FAR) 48 CFR 14.406–3 (a) and (b) and the award of a contract under (FAR) 48 CFR 14.406–3(d) (see (FAR) 48 CFR 14.406–3(e)). The Associate Administrator for Procurement has authorized procurement officers to permit withdrawal of bids when the conditions in (FAR) 48 CFR 14.406–3(c) are met.

* * * * *

1814.406–4 [Amended]

21. Section 1814.406–4 is amended by removing paragraph (b) and by removing the paragraph designation from paragraph (a).

PART 1815—CONTRACTING BY NEGOTIATION

22. Paragraph (b)(1) of section 1815.406–5 is revised to read as follows:

1815.406–5 Part IV—Representations and Instructions.

* * * * *

(b) * * *

(1) State if the selected contractor will require access to classified information (see NHB 1620.3, NASA Security Handbook).

* * * * *

23. Section 1815.570 is revised to read as follows:

1815.570 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

24. In section 1815.807–70, paragraph (d)(1) is revised to read as follows:

1815.807–70 Content of the prenegotiation position memorandum.

* * * * *

(d) *Cost analysis.* (1) Include a parallel tabulation, by element of cost and profit/fee, of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position, if applicable. For each element of cost, compare the contractor's proposal and each Government position, explain the differences and how the Government position(s) were developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution (see 1831.205–670). Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective.

* * * * *

PART 1816—TYPES OF CONTRACTS

1816.603–3 [Amended]

25. Section 1816.603–3 is amended by removing paragraphs (a) (2) and (3), removing the paragraph designation from paragraph (a)(1) (making that paragraph and paragraph (a) introductory text one paragraph), and redesignating paragraphs (a)(1) (i) through (xi) as paragraphs (a) (1) through (11).

PART 1817—SPECIAL CONTRACTING METHODS

26. In section 1817.504, the second sentence of paragraph (a) is revised to read as follows:

1817.504 Ordering procedures.

(a) * * * Before offers are solicited from commercial sources, the field installation's Director or a designee (see NMI 5101.24, Delegation of Authority to Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters) must determine whether to obtain the supplies or services from another Government agency. * * *

* * * * *

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

27. Section 1824.102 is revised to read as follows:

1824.102 General.

For NASA rules and regulations implementing the Privacy Act, see NMI 1382.17, Privacy Act—NASA Regulations (14 CFR part 1212).

28. Paragraph (a) of section 1824.202 is revised to read as follows:

1824.202 Policy.

(a) NASA implementation of the Freedom of Information Act is found in NMI 1382.2, Availability of Agency Records to Members of the Public (14 CFR part 1206).

* * * * *

PART 1825—FOREIGN ACQUISITION

29. In section 1825.604, the second sentence of paragraph (e) is revised to read as follows:

1825.604 Exempted supplies.

* * * * *

(e) * * * The contracting officer shall consult 14 CFR 1214.15 (NMI 8610.18, Duty-Free Entry of Space Articles) for procedures for obtaining the required Headquarters certificates for the duty-free entry of these articles.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

30. Sections 1831.205–670 and 1831.205–671 are added to read as follows:

1831.205–670 Evaluation of contractor and subcontractor compensation for service contracts.

(a) The contracting officer shall evaluate the reasonableness of compensation for service contracts:

(1) Prior to the award of a cost reimbursement or non-competitive fixed-price type contract which has a total potential value in excess of $500,000, and

(2) Periodically after award for cost reimbursement contracts, but at least every three years.

(b) The contracting officer shall ensure the reasonableness of compensation is evaluated for cost reimbursement or non-competitive fixed-price type service subcontracts under a prime contract meeting the criteria in paragraph (a)(1) of this section where:

(1) The subcontract has a total potential value in excess of $500,000, and

(2) The cumulative value of all of a subcontractor's service subcontracts under the prime contract is in excess of 10 percent of the prime contract's total potential value.

(c)(1) Offerors shall be required to submit as part of their proposals a compensation plan addressing all proposed labor categories. Offerors also shall demonstrate in writing that their proposed compensation is reasonable.

(2) Subcontractors meeting the criteria in paragraph (b) of this section shall be required to comply with paragraph (c)(1).

(d) The contracting officer's preaward evaluation of each offeror's and their subcontractors' compensation should be done as part of, or in addition to DCAA audits, price analyses, or any other means deemed to be necessary.

(e) The results of the contracting officer's evaluation, including any excessive compensation found and its planned resolution, shall be addressed in the prenegotiation position memorandum, with the final resolution discussed in the price negotiation memorandum.

(f) The contracting officer shall ensure that the reasonableness of compensation for cost reimbursement subcontracts meeting the criteria in paragraphs (b)(1) and (2) of this section is periodically reviewed after award, but at least every three years.

(g) The results of the periodic evaluations of contractor and subcontractor compensation after contract award shall be documented in the contract file.

1831.205–671 Solicitation provision.

The contracting officer shall insert a provision substantially the same as the provision at 1852.231–71, Determination of Compensation, in solicitations for services which contemplate the award of a cost reimbursement or non-competitive fixed-price type service contract having a total potential value in excess of $500,000.

PART 1832—CONTRACT FINANCING

31. The title and first sentence of section 1832.402–1 are revised to read as follows:

1832.402–1 Small Business Innovation Research contracts

Advance payments for all Small Business Innovation Research (SBIR) Phase I contracts have been authorized through a class deviation. * * *

32. Paragraph (d) of section 18.32.702–70 is amended by revising the third and four sentences to read as follows:

1832.702–70 [Amended]

* * * * *

(d) * * * The procurement officer shall maintain a record of all such approvals during the fiscal year. At a minimum, the record will include: contract number, description and type; dollar value; amount of funds initially available; and the reason(s) for the waiver.

* * * * *

1832.705–2 [Removed]

33. Section 1832.705–2 is removed.

34. Section 1832.705–270 is amended by revising the first sentence of paragraph (b) as follows:

1832.705–270 Additional clauses for limitation of cost or funds.

(a) * * *

(b) The contracting officer shall insert a clause substantially as stated at 1852.232–81, Contract Funding, in Section B of solicitations and contracts containing the clause at (FAR) 48 CFR 52.232–22, Limitation of Funds. * * *

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

35. In section 1835.003, paragraph (c) is revised to read as follows:

1835.003 Policy.

* * * * *

(c) See NMI 5109.13, Recoupment Policy for the Sale, Use, Lease, or Other Transfer of NASA-Developed Technologies, for NASA policy regarding recoupment.

PART 1837—SERVICE CONTRACTING

36. Section 1837.200 is revised to read as follows:

1837.200 Scope of subpart.

This subpart implements and supplements (FAR) 48 CFR part 37, subpart 37.2 and NMI 5104.5, Guidelines for the Use and Approval of Advisory and Assistance Services Obtained by Contract, and establishes procedures to be followed in contracting for advisory and assistance services.

PART 1842—CONTRACT ADMINISTRATION

37. In section 1842.173, the second sentence is revised to read as follows:

1842.173 Reimbursement for contract administration services.

* * * Budgeting, funding, and payment for these services shall be accomplished in accordance with NMI 7410.1, Management, Funding, and Payment for Contract and Grant Administration and Audit Services Obtained from Other Federal Agencies. * * *

38. In section 1842.202–72, the first sentence is revised to read as follows:

1842.202–72 Delegations to security offices.

NASA's policies and procedures on security are set forth in NMI 1600.2, NASA Security Program. * * *

PART 1845—GOVERNMENT PROPERTY

39. Paragraph (a) of section 1845.302–70 is revised to read as follows:

1845.302–70 Securing approval of facilities projects.

(a) Pursuant to NMI 7330.1, Delegation of Authority—Approval Authorities for Facility Projects, the contracting officer must approve facilities projects involving leasing, construction, expansion, modification, rehabilitation, repair, or replacement of real property.

* * * * *

PART 1846—QUALITY ASSURANCE

40. In section 1846.270, the second sentence of paragraph (a) is revised to read as follows:

1846.270 Contract clauses for space flight-related operations.

(a) * * * The clause, however, shall not be used in procurements for flight

crew members or payload specialists when these individuals are covered by other NASA Management Instructions that have screening requirements equivalent to those in NMI 8610.13, Mission Critical Space Systems Personnel Reliability Program (for example, NMI 7100.16, Payload Specialists for Space Transportation System (STS) Missions).

* * * * *

PART 1847—TRANSPORTATION

41. Section 1847.200–70 is revised to read as follows:

1847.200–70 Charter of aircraft.

When procuring aircraft by charter, contracting officers shall comply with NHB 7900.3, Aircraft Operations Management Manual.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

42. Section 1852.231–71 is added to read as follows:

1852.231–71 Determination of Compensation Reasonableness.

As prescribed at 1831.205–671, insert the following provision.

Determination of Compensation Reasonableness

(March 1994)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at (FAR) 48 CFR 52.222–46, "Evaluation of Compensation for Professional Employees."

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used for those Service Contract Act employees proposed that do not fall within the scope of any classification listed in the applicable wage determination.

(d) The offeror shall require all service subcontractors (1) with proposed cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value in excess of $500,000 and (2) the cumulative value of all their service subcontracts under the proposed prime contract in excess of 10 percent of the prime contract's total potential value, provide as part of their proposals the information identified in (a) through (c) of this provision.

(End of provision)

1852.237–71 [Amended]

43. Paragraph (c) of the clause in section 1852.237–71 is amended by removing the footnote "*" and adding in its place "_____ [In accordance with 1837.170(a)(2), a period of time (e.g., one year) may be inserted.]" and the footnote "*" to paragraph (c) is removed.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

44. In Appendix I to section 1870.103, paragraph 101.4. and the second sentence of paragraph 302.2. are revised to read as follows:

Appendix I to 1870.103: Guidelines for Acquisition of Investigations

* * * * *

Chapter 1—The Investigation Acquisition System

* * * * *

101 Key Features of the System

* * * * *

4. When the need is determined by the Program Associate Administrator, payload specialists will be selected in accordance with NMI 7100.16, Payload Specialists for Space Transportation System (STS) Missions.

* * * * *

Chapter 3—The Announcement of Opportunity

* * * * *

302 Responsibilities

* * * * *

2. * * * Attention is directed to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

* * * * *

45. In Appendix I to section 1870.303, the first sentence of paragraph 404.2.l, the second sentence of paragraph 602.2, paragraph 603.5.b, and the first sentence of paragraph 603.5.c. are revised to read as follows:

Appendix I to 1870.303—NASA Source Evaluation Board Procedures (Handbook)

* * * * *

Chapter 4—SEB Operating Procedures for Solicitation and Evaluation

* * * * *

404 Request for Proposals (RFP's)—Review and Approval

* * * * *

2. * * *

* * * * *

l. When the procurement involves a major system under NMI 7120.4, Management of Major System Programs and Projects, and NHB 7120.5, Management of Major System Programs and Projects Handbook, the SEB will ensure that the RFP is prepared in terms of mission need so each offeror can respond with an alternative system design concept proposal to satisfy the mission need and can propose a technical approach, design features, and alternatives to schedule, cost, and capability goals consistent with that concept. * * *

* * * * *

Chapter 6—Source Selection

* * * * *

602 Notice and Debriefing for Unsuccessful Offerors

* * * * *

2. * * * This debriefing should normally take place prior to contract award and be conducted in accordance with 15.1003. * * *

* * * * *

603 Source Selection Statement

* * * * *

5. * * *

b. Accordingly, unless prior approval is obtained through the Headquarters Procurement Operations Division (Code HS) with the concurrence of the Office of General Counsel, Source Selection Statements for the selection of alternative system design concepts subject to NMI 7120.4, Management of Major System Programs and Projects, and NHB 7120.5, Management of Major System Programs and Projects Handbook, are not to be released to competing offerors or the general public, if requested, prior to the release of the Source Selection Statement for full-scale development.

c. A similar problem may occur in other procurements where competition continues but is not covered under NMI 7120.4 or NHB 7120.5. * * *

* * * * *

[FR Doc. 94–5144 Filed 3–15–94; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 59, No. 51
Wednesday, March 16, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1499

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period relating to a proposed rule that would establish regulations governing the donation of agricultural commodities by Commodity Credit Corporation for distribution in foreign countries pursuant to Section 416(b) of the Agriculture Act of 1949, or the Food for Progress Act of 1985.

DATES: Consideration will be given to written comments submitted on or before April 15, 1994.

ADDRESSES: Comments should be submitted to: Director/PAD, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Ave., SW., room 4079–S, Washington, DC 20250–1000.

SUPPLEMENTARY INFORMATION: On February 14, 1994, we published in the **Federal Register** (59 FR 6916) a proposed rule to establish regulations governing the donation of agricultural commodities by the Commodity Credit Corporation for distribution in foreign countries pursuant to section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985.

Comments on the proposed rule were required to be submitted by March 16, 1994. However, in response to requests received, we are extending this comment period to April 15, 1994. This extension will allow interested persons additional time in which to prepare comments on the proposed rule.

Signed this March 10, 1994, in Washington, DC.

Philip Mackie,

Acting General Sales Manager, FAS, and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 94–6035 Filed 3–15–94; 8:45 am]
BILLING CODE 3410–10–M

Farmers Home Administration

7 CFR Parts 1942 and 1980

RIN 0575–AB53

Rural Business Enterprise Grants and Television Demonstration Grants; Technical Assistance and Training Grants; Nonprofit National Corporations Loan and Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend the FmHA policies and procedures governing the administration of programs which authorize technical assistance as an eligible grant purpose. This action is necessary to implement legislation that prohibits duplication of technical assistance grant funding provided by the Forest Service (FS). The intended effect of this action is to require that grant funds may not be used to pay for technical assistance which duplicates assistance provided under an action plan funded by the FS under the National Forest-Department Rural Communities Economic Diversification Act during 5 continuous years from the date of grant approval by the FS.

DATES: Comments must be submitted on or before April 15, 1994.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Barton, Loan Specialist, Community Facilities Division, Rural Development Administration, U.S. Department of Agriculture, room 6314, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700, telephone (202) 720–1504.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Environmental Impact

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Executive Order 12778

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900, Subpart B, must be exhausted prior to filing suit.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 1.5 hours per response, with an average of 1 hour per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding 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, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

Background

FmHA proposes this action to implement section 2375(e) of Public Law 101–624, which requires the Secretary of Agriculture to ensure that no substantially similar geographical or defined local area in a State receives a grant for technical assistance to an economically disadvantaged community from the FS and a grant for technical assistance under a designated rural development program as defined in section 365(b)(2) of the Consolidated Farm and Rural Development Act, during any continuous 5-year period.

Programs Affected

The programs/activities are listed in the Catalog of Federal Domestic Assistance under Numbers 10.424, Rural Development Grants; 10.434, Nonprofit National Corporations Loans and Grant Program; and 10.436, Technical Assistance and Training Grants. The 10.424 and 10.434 programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The 10.436 program is exempt from the provisions of Executive Order 12372. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J.

List of Subjects in 7 CFR Parts 1942 and 1980

Business and industry; Community development; Community facilities; Economics development, Grant programs—housing and community development, Grant programs—nonprofit corporations, Industrial park, Loan programs—nonprofit corporations, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

2. Section 1942.307 is amended by adding a new paragraph (a)(6) as follows:

§ 1942.307 Limitations on use of grant funds.

(a) * * *

(6) To pay for technical assistance as defined in this subpart which duplicates assistance provided to implement an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with FS and FmHA to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for technical assistance under the above program. The grantee will provide documentations to FS and FmHA regarding the contact with each agency. Under its program, the FS assists rural communities dependent upon national forest resources by establishing rural forestry and economic diversification action teams which prepare action plans. Action plans are intended to provide opportunities to promote economic diversification and enhance local economies dependent upon national forest resources.

* * * * *

Subpart J—Technical Assistance and Training Grants

3. Section 1942.460 is amended by adding paragraph (g) to read as follows:

§ 1942.460 Limitations.

* * * * *

(g) Pay for technical assistance as defined in this subpart which duplicates assistance provided to implement an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with the FS and FmHA to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for technical assistance under the above programs. The grantee will provide documentation to FS and FmHA regarding the contact with each agency. Under its program, the FS assists rural communities dependent upon national forest resources by establishing rural forestry and economic diversification action teams which prepare action plans. Action plans are intended to provide opportunities to promote economic diversification and enhance local economies dependent upon national forest resources.

PART 1980—GENERAL

4. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Nonprofit National Corporations Loan and Grant Program

5. Section 1980.613 is amended by redesignating the existing paragraph as paragraph (a) and adding subparagraph (b) to read as follows:

§ 1980.613 Technical assistance.

* * * * *

(b) Grant funds for technical assistance which duplicates assistance provided under an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Economic Diversification Act provided for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the NNC shall coordinate with the FS and FmHA to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for technical assistance under the above program. The NNC will provide documentation to FS and FmHA regarding the contact with each agency.

Under its program, the FS assists rural communities dependent upon national forest resources by establishing rural forestry and economic diversification action teams which prepare action plans. Action plans are intended to provide opportunities to promote economic diversification and enhance local economies dependent upon national forest resources.

Dated: March 1, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–6023 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0832]

Revisions Regarding Tie-in Prohibitions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is seeking public comment on proposed amendments to Regulation Y that would permit bank holding companies to offer discounts on brokerage commissions if the customer obtains a traditional bank product (a loan, discount, deposit, or trust service) from any affiliate. The Board recently approved an exemption permitting discounts on brokerage commissions for First Union Corporation, Charlotte, North Carolina (First Union), and the proposed rule would make it available to bank holding companies generally, thus avoiding the need for action on individual requests.

The proposal also seeks comment on whether the Board should adopt an exception to the antitying prohibitions to permit a bank to discount a traditional bank product if the customer obtains another traditional bank product from an affiliate of the bank. This exemption extends to affiliates the statutory exemption that permits a bank to offer discounts on packages of traditional bank products. The Board has received several requests for exemptions involving individual traditional bank products and believes that such an exemption is more appropriately addressed in rulemaking.

DATES: Comments must be submitted on or before April 14, 1994.

ADDRESSES: Comments, which should refer to Docket No. R-0832, may be mailed to the Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Managing Senior Counsel (202/452-3711); Laurie S. Schaffer, Senior Attorney (202/452-2246), or David S. Simon, Attorney (202/452-3611), Legal Division; or Anthony Cyrnak, Economist, (202/452-2917), Division of Research and Statistics, Board of Governors. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 et seq.) (Section 106) generally prohibits banks from tying a product or service to another offered by the bank or any of its affiliates. A prohibited tie-in occurs if a bank: (1) varies the consideration for credit or other service on the condition that the customer obtain some additional service from the bank or any of its affiliates; or (2) actually requires the customer to purchase another product or service from the bank or any of its affiliates as a condition for providing the customer the first product or service. In 1971, the Board applied these antitying prohibitions to bank holding companies and their nonbank subsidiaries as if they were banks.

The statute provides an exemption permitting a bank to tie a product with a traditional bank product[1] offered from that bank, but not from any of its affiliates. Thus, Section 106 permits a bank to discount the consideration paid for credit if a customer also obtains a traditional banking product from that bank (but not an affiliate of that bank).

Section 106 provides that the Board may, by regulation or order, permit exceptions from the antitying prohibition where the Board determines that an exception will not be contrary to the purposes of the section.

[1] These products are defined for purposes of tie-in prohibitions as "a loan, discount, deposit, or trust service." 12 U.S.C. 1972(1)(A).

Analysis of Proposed Amendments

Discounts on Brokerage Services. The Board recently approved an exemption for a brokerage subsidiary of a First Union bank to offer discounts on commissions for brokerage services to customers who maintain a minimum balance in accounts at any First Union bank.[2] The Board found that the market for retail brokerage services is national in scope and highly competitive therefore making it unlikely that First Union—or any other provider of brokerage services—could exercise sufficient market power to impair competition in the market for traditional banking services. The Board also noted that, under antitrust precedent, concerns over these types of arrangements were substantially reduced where the buyer is free to take either product by itself even though the seller also may offer the two items as a unit at a single price.[3] Under these circumstances, the Board concluded that the requested exemption was consistent with the legislative purpose of the statute (to prevent banks from using their economic power to lessen competition or engage in anticompetitive practices) and the legislative purpose of the Board's exemptive authority (to allow appropriate traditional banking practices based on sound economic analysis).

The Board believes that this exemption should be available to all bank holding companies, and the proposed rule implements this exemption by permitting a bank to offer a discount on brokerage services if the customer obtains a traditional banking product from that bank or any affiliate. The brokerage services and traditional banking products offered in the arrangement, however, could be separately purchased by the customer.

Traditional Bank Products. As noted, Section 106 contains an exemption that permits a bank to tie a product to a traditional bank product so long as both products are offered by the bank itself. The statute does not permit a bank to tie its products to a traditional bank product offered by an affiliate bank or nonbank, however. The Board has received several requests for exemptions involving proposed discounts on individual traditional bank products offered by a bank and its affiliates.[4] The

[2] *First Union Corporation*, 80 Federal Reserve Bulletin 166 (1994) ("First Union Order").

[3] *Northern Pacific R. Co. v. United States*, 356 U.S. 1, 6, n.4 (1958).

[4] A request by First Union, which would permit any First Union bank to vary the consideration on traditional bank products to customers who

proposal seeks comment on adopting an exception to the antitying restrictions of Section 106 to permit a bank to offer a discount on a traditional bank product it offers if the customer obtains another traditional bank product from an affiliate of the bank, provided that all the products are available for separate purchase by the customer.

The Board believes that such an exemption is consistent with the purposes of the statute, and the Congressional intent not to affect traditional banking relationships. In this regard, the Senate Report states that the traditional bank products exemption was intended to preserve a customer's ability to negotiate the price of multiple banking services with the bank on the basis of the customer's entire relationship.[5] The Senate Report also suggests that the Board could use its exemptive authority to continue to allow appropriate traditional banking practices.[6]

Banks organized in a bank holding company structure currently are subject to regulatory burdens not imposed on single banks offering discounts on traditional bank products. Moreover, it does not appear to further the purpose of the statute to allow a bank to discount a product it offers if the customer has purchased a traditional bank product from the bank, but not to allow the discount when the customer has purchased the very same traditional bank product from an affiliate bank or nonbank. By removing this regulatory burden, the Board believes that consumers would benefit from costs savings realized through more efficient operations.

The same efficiencies and costs savings to consumers would be realized by permitting discounts on traditional bank products offered by nonbank affiliates in a package arrangement with an affiliate bank. In this regard, the legislative history for provisions involving tying prohibitions enacted after Section 106 support these types of package arrangements for traditional bank products offered in combination with nonbanking affiliates.[7]

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 the proposed rule.

Regulatory Flexibility Act

It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. In § 225.4, new paragraphs (d)(3) and (d)(4) are added to read as follows:

§ 225.4 Corporate practices.

* * * * *

(d)(1)

* * * * *

(3) *Exemption for brokerage services.* A bank may vary the consideration charged for brokerage services on the condition or requirement that the customer also obtain a loan, discount, deposit, or trust service (but no other products) from that bank or any affiliate, if the brokerage services and the loan, discount, deposit, or trust service offered in the arrangement also are separately available for purchase by the customer. The exemption granted pursuant to this paragraph shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices.

(4) *Exemption for traditional bank products.* A bank may vary the consideration charged for a loan, discount, deposit, or trust service (but no other products) on the condition or requirement that the customer also obtain a loan, discount, deposit, or trust service (but no other products) from an affiliate of that bank, if all these products are separately available for purchase by the customer. The exemption granted pursuant to this paragraph shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-6050 Filed 3-15-94; 8:45 am]

BILLING CODE 6210-01-F

maintain a minimum balance in accounts at any bank affiliate, was published and received 10 comments. All the commenters favored the proposal, and several commenters requested the Board to broaden the exemption to include all traditional bank products through rulemaking.

[5] S. Rep. No. 1084, 91st Cong., 2d Sess., 16-17 (1970) ("Senate Report"). The Senate Report cites the following application of the exemption: "where the customer uses multiple banking services such as deposit, loan, fiduciary, and commercial accounts or facilities, the parties may be free to fix or vary the consideration for any services upon the existence or extent of utilization of such banking services." Senate Report at 17. Senator Bennett noted when introducing the tie-in amendment that "[c]learly, neither a bank nor its customer should be attacked under [Section 106] for taking advantage of the economies and efficiencies of full-service banking." 116 Cong. Rec. S15708 (1970).

[6] Senate Report at 46.

[7] In the Competitive Equality Banking Act of 1987 (Pub. L. 100-86), which applied the tie-in restrictions to nonbank banks, Congress indicated that "the anti-tying restrictions [of Section 106] would not be violated by tying one of these traditional banking services offered by a grandfathered nonbank bank to another traditional banking service offered by an affiliate." H.R. Conf. Rep. No. 261, 100th Cong., 1st Sess. 128-29 (1987). While this excerpt does not accurately reflect the literal terms of Section 106, it lends support for the proposed extension of an exemption for tie-in arrangements for traditional banking services offered by a bank and its nonbanking affiliates or parent holding company.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-01-AD]

Airworthiness Directives; Nordskog Water Heaters and Coffee Makers as Installed in Various 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 Nordskog water heaters and coffee makers. This proposal would require an inspection to determine whether certain discrepant pressure relief valves have been installed in certain galley water heaters and coffee makers; and either replacement of the discrepant valves, or discontinued use and installation of placards. This proposal is prompted by reports of injuries to cabin crew members that resulted from explosions of galley water heaters. The actions specified by the proposed AD are intended to prevent explosions of galley water heaters and coffee makers, and subsequent injuries to passengers or cabin crew members.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–01–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 Aircraft Products Company, 12807 Lake Drive, P.O. Box 130, Delray Beach, Florida 33447–0130. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5210.

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–01–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–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 15, 1993, the FAA issued AD 93–23–01, Amendment 39–8735 (58 FR 61618, November 22, 1993), applicable to certain Nordskog water heaters and coffee makers installed in various airplanes, to require an inspection to determine whether certain NUPRO pressure relief valves have been installed in certain Nordskog galley water heaters and coffee makers. That AD also requires either replacement of those NUPRO pressure relief valves with new, improved NUPRO pressure relief valves, or discontinued use of certain Nordskog galley water heaters and coffee makers and installation of placards stating, "Not to be used." That action was prompted by reports of injuries to cabin crew members that resulted from explosions of galley water heaters. The requirements of that AD are intended to prevent explosions of galley water heaters and coffee makers, and subsequent injuries to passengers or cabin crew members.

The incident reports that prompted AD 93–23–01 involved units with an integral check valve; AD 93–23–01 applies only to units with the integral check valve. In the preamble to that AD, the FAA indicated that it was evaluating the need for additional AD action to address other installations that incorporate the same pressure relief valve design. The FAA now finds that Nordskog water heaters and coffee makers without the integral check valve also use the same pressure relief valve. Therefore, these units could also be subject to the same unsafe condition as addressed by AD 93–23–01.

The FAA has reviewed and approved Nordskog Industries, Inc., Service Bulletin SB–93–35, dated October 21, 1993, that describes procedures for an inspection to determine whether certain NUPRO pressure relief valves have been installed in certain Nordskog galley water heaters and coffee makers; and replacement of those NUPRO pressure relief valves with new, improved NUPRO pressure relief valves. The manufacturer has advised that the discrepant pressure relief valve has been installed in certain Nordskog galley water heaters and coffee makers that either were manufactured between January 1990 and July 1991, or have been serviced since January 1990. The manufacturer has also advised the FAA that this problem has been corrected on the new model number pressure relief valves installed by Nordskog since July 1991. The effectivity listing of this service bulletin includes the model numbers of Nordskog galley water heaters and coffee makers on which the discrepant relief valves may be installed.

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 an inspection to determine whether certain NUPRO pressure relief valves have been installed in certain Nordskog galley water heaters and coffee makers. This proposed AD would also require either replacement of those NUPRO pressure relief valves with new, improved NUPRO pressure relief valves, or discontinued use of certain Nordskog galley water heaters and coffee makers and installation of placards stating, "Not to be used." The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA is aware that the subject water heaters and coffee makers are installed in various airplanes. There are approximately 300 of these airplanes in the worldwide fleet; the FAA estimates that 200 airplanes are of U.S. registry It would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour (There are approximately 4 water heaters and/or coffee makers installed on each airplane.) The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $22,000, or $110 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:

Nordskog Industries, Inc.: Docket 94–NM–01–AD.

Applicability: Nordskog water heaters and coffee makers, as listed in Nordskog Industries, Inc., Service Bulletin SB–93–35, dated October 21, 1993; as installed in, but not limited to Boeing Model 727, 737, 747, 757, and 767 series airplanes; McDonnell Douglas Model DC–9, DC–9–80, and DC–10 series airplanes, and MD–11 airplanes; Lockheed Model L–1011 series airplanes; Airbus Industrie Model A300, A310, and A320 series airplanes; Gulfstream Model G–1159 series airplanes and Model G–IV airplanes; de Havilland, Inc., Model DHC–8 series airplanes; Dassault-Aviation Model Mystere-Falcon 50, 200, and 900 series airplanes; Canadair Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and –3R) and CL–600–2B19 series airplanes; and Fokker Model F27 and F28 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent explosions of galley water heaters and coffee makers, and subsequent injuries to passengers or cabin crew members, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time inspection to determine whether a NUPRO pressure relief valve having part number (P/N) SS–2C4–65 has been installed, in accordance with Nordskog Industries, Inc., Service Bulletin SB–93–35, dated October 21, 1993. If any NUPRO pressure relief valve having P/N SS–2C4–65 has been installed, prior to further flight, accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Remove the NUPRO pressure relief valve having P/N SS–2C4–65 and install a new, improved NUPRO pressure relief valve having P/N SS–CHF2–65, in accordance with the service bulletin. Or

(2) Deactivate any Nordskog water heater or coffee maker listed in the service bulletin on which a NUPRO pressure relief valve having P/N SS–2C4–65 has been installed, and install a placard stating, "Not to be used."

(b) As of the effective date of this AD, no person shall install a NUPRO pressure relief valve having P/N SS–2C4–65 on any airplane

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

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

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 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 March 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6067 Filed 3–15–94; 8:45 am]

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14 CFR Part 39

[Docket No. 91–CE–76–AD]

Airworthiness Directives: Beech Aircraft Corp. Models B300 and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise AD 91–20–14, which currently requires incorporating revised takeoff and climb performance charts into the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (AFM/POH) on Beech Aircraft Corporation (Beech) Models B300 and B300C airplanes. Beech has started incorporating these takeoff and climb requirements into the AFM/POH of airplanes manufactured since issuance of AD 91–20–14. The proposed action would limit the applicability to only those airplanes without these takeoff and climb requirements incorporated into the AFM/POH at production. The actions specified by the proposed AD are intended to ensure that the affected airplanes achieve required minimum takeoff and climb performance for each approved combination of takeoff configuration, weight, pressure altitude, and temperature.

DATES: Comments must be received on or before May 27, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Copies of the AFM/POH revision that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Bennett L. Sorensen, Flight Test Pilot, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4165; facsimile (316) 946–4407.

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 should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, 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 that summarizes 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 No. 91–CE–76–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 91–20–14, Amendment 39–8168 (January 30, 1992, 57 FR 3516), currently requires incorporating revised takeoff and climb performance charts, B2 revision, part number (P/N) 130–590031–1, dated September 1991, into the AFM/POH on Beech Models B300 and B300C airplanes. Beech has started incorporating these takeoff and climb requirements into the AFM/POH of Models B300 and B300C airplanes manufactured since issuance of AD 91–20–14.

After examining the circumstances and reviewing all available information related to the action described above, the FAA has determined that (1) the applicability of AD 91–20–14 should exclude those airplanes incorporating the takeoff and climb requirements in the AFM/POH at manufacture; and (2) AD action should remain for all other Models B300 and B300C airplanes in order to continue to ensure that these airplanes achieve required minimum takeoff and climb performance for each approved combination of takeoff configuration, weight, pressure altitude, and temperature.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Models B300 and B300C airplanes of the same type design, the proposed AD would revise AD 91–20–14 to continue to require incorporating revised takeoff and climb performance charts, B2 revision, part number (P/N) 130–590031–1, dated September 1991, into the AFM/POH, but would exclude those airplanes incorporating the takeoff and climb requirements at manufacture.

The FAA estimates that 118 airplanes in the U.S. registry would be affected by the proposed AD, and that it would take approximately 1 workhour to incorporate the charts into the POH. Since an owner/operator who holds a private pilot certificate as authorized by 14 CFR 43.7 and 14 CFR 43.11 of the Federal Aviation Regulations is allowed to accomplish the proposed inspection, the only cost impact upon the public would be the time it takes to incorporate these charts.

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 action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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 removing AD 91–20–14, Amendment 39–8168 (January 30, 1992, 57 FR 3516), and by adding the following new airworthiness directive to read as follows:

Beech Aircraft Corporation: Docket No. 91–CE–76–AD; Revises AD 91–20–14, Amendment 39–8168.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial No.
B300	FL–1 through FL–110.
B300C	FM–1 through FM–8.

Compliance: Required within 10 hours time-in-service after February 20, 1992 (the effective date of AD 91–20–14), unless already accomplished.

To ensure that the affected airplanes achieve required minimum takeoff and climb performance for each approved combination of takeoff configuration, weight, pressure altitude, and temperature, accomplish the following:

(a) Incorporate the takeoff and climb performance charts, B2 revision, part number (P/N) 130–590031–1, dated September 1991, into the Model B300 and B300C Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (AFM/POH).

Note 1: The charts sent in the priority letter AD 91–20–14 package and B2 revision, P/N 130–590031–1, dated September 1991, are the same.

(b) Incorporating the climb and takeoff charts as required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by 14 CFR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.11.

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

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

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

(e) All persons affected by this directive may obtain copies of the AFM/POH revision referred to herein upon request to Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment revises AD 91–20–14, Amendment 39–8168.

Issued in Kansas City, Missouri, on March 10, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6042 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–V

14 CFR Part 39

[Docket No. 94–NM–13–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With General Electric CF6–80A or Pratt & Whitney JT9D–7R4 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 767 series airplanes. This proposal would require replacement of the thrust reverser flow restrictor devices with one-way (check) valve restrictors. This proposal is prompted by reports of piston seal leakage found during actuator overhaul on certain Model 767 series airplanes. The actions specified by the proposed AD are intended to prevent possible deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–13–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: Richard Simonson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2683; 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 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–13–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–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of piston seal leakage found during actuator overhaul on Model 767 series airplanes equipped with General Electric CF6–80A and Pratt & Whitney JT9D–7R4 engines. There have been no reports of thrust reverser sleeve deployment due to this leakage; however, testing accomplished by the airplane manufacturer suggests that if sufficient seal leakage occurs in the locking actuator on a single thrust reverser sleeve, that sleeve could possibly deploy.

The deploy and stow sides of the thrust reverser actuator are separated by a piston seal. During reverser stow, or during an occurrence of auto-restow, leakage of this seal can allow hydraulic fluid to pass from the stow side of the actuator to its deploy side. If this leakage is sufficient, a flow control/restrictor device in the hydraulic line can subsequently cause back pressure to build up in the deploy side of the actuator. In such cases, the sleeve could possibly unlock and deploy. This condition, if not corrected, could result in reduced controllability of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletins 767–78A0064 (for Model 767 series airplanes equipped with General Electric CF6–80A engines) and 767–78A0065 (for Model 767 series airplanes equipped with Pratt & Whitney JT9D–7R4 engines), both dated July 16, 1992, that describe procedures for replacement of the thrust reverser flow restrictor devices with one-way (check) valve restrictors. Accomplishment of this replacement will prevent the possibility of uncommanded deployment of a single thrust reverser sleeve ("half") caused by leakage of the piston seals in the thrust reverser sleeve actuators.

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 replacement of the thrust reverser flow restrictor devices with one-way (check) valve restrictors. The actions would be required to be accomplished in accordance with the alert service bulletins described previously.

There are approximately 119 Model 767 series airplanes equipped with General Electric CF6–80A engines of the affected design in the worldwide fleet. The FAA estimates that 69 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model 767 series airplanes equipped with General Electric CF6–80A engines is estimated to be $121,440, or $1,760 per airplane.

There are approximately 95 Model 767 series airplanes equipped with Pratt & Whitney JT9D–7R4 engines of the affected design in the worldwide fleet. The FAA estimates that 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these

figures, the total cost impact of the proposed AD on U.S. operators of Model 767 series airplanes equipped with Pratt & Whitney JT9D–7R4 engines is estimated to be $49,500, or $1,650 per airplane.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $170,940.

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–13–AD.

Applicability: Model 767 series airplanes equipped with General Electric CF6–80A or Pratt & Whitney JT9D–7R4 engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, replace the thrust reverser flow restrictor devices with one-way (check) valve restrictors in accordance with Boeing Alert Service Bulletin 767–78–0064 (for Model 767 series airplanes equipped with General Electric CF6–80A engines) or 767–78–0065 (for Model 767 series airplanes equipped with Pratt & Whitney JT9D–7R4 engines), both dated July 16, 1992, as applicable.

(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 Federal Aviation Regulations (FAR) 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 March 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6066 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–ANM–11]

Proposed Amendment to Class D Airspace; Grand Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Grand Junction, Colorado, Class D airspace. This action is necessary to correct an error in the airspace description inadvertently omitted during the airspace reclassification process. This action would amend the Grand Junction, Colorado, Class D airspace from full-time to part-time. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "airport traffic area" and "control zones" with operating control towers, and replaced them with the designation "Class D airspace."

DATES: Comments must be received on or before April 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–11, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–11, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report

summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Grand Junction, Colorado, to correct an error in the Class D airspace description. During the airspace reclassification process (57 FR 38962; August 27, 1992) the language designating the Class D airspace as part-time was inadvertently omitted. This action would correct that omission. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and "control zones" with operating control towers, and replaced them with the designation "Class D airspace." The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36299; July 6, 1993). The Class D airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM CO D Grand Junction, CO [Amended]

Grand Junction, Walker field, CO
(lat. 39°07'21"N, long. 108°31'36"W)

That airspace extending upward from the surface to and including 7,400 feet MSL within a 4.7-mile radius of Walker Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on March 3, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 94–6102 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AAL–1]

Proposed Extension of Jet Route J–179 and Establishment of Jet Route J–510; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter Jet Route J–179 between the Middleton Island, AK, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the Sparrevohn, AK, VOR/DME and from the St. Mary's, AK, Nondirectional Radio Beacon (NDB) to the Emmonak, AK, VOR/DME. Also, this proposed rule would establish Jet Route J–510 between the Galena, AK, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Emmonak, AK, VOR/DME. This action would enhance navigation for aircraft flying from the continental United States and aircraft departing from Anchorage International Airport. This action would also reduce pilot and air traffic controller workload.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 94–AAL–1, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–

AAL–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 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 a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter Jet Route J–179 by extending J–179 from Middleton Island, AK, VOR/DME to Emmonak, AK, VOR/DME, and to establish Jet Route J–510 from Galena, AK, (VORTAC) to Emmonak, AK, VOR/DME. This action would enhance navigation for aircraft flying from the continental United States and aircraft departing from Anchorage International Airport. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet routes listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–179 [Revised]

From Middleton Island, AK; Kenai, AK; Sparrevohn, AK; Aniak, AK, NDB; St. Mary's, AK, NDB: to Emmonak, AK.

* * * * *

J–510 [New]

From Galena, AK; Unalakleet, AK; to Emmonak, AK.

* * * * *

Issued in Washington, DC, on March 9, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–6103 Filed 3–15–94; 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

March 10, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of filing and opportunity to file comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has received filings relating to the use of a standardized ASCII format for downloading capacity release data sets, including proposed ASCII file formats, and the requirement to post operationally available capacity. The Commission is affording interested persons an opportunity to file comments on this filing.

DATES: Comments due by March 17, 1994.

ADDRESSES: Comments should be filed at: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2294.

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) 208–0666.

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.

Notice of Filing

March 10, 1994.

Take notice that on March 9, 1994, Working Groups 1 & 2 submitted filings relating to the use of a standardized ASCII format for downloading capacity release data sets, including proposed ASCII file formats. On March 3, 1994, Working Groups 1 & 2 also forwarded an additional comment on the requirement to post operationally available capacity.

Any person desiring to submit comments on these filings should file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 on or before March 17, 1994.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6054 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

RIN 096–AD45

Organization and Procedures; Procedures of the Office of Hearings and Appeals; Authority of Appeals Officers To Deny a Request for Appeals Council Review; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Correction to proposed rule.

SUMMARY: This document contains corrections to the preamble to the proposed rule published Monday, January 10, 1994 (59 FR 1363). The proposed rule would amend 20 CFR 422.205, which describes the organization and procedures of the Appeals Council, to authorize Appeals Officers, as well as members of the Appeals Council, to deny a request for review of a decision by an Administrative Law Judge (ALJ).

DATES: To be sure that your comments are considered, we must receive them no later than March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 (410) 965–1769.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule that is the subject of these corrections would amend the regulation concerning the organization and procedures of the Appeals Council, 20 CFR 422.205, to authorize Appeals Officers, as well as members of the Appeals Council, to deny a request for review of a decision by an ALJ.

Need for Correction

As published, the preamble to the proposed rule contains the following errors. One paragraph was inadvertently omitted, and parts of two other paragraphs were shown twice. In addition, a paragraph which references those Catalog of Federal Domestic Assistance Programs affected by the proposed rule contained a phrase which should have appeared in another paragraph of the preamble and incomplete program designations.

Correction of Publication

Accordingly, the publication on January 10, 1994 of the proposed rule, which was the subject of FR Doc. 94–481, is corrected as follows:

1. On page 1364, in the second column, delete the last four lines of the second paragraph under Regulatory Provisions beginning with the word "Judges". Insert the following as the third paragraph:

> The terms "member" and "members" of the Appeals Council are used throughout § 422.205 and in several other sections of 20 CFR, Chapter III (see, for example §§ 404.2, 404.950, 404.1785, 410.110, 410.639, 410.658, 410.692, 410.696, 416.120, 416.1450, and 416.1585). The substantive provisions of the regulations with respect to the authority of the Appeals Council are not changed by our decision to designate the "members" as "Administrative Appeals Judges," or by the proposed change to expand the authority of the Appeals Officers, who organizationally are part of the Council.

2. On page 1364, in the third column, delete the first full paragraph which begins with the word "Inasmuch".

3. On page 1364, in the third column, in the Catalog of Federal Domestic Assistance Program references: remove the phrase "Reporting and recordkeeping requirements;"; add after the word "Security;" in the second to last line "93.806 Special Benefits for Disabled Coal Miners;"; and add immediately after the word "Security" in the last line the word "Income".

4. On page 1364, in the third column, in the paragraph which follows "List of Subjects in 20 CFR Part 422," add ", Reporting and recordkeeping requirements" immediately after "security".

Dated: March 10, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–6071 Filed 3–15–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment repeals Maryland's Code of Maryland Regulations (COMAR) 08.13.02 (Deep-Mining of Coal). Regulations that existed in the repealed Chapter 02 and are still necessary to regulate deep-mining are moved to COMAR 08.20 (Surface Coal Mining and Reclamation Under Federally Approved Program). This proposed amendment facilitates the codification of Maryland's approved program and is intended to revise the Maryland program to be consistent with the corresponding Federal regulations. Minor changes were made to certain provisions transferred to COMAR 08.20.

This document sets forth the times and locations that the Maryland program and the proposed amendment to that program are available for public inspection, the dates and times of the comment period during which interested persons may submit written comments on the amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m., [e.s.t.] on April 15, 1994. If requested, a public hearing on the amendment will be held at 9 a.m., [e.s.t.] on April 11, 1994.

Requests to speak at the hearing must be received on or before 4 p.m., [e.s.t.] on March 31, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Acting Director, Harrisburg Field Office, at the first address listed below.

Copies of the Maryland program, 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 requestor may receive, free of charge, one copy of the proposed amendment by contracting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone (301) 689–4136.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: George Rieger, Acting Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland Program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of the Proposed Amendment

The Maryland Bureau of Mines (Bureau) submitted a program amendment to OSM on February 25, 1994. The amendment (Administrative Record Number MD–566.00) repeals Maryland's COMAR 08.13.02 (Deep-Mining of Coal). Regulations that existed in the repealed Chapter 02 and are still necessary to regulate deep-mining are moved to COMAR 08.20 (Surface Coal Mining and Reclamation Under Federally Approved Program). These regulations include: COMAR 08.20.02.18 (Deep-Mine Applications), 08.20.13 (Surface Effects of Deep Mines), 08.20.14.13 (Deep-Mine Bonding Requirements). COMAR 08.20 is a new subtitle that Maryland developed to streamline the codification of Federally approved program rules by grouping the provisions by chapter instead of by regulation. COMAR 08.13.09 (Surface Coal Mining and Reclamation under Federally Approved Program) or Chapter 09 of Subtitle 13 was transferred by COMAR Supplement No. 15 to this new Subtitle 20 in May of 1993. Minor editorial changes were made to certain provisions transferred to COMAR 08.20. Other changes are listed below.

COMAR 08.20.13.04D (Face-Up Areas) is amended to prevent gravity discharge of water from surface openings of underground coal mines.

COMAR 08.20.13.10D (Subsidence Control: Buffer Zone) is amended to delete the subsidence control waiver option for public bridges subject to subsidence.

COMAR 08.20.02.18A(4) (Deep Mine Applications) is amended to require the map scale for the underground workings to be 1 inch equal to 500 feet or a different scale if clarity is preserved and the alternate scale is approved by the Bureau.

COMAR 08.20.13.12A (Projection Maps) is revised to require the projected mining to be submitted at the same scale as the map submitted under COMAR 08.20.13.18A(4).

III. Public Comment Procedures

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 Maryland 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 Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., [e.s.t] on March 31, 1994. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 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 the Office of Management and Budget 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 State submittal which is the subject of this rule is based upon counterpart 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. Hence, 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 for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1994.

Tim L. Dieringer,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–6084 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7086]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Indiana	Jasper (City) DuBois County.	Jahn Creek	0.62 river mile upstream of confluence	*456	*455
			1,375 feet upstream of Maplecrest Boulevard.	None	*483
		Mill Creek	0.4 river mile downstream of confluence of Ackerman Branch.	None	*452
			0.85 river mile upstream of confluence of Grist Run.	None	*481
		Ackerman Branch	Confluence with Mill Creek	None	*453
			Approximately 1,300 feet upstream of North 400 Road.	None	*469
		Grist Run	Confluence with Mill Creek	None	*468
			Approximately 500 feet upstream of West 350 Road.	None	*472
		Crooked Creek	Approximately 375 feet downstream of West 450 Road.	None	*448
			Confluence of Crooked Creek Tributary	None	*466
		Crooked Creek Tributary	Confluence with Crooked Creek	None	*466
			Approximately 50 feet upstream of North 200 Road.	None	*469
		Jasper Drain	Confluence with Crooked Creek	None	*464
			Approximately 50 feet upstream of St. Charles Street.	None	*472

Maps available for inspection at the Jasper City Hall, 610 Main Street, Jasper, Indiana.

Send comments to the Honorable William Schmitt, Mayor of the City of Jasper, P.O. Box 29, Jasper, Indiana 47546.

Maryland	Oakland (Town) Garrett County.	Little Youghiogheny River	Approximately 100 feet upstream of confluence with the Youghiogheny River.	*2,367	*2,366
			Approximately 0.4 mile upstream of confluence of Unnamed Tributary.	None	*2,386
		Bradley Run	At the confluence with Little Youghiogheny River.	*2,370	*2,371
			At the downstream side of CSX Transportation.	*2,370	*2,371

Maps available for inspection at the Town Hall, Oakland, Maryland.

Send comments to the Honorable Asa McCain, Mayor of the Town of Oakland, Garrett County, 109 South 3rd Street, Oakland, Maryland 21550.

Minnesota	Argyle (City) Marshall County.	Middle River	Approximately 0.64 mile downstream of Pacific Avenue.	*841	*840
			Approximately 1.6 miles upstream of County Highway 4.	*850	*851

Maps available for inspection at the City Office, 701 Pacific Avenue, Argyle, Minnesota.

Send comments to the Honorable Bruce C. Anderson, Mayor of the City of Argyle, Marshall County, Box 288, Argyle, Minnesota 56713.

Minnesota	Preston, City (Fillmore County).	South Branch Root River	Approximately 1,900 feet downstream of U.S. Route 16 and 52.	None	*927
			Approximately 400 feet upstream of corporate limits.	*955	*954

Maps available for inspection at the City Hall, 109 St. Paul 2 South Weston, Preston, Minnesota.

Send comments to the Honorable Earl Huff, Mayor of the City of Preston, Fillmore County, P.O. Box 657, Preston, Minnesota 55965.

North Carolina	Washington County (Unincorporated Areas).	Roanoke River	At North Carolina Highway 45	None	*8
			At upstream Town of Plymouth extraterritorial limits.	None	*8
		Welch Creek	At downstream Town of Plymouth extraterritorial limits.	*7	*9
			Approximately 0.2 mile upstream of confluence of Welch Creek Tributary.	*8	*9
		Welch Creek Tributary	At confluence with Welch Creek	*8	*9
			Approximately 0.4 mile upstream of confluence with Welch Creek.	*8	*9

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Washington County Permits, Inspections, and Emergency Management Office, 120 Adams Street, Plymouth, North Carolina.					
Send comments to Mr. Lee Smith, Washington County Manager, P.O. Box 1007, Plymouth, North Carolina 27962.					
South Carolina	City of Columbia	Tributary K–2	Approximately .285 feet upstream of the unnamed road.	None	*243
	Lexington and Richland Counties.		Approximately 510 feet upstream of the unnamed road.	None	*248
Maps available for inspection at the City Hall, Public Information Office, 1737 Main Street, Columbia, South Carolina.					
Send comments to the Honorable Robert D. Coble, Mayor of the City of Columbia, P.O. Box 147, Columbia, South Carolina 29217.					
Wisconsin	Dane County (Unincorporated Areas).	Sugar River	Approximately 1.0 mile downstream of State Highway 69 bridge.	*911	*912
			Approximately 1.0 mile upstream of State Highway 69 bridge.	*916	*917
Maps available for inspection at the City/County Building, 210 Martin Luther King Boulevard, Room 116, Madison, Wisconsin.					
Send comments to Mr. Richard Phelps, Dane County Executive, 210 Martin Luther King Jr. Boulevard, Room 419, Madison, Wisconsin 53709.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6081 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

[Docket No. FEMA–7088]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

These proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding location	# Depth in feet above ground. *Elevation in feet (NGVD)
TEXAS	
North Lake (town), Denton County	
Denton Creek:	
Approximately 3,800 feet downstream of Cleveland Gibbs Road	*570
Just upstream of Interstate Highway 35	*582
At the confluence of Trail Creek	*596
Just upstream of FM 407	*610
Approximately 100 feet downstream of Atchison, Topeka, and Santa Fe Railroad	*682
Maps are available for review at City Hall, 105 West 4th Street, Justin, Texas.	
Send comments to The Honorable Carla Hardeman, Mayor, Town of North Lake, P.O. Box 158, Justin, Texas 76247.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Maumelle (City), Pulaski County.	Arkansas River	Approximately 0.9 mile upstream of the I–430 bridge and approximately 1,300 feet east and 400 feet south of the intersection of Crystal Hill Road and Counts Massie Road.	None	*263
			Approximately 4,900 feet west of the intersection of Orchid Drive and Masters Place Cove.	None	*266
			Approximately 4,200 feet west of the intersection of Odom Boulevard (south) and Naylor Drive.	None	*268
		White Oak Bayou	Approximately 2,700 feet east of the intersection of Maumelle Boulevard and Palmer Drive.	None	*262
			Approximately 2,000 feet east of the intersection of Murphy Drive and Human Drive.	None	*262
Maps are available for review at City Hall, 550 Edgewood Drive, Maumelle, Arkansas.					
Send comments to the Honorable Glenn DeHan Jr., Mayor, City of Maumelle, P.O. Box 8100, Maumelle, Arkansas 72118.					
Colorado	Frisco (town) Summit County.	No Name Creek	Approximately 565 feet downstream of Seventh Avenue.	None	*9,058
			Approximately 10 feet upstream of Seventh Avenue.	None	*9,062
			Approximately 570 feet upstream of Seventh Avenue.	None	*9,067
			Approximately 1,340 feet upstream of Seventh Avenue.	None	*9,082
		Jug Creek	Approximately 1,000 feet downstream of Belford Street.	None	*9,039
			Approximately 200 feet downstream of Belford Street.	None	*9,053
			Approximately 300 feet upstream of Belford Street.	None	*9,057
			Approximately 1,100 feet upstream of Belford Street.	None	*9,071
		Meadow Creek	Approximately 360 feet downstream of Meadow Creek Drive.	*9,029	*9,029
			Just upstream of Tenmile Drive	*9,051	*9,049
			Approximately 140 feet downstream of Meadow Drive.	*9,055	*9,052
			Approximately 1,660 feet upstream of Meadow Drive.	*9,067	*9,067

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Tenmile Creek	Approximately 170 feet downstream of Summit Boulevard.	None	*9,019
			Approximately 390 feet upstream of Summit Boulevard.	*9,031	*9,026
			Approximately 1,210 feet upstream of Summit Boulevard.	*9,042	*9,040
			Approximately 2,050 feet upstream of Summit Boulevard.	*9,052	*9,051
			Approximately 360 feet downstream of the Main Street Bridge.	*9,100	*9,099
			Approximately 400 feet upstream of the Main Street Bridge.	None	*9,109
			Approximately 1,440 feet upstream of the Main Street Bridge.	None	*9,122
			Approximately 1,565 feet upstream of the Main Street Bridge.	None	*9,124
			Approximately 700 feet north of the intersection of Main Street and Sixth Avenue.	None	#1
		Miners Creek	Approximately 1,130 feet downstream of Colorado State Highway 9.	None	*9,019
			Approximately 270 feet downstream of Colorado State Highway 9.	None	*9,027
			Approximately 290 feet upstream of Colorado State Highway 9.	None	*9,039
			Approximately 1,390 feet upstream of Colorado State Highway 9.	None	*9,059

Maps are available for review at Town Hall, Town of Frisco, #1 Main Street, Frisco, Colorado.

Send comments to The Honorable Jim Spenst, Mayor, Town of Frisco, P.O. Box 370, Frisco, Colorado 80443.

Colorado	Summit	Blue River	Approximately 880 feet downstream of Swan Mountain Road.	None	*9,020
	Unincorporated Areas.		Approximately 2,090 feet upstream of Swan Mountain Road.	None	*9,058
			Approximately 5,080 feet upstream of Swan Mountain Road.	None	*9,093
			Approximately 6,920 feet upstream of Swan Mountain Road.	None	*9,115
			Approximately 8,740 feet upstream of Swan Mountain Road.	None	*9,136
			Approximately 7,200 feet downstream of Colorado State Highway 9.	None	*9,633
			Approximately 5,080 feet downstream of Colorado State Highway 9.	None	*9,677
			Approximately 2,860 feet downstream of Colorado State Highway 9.	None	*9,720
			Approximately 340 feet downstream of Colorado State Highway 9.	None	*9,780
			Approximately 1,940 feet upstream of Colorado State Highway 9.	None	*9,813
		Snake River	Approximately 4,780 feet downstream of East Keystone Road.	*9,252	*9,252
			Approximately 2,840 feet downstream of East Keystone Road.	*9,270	*9,271
			Approximately 460 feet downstream of East Keystone Road.	*9,296	*9,295
			Approximately 2,560 feet upstream of East Keystone Road.	*9,331	*9,330
			Approximately 4,400 feet upstream of East Keystone Road.	*9,350	*9,350
		Meadow Creek	Approximately 980 feet upstream of Dillion Reservoir.	*9,024	*9,020
			Approximately 1,600 feet upstream of Dillon Reservoir.	*9,027	*9,023
			Approximately 2,180 feet upstream of Dillon Reservoir.	*9,030	*2,025
			Approximately 2,580 feet upstream of Colorado State Highway 9.	None	*9,069
			Approximately 3,420 feet upstream of Colorado State Highway 9.	None	*9,085

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		French Gulch	Approximately 70 feet upstream of Colorado State Highway 9.	None	*9,490
			Approximately 710 feet upstream of Colorado State Highway 9.	None	*9,500
			Approximately 3,370 feet upstream of Colorado State Highway 9.	None	*9,606
			Approximately 4,750 feet upstream of Colorado State Highway 9.	None	*9,662
		North Fork Snake River	Approximately 990 feet downstream of Montezuma Road.	None	*9,326
			Approximately 620 feet upstream of Montezuma Road.	None	*9,384
			Approximately 1,660 feet upstream of Montezuma Road.	None	*9,438
		South Barton Gulch	Approximately 2,780 feet downstream of American Road.	None	*9,392
			Approximately 580 feet downstream of American Road.	None	*9,460
			Approximately 220 feet upstream of American Road.	None	*9,492
			Approximately 1,820 feet upstream of American Road.	None	*9,590
			Approximately 3,240 feet upstream of American Road.	None	*9,719
		Swan River	Approximately 40 feet upstream of the confluence with Blue River.	None	*9,138
			Approximately 2,140 feet upstream of the confluence with Blue River.	None	*9,169
			Approximately 3,600 feet upstream of the confluence with Blue River.	None	*9,190
			Approximately 5,300 feet upstream of the confluence with Blue River.	None	*9,215
			Approximately 6,280 feet upstream of the confluence with Blue River.	None	*9,229
		Tenmile Creek (Above 4th Avenue).	Approximately 560 feet upstream of U.S. Route 6.	None	*9,110
			Approximately 1,500 feet upstream of U.S. Route 6.	None	*9,123
		Miners Creek	Approximately 160 feet downstream of Pitkin Street.	None	*9,040
			Approximately 1,300 feet upstream of Pitkin Street.	None	*9,068
			Approximately 2,430 feet upstream of Pitkin Street.	None	*9,111
		Jug Creek	Approximately 300 feet upstream of the confluence with Miners Creek.	None	*9,046
			Approximately 1,810 feet upstream of the confluence with Miners Creek.	None	*9,059
			Approximately 2,070 feet upstream of the confluence with Miners Creek.	None	*9,068
		No Name Creek	Approximately 1,960 feet upstream of the confluence with Jug Creek.	None	*9,080

Maps are available for review at the Community Development Division, Summit County, 120 Lincoln Street, Breckenridge, Colorado.

Send comments to The Honorable Joe Sands, Chairman, Summit County Board of Supervisors, P.O. Box 68, Breckenridge, Colorado 80424.

Iowa	Fairfield (city) Jefferson County.	Crow Creek	Approximately 900 feet upstream of the confluence of Kaghaghee Creek.	None	*693
			Approximately 1,950 feet upstream of the confluence of Kaghaghee Creek.	None	*695

Maps are available for review at the City Hall, City of Fairfield, 118 South Main Street, Fairfield, Iowa.

Send comments to The Honorable Robert Rasmussen, Mayor, City of Fairfield, 118 South Main Street, Fairfield, Iowa 52556.

Montana	Powell County (Unincorporated Areas).	Little Blackfoot River-Garrison Reach.	At the downstream Limit of Detailed Study at the Burlington Northern Railroad.	N/A	*4,345
			Just downstream of U.S. Highway 10	N/A	*4,347
			Just upstream of U.S. Highway 10	N/A	*4,353

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At upstream Limit of Detailed Study approximately 2,500 feet upstream of U.S. Highway 10.	N/A	*4,360
		Little Blackfoot River-Avon Reach.	At downstream Limit of Detailed Study approximately 1,950 feet downstream of U.S. Highway 12.	N/A	*4,656
			Just upstream of downstream crossing of U.S. Highway 12.	N/A	*4,669
			Approximately 175 feet downstream of upstream crossing of U.S. Highway 12.	N/A	*4,710
			Just upstream of Burlington Northern Railroad.	N/A	*4,716
			Detailed Study approximately 3,250 feet upstream of U.S. Highway 12.	N/A	*4,725
		Little Blackfoot River-Elliston Reach.	At downstream Limit of Detailed Study approximately 6,150 feet below confluence of Elliston Creek.	N/A	*4,979
			Approximately 4,250 feet above downstream Limit of Detailed Study.	N/A	*5,008
			Approximately 1,750 feet below confluence of Elliston Creek.	N/A	*5,009
			Approximately 2,500 feet upstream of confluence of Elliston Creek.	N/A	*5,040
			Approximately 4,800 feet downstream of Burlington Northern Railroad.	N/A	*5,042
			Just upstream of U.S. Highway 12	N/A	*5,081
			At the confluence of Telegraph Creek	N/A	*5,184
			At the upstream Limit of Detailed Study approximately 11,800 feet above confluence of Telegraph Creek.	N/A	*5,318
		Telegraph Creek	At confluence with Little Blackfoot River—Ellistion Reach.	N/A	*5,184
			Approximately 10,650 feet upstream of confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,342
			Approximately 12,650 feet upstream of confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,390
			At Limit of Detailed Study approximately 16,640 feet above the confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,520
		Elliston Creek	At confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,024
			Approximately 1,000 feet upstream of confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,042
			Just downstream of the Burlington Northern Railroad.	N/A	*5,044
			At Limit of Detailed Study approximately 2,825 feet upstream of U.S. Highway 12.	N/A	*5,134

Maps are available for review at the Department of Natural Resources and Conservation Floodplain Management Section, 1520 East Sixth Avenue, Helena, Montana 59620.

Send comments to the Honorable Kenneth Fleming, Chairman, Powell County Board of Commissioners, Courthouse, 409 Missouri Avenue, Deer Lodge, Montana 59722.

Nebraska	Bellevue (City) Sarpy County.	Big Papillion—Papillion Creek.	At the southern extraterritorial limits, approximately 2,300 feet downstream of Burlington Northern Railroad.	*973	*973
			Approximately 100 feet upstream of Wagon Trail Road.	*979	*978
			Just upstream of Kennedy Expressway ...	*983	*982
			Just upstream of State Highway 370	*990	*989
			Just downstream of Cornhusker Drive	*998	*993
			At Sarpy-Douglas County Boundary	*1,001	*998
		West Papillion Creek	At the confluence with Big Papillion Creek	*991	*990
			Approximately 100 feet upstream of 36th Street.	*993	*991

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At the extraterritorial limits located approximately 2,800 feet upstream of 48th Street.	*1,001	*1,002
		Betz Road Ditch	Approximately 600 feet downstream of U.S. Highway 73–75.	*990	*988
			Approximately 150 feet upstream of Highway 370.	*1,001	*1,003
			Approximately 100 feet upstream of Twin Ridge Drive.	*1,033	*1,028
			Just upstream of Fairfax Drive	*1,057	*1,057
			Approximately 250 feet upstream of Lincoln Road.	*1,073	*1,073

Maps are available for review at the Planning Department, City of Bellevue, 210 West Mission Street, Bellevue, Nebraska.

Send comments to The Honorable Inez Boyd, Mayor, City of Bellevue, City Hall, 210 West Mission Street, Bellevue, Nebraska 68005.

Nebraska	La Vista (City) Sarpy County.	Big Papillion—Papillion Creek.	Approximately 6,370 feet upstream of Cornhusker Drive.	*998	*994
			At the Sarpy-Douglas County Boundary	*1,001	*998
		West Papillion Creek	Approximately 2,700 feet downstream of Giles Road.	*1,028	*1,026
			Approximately 1,500 feet downstream of Giles Road at the extraterritorial limits.	*1,029	*1,027
			Just downstream of Giles Road	*1,033	*1,029
			Approximately 400 feet downstream of Harrison Road.	*1,041	*1,040
			Approximately 950 feet upstream of Interstate Highway 80 at the Sarpy-Douglas County Boundary.	*1,044	*1,044

Maps are available for review at City Hall, City of La Vista, 8116 Vista, 8116 Parkview Boulevard, La Vista, Nebraska.

Send comments to The Honorable Harold Anderson, Mayor, City of La Vista, 8116 Parkview Boulevard, La Vista, Nebraska 68128.

Nebraska	Papillion (City) Sarpy County.	Big Papillion Creek	At the intersection of the floodway boundary and the east extraterritorial limits, at a point located approximately 1,600 feet north of Cornhusker Drive.	*998	*993
			Approximately 6,370 feet upstream of Cornhusker Drive.	*998	*994
		West Papillion Creek	At the east extraterritorial limits located approximately 2,800 feet upstream of 48th Street.	*1,001	*1,002
			Just upstream of 66th Street	*1,006	*1,006
			Just downstream of Washington Street (84th Street).	*1,013	*1,012
			Approximately 1,500 feet downstream of Giles Road at the extraterritorial limits.	*1,030	*1,027
		West Midland Creek	Approximately 1,040 feet upstream of Chicago Rock Island and Pacific Railroad.	*1,060	*1,060
			Approximately 2,040 feet upstream of Chicago Rock Island and Pacific Railroad.	None	*1,069

Maps are available for review at City Hall, City of Papillion, 122 East Third Street, Papillion, Nebraska.

Send comments to The Honorable Pete Goodman, Mayor, City of Papillion, City Hall, 122 East Third Street, Papillion, Nebraska 68046.

Texas	Jacksonville (City) Cherokee County.	Keys Creek	Approximately 350 feet downstream of U.S. Highway 79.	None	*364
			Approximately 175 feet downstream of U.S. Highway 79.	None	*367

Maps are available for review at Jacksonville Development Center, 307 East Commerce Street, Jacksonville, Texas.

Send comments to The Honorable Larry Durrett, P.O. Box 1390, Jacksonville, Texas 75766.

Texas	Van Horn (City) Culberson County.	Drain 1	Approximately 2,750 feet downstream from U.S. Route 90.	None	*4,009
			Approximately 80 feet upstream of U.S. Route 90.	None	*4,032

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 350 feet upstream of Elm Street.	None	*4,060
		Drain 2	Approximately 200 feet downstream of Jones Street.	None	*4,021
			Approximately 1,100 feet upstream of Jones Street.	None	*4,029
		Drain 3	Approximately 700 feet downstream of U.S. Route 90.	None	*4,015
			Approximately 900 feet upstream of U.S. Route 90.	None	*4,032
	Maps are available for review at City Hall, 1801 West Broadway, Van Horn, Texas.				
	Send comments to The Honorable Okey Lucas, Mayor, City of Van Horn, P.O. Box 517, Van Horn, Texas 78955.				
Utah	Bluffdale (City) Salt Lake County.	Jordan River	Approximately 9,100 feet downstream of 14600 South Street.	None	*4,355
			At 14600 South Street	None	*4,383
			At Denver and Rio Grande Western Railroad.	None	*4,430
			At Joint Diversion Structure	None	*4,435
			At Turner Dam Diversion Structure	None	*4,484
			Approximately 900 feet upstream of the Turner Dam Diversion Structure.	None	*4,488
	Maps are available for review at the City Clerk's Office, City of Bluffdale, 14175 South Redwood Road, Bluffdale, Utah.				
	Send comments to The Honorable Lee Wanlass, Mayor, City of Bluffdale, 14212 South, 3600 West Street, Bluffdale, Utah 84065.				
Utah	Draper (City) Salt Lake County.	Jordan River	Approximately 7,800 feet downstream of 12300 South Street.	None	*4,321
			At 12300 South Street	None	*4,331
			At 12600 South Street	None	*4,335
			At confluence of Corner Canyon Creek	None	*4,346
			Approximately 4,050 feet upstream of confluence of Corner Canyon Creek	None	*4,355
	Maps are available for review at the City Engineer's Office, City of Draper, 12441 South, 900 East Street, Draper, Utah.				
	Send comments to The Honorable Dave Campbell, Mayor, City of Draper, 12441 South, 900 East Street, Draper, Utah 84020.				
Utah	Midvale (City) Salt Lake County.	Jordan River	Approximately 6,900 feet downstream of West Center Street.	None	*4,276
			At West Center Street	None	*4,286
			Approximately 1,350 feet upstream of West Center Street.	None	*4,288
	Maps are available for review at the City of Midvale, Engineering Department, 80 East Center Street, Midvale, Utah.				
	Send comments to The Honorable Don Poulsen, Mayor Elect, City of Midvale, 80 East Center Street, Midvale, Utah 84047.				
Utah	Murray (City) Salt Lake County.	Jordan River	Approximately 3,600 feet downstream of 4500 South Street.	None	*4,242
			At Brighton Canal Diversion	None	*4,246
			At Bullion Street	None	*4,262
			At 6400 South Street	None	*4,273
			Approximately 1,100 feet upstream of 6400 South Street.	None	*4,276
		Big Cottonwood Creek	Approximately 80 feet upstream of the confluence with the Jordan River.	*4,239	*4,243
			Approximately 800 feet upstream of the confluence with the Jordan River.	*4,243	*4,243
			At 500 West Street	*4,245	*4,245
			Approximately 130 feet upstream of 500 West Street.	*4,246	*4,246
	Maps are available for review at the City of Murray, Public Works Office, 5025 South State Street, Room 200, Murray, Utah.				
	Send comments to The Honorable Lynn Pett, Mayor, City of Murray, 5025 South State Street, Room 200, Utah 84157.				
Utah	Riverton (City) Salt Lake County.	Jordan River	Approximately 4,650 feet downstream of 12400 South Street.	None	*4,324
			At 12400 South Street	None	*4,331
			At 12600 South Street	None	*4,335
			At confluence of Corner Canyon Creek	None	*4,346
			Approximately 4,100 feet upstream of confluence of Corner Canyon Creek.	None	*4,355

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the City Engineering Department, City of Riverton, 949 East, 12400 South Street, Riverton, Utah. Send comments to The Honorable Jim Warr, Mayor, City of Riverton, 12765 South, 1400 West Street, Riverton, Utah 84065.					
Utah	Salt Lake City (City) Salt Lake County.	Jordan River	At Surplus Canal Diversion Structure	*4,229	*4,232
			Approximately 25 feet upstream of 21st South Street.	*4,229	*4,232
Maps are available for review at the Public Utilities Department, City of Salt Lake City, 1530 South, West Temple Street, Salt Lake City, Utah. Send comments to The Honorable Deedee Corridinl, Mayor, City of Salt Lake City, 1530 South, West Temple Street, Salt Lake City, Utah 84115.					
Utah	Salt Lake County (Unincorporated Areas).	Jordan River	At 2100 South Street	None	*4,232
			At 3300 South Street	None	*4,236
			At 3900 South Street	None	*4,239
			At Taylorsville Expressway	None	*4,245
			At the Brighton Canal Diversion Structure	None	*4,246
			At the confluence with Little Cottonwood Creek.	None	*4,249
			At Salt Lake County—City of Murray boundary.	None	*4,256
			Approximately 300 feet downstream of 7800 South Street.	None	*4,285
			Approximately 1,300 feet upstream of 7800 South Street.	None	*4,288
			At 9000 South Street	None	*4,297
			Approximately 2,700 feet upstream of 9000 South Street.	None	*4,300
			Approximately 3,200 feet upstream of 9000 South Street.	None	*4,301
Maps are available for review at the Development Services Division, Salt Lake County, 2001 South State, No. N–3600, Salt Lake, Utah. Send comments to The Honorable James Bradley, Chairperson, Salt Lake County Commissioner, 2001 South State Street, Salt Lake City, Utah 84190–4600.					
Utah	Sandy City (City) Salt Lake County.	Jordan River	At 9000 South Street	None	*4,297
			At North Jordan Canal Diversion	None	*4,302
			Approximately 3,125 feet above the North Jordan Canal Diversion.	None	*4,305
Maps are available for review at the City Engineering Department, City of Sandy City, 10000 Centennial Parkway, Sandy City, Utah. Send comments to The Honorable Tom Odom, Mayor Elect, City of Sandy City, 10000 Centennial Parkway, Sandy City, Utah 84070.					
Utah	South Jordan (City) Salt Lake County.	Jordan River	Approximately 350 feet downstream of the North Jordan Canal Diversion.	None	*4,301
			At 10600 South Street	None	*4,313
			Approximately 6,500 feet upstream of the confluence of Willow Creek.	None	*4,324
			At the confluence with the Jordan River	None	*4,317
			Approximately 400 feet upstream of the confluence with the Jordan River.	*4,314	*4,317
			Approximately 1,000 feet upstream of the confluence with the Jordan River.	*4,318	*4,318
			Approximately 2,560 feet upstream of the confluence with the Jordan River.	*4,344	*4,344
Maps are available for review at the Planning Department, City of South Jordan, 111755 Redwood Road, South Jordan, Utah. Send comments to The Honorable Theron Hutchings, Mayor, City of South Jordan, 111755 Redwood Road, South Jordan, Utah 84095.					
Utah	South Salt Lake (City) Salt Lake County.	Jordan River	Approximately 100 feet downstream of 2100 South Street.	None	*4,233
			At the confluence of Mill Creek	None	*4,234
			At 3300 South Street	None	*4,235

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the City Engineering Department, South Salt Lake City, 220 East Morris Avenue, South Salt Lake, Utah. Send comments to The Honorable Eldon Farnsworth, Mayor, City of South Lake, 220 East Morris Avenue, South Salt Lake, Utah 84155.					
Utah	West Jordan (City) Salt Lake County.	Jordan River	At 6400 South Street	None	*4,273
			At 7800 South Street	None	*4,286
			At 9000 South Street	None	*4,297
			At confluence of Dry Creek	None	*4,300
Maps are available for review at the City Engineer's Office, City of West Jordan , 8000 South Redwood Road, Draper, Utah. Send comments to The Honorable Dan Dahlgren, Mayor, City of West Jordan, 8000 South Redwood Road, Draper, Utah 84020.					
Utah	West Valley City (City) Salt Lake County.	Jordan River	At 2100 South Street	None	*4,232
			At confluence of Mill Creek	None	*4,233
			At 3300 South Street	None	*4,236
			At 3900 South Street	None	*4,240
Maps are available for review at the City of West Valley City, Public Works Department, Engineering Division, 3600 Constitution Boulevard, West Valley City, Utah. Send comments to The Honorable Brent Anderson, Mayor, City of West Valley, 3600 Constitution Street, Draper, Utah 84020.					
Washington	Burien (City) King County.	Miller Creek	Approximately 1,770 feet downstream of First Avenue South.	None	*137
			Just upstream of First Avenue South	None	*187
			Just upstream of Ambaum Boulevard	None	*192
			At the culvert outlet, approximately 400 feet downstream of Des Moines Way.	None	*200
Maps are available for review at City Hall, City of Burien, 13838 First Avenue South, Burien, Washington. Send comments to The Honorable Arun Jhaveri, Mayor, City of Burien, City Hall, 13838 First Avenue South, Burien, Washington 98168.					
Washington	King County Unincorporated Areas.	Richards Creek	South of Southeast Allen Road at intersection of 138th Avenue SE.	None	*329
Maps are available for review at Building and Land Development Division, 3600 13th Place, Bellevue, Washington. Send comments to The Honorable Tim Hill, County Executive, 516 Third Avenue, Seattle, Washington 98104.					
Washington	Normandy Park (City) King County.	Miller Creek	At the private drive located approximately 260 feet above mouth.	*9	*9
			At SW. 175th Place	*17	*16
			Approximately 120 feet downstream of the Sewage Plant North Access Road.	*47	*44
Maps are available for review at the Department of Planning, 801 Southwest 174th Street, Normandy Park, Washington. Send comments to The Honorable Stuart Creighton, Mayor, City of Normandy Park, 801 Southwest 174th Street, Normandy Park, Washington 98166.					
Washington	Seatac (City) King County.	Miller Creek	At the culvert inlet just upstream of Des Moines Way.	None	*204
			Just upstream of South 160th Street	None	*247
			At 12th Avenue South extended, at Lake Reba Detention Pond Outlet.	None	*265
			At Lake Reba Detention Pond	None	*274
Maps are available for review at the Department of Public Works, 19215 28th Avenue South, Seatac, Washington. Send comments to The Honorable Frank Hansen, Mayor, City of Seatac, City Hall, 19215 28th Avenue South, Seatac, Washington 98188.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6083 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–P–M

DEPARTMENT OF DEFENSE

48 CFR Parts 245 and 252

Defense Federal Acquisition Regulation Supplement; Demilitarization

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for public comments.

SUMMARY: The Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement (DFARS) to cover control of Munitions List items (MLI) and Strategic List items

(SLI) and demilitarization of excess property.

DATES: Comments on the proposed rule should be submitted to the address shown below on or before May 16, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to Defense Acquisition Regulations Directorate, Attn: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301–3062. FAX (703) 697–9845. Please cite DFARS Case 92–D024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green; (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS by adding a subsection at 245.604–70 and a clause at 252.245–7XXX, and by revising 245.601, 245.604, 245.610–4, and 245.7310–1 to improve control of Munitions List items (MLI) and Strategic List items (SLI) and demilitarization of excess contractor inventory. The proposed rule will require the Military Departments to determine whether Government property qualifies as MLI or SLI, to identify it as such in contracts and purchase orders, and to include specific demilitarization instructions in the contracts. The rule also specifies contractor responsibilities for demilitarizing or applying security trade controls over such property when applicable and requires contractors to include a demilitarization code with the item description on inventory schedules generated to report excess Government property. Furthermore, contractors are required to include such provisions in any subcontract that furnishes or supplies MLI or SLI to subcontractors, or that requires subcontractors to manufacture or produce MLI or SLI.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies, but the proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the vast majority of property to be demilitarized, including MLI and SLI, is in the custody of large contractors. An initial Regulatory Flexibility Analysis (IRFA) has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subparts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite DAR Case 92–D024 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the proposed rule imposes reporting and recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* A request for clearance of the information collection has been submitted to OMB.

List of Subjects in 48 CFR Parts 245 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Directorate.

Therefore it is proposed that 48 CFR parts 245 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 245 and 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and (FAR) 48 CFR part 1, subpart 1.3.

2. Section 245.601 is amended by revising paragraph (2) to read as follows:

245.601 Definitions

* * * * *

2. *Demilitarization* is defined in the clause at 252.245–7XXX, Demilitarization and Security Trade Controls.

* * * * *

245.604 [Amended]

3. Section 245.604 is amended by removing paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4).

4. Section 245.604–70 is added to read as follows:

245.604–70 Demilitarization and security trade controls.

(a) Contracting officers shall ensure that purchase requests include—

(1) A statement that each item of Government property assigned a national stock number or nonstandard stock number to be furnished to a contractor under the resultant contract has been reviewed to determine whether it—

(i) Appears on the U.S. Munitions List (DoD 4160.21–M–1, Appendix 1); and/or

(ii) Meets the criteria for a Munitions List item or Strategic List item; and

(iii) Requires demilitarization and/or security trade controls.

(2) Specific demilitarization instructions, if required, in accordance with Appendices 4 and 5 of DoD 4160.21–M–1, Defense Militarization Manual.

(b) *Contract clause.* Use the clause at 252.245–7XXX, Demilitarization and Security Trade Controls, in solicitations and contracts for items that, if disposed of, would require demilitarization and/or security trade controls.

5. Section 245.7310–1 is amended by revising paragraph (a) to read as follows:

245.7310–1 Demilitarization.

* * * * *

(a) *Demilitarization.*

Item(s) _____ require demilitarization by the Purchaser in the manner and to the degree set forth in the Defense Demilitarization Manual, DoD 4160.21–M–1.

* * * * *

6. Section 252.245–7XXX is added to read as follows:

252.245–7XXX Demilitarization and Security Trade Controls.

As prescribed in 245.604–70(b), use the following clause:

Demilitarization and Security Trade Controls (XXX 1994)

(a) *Definitions.*

Demilitarization means the act of destroying the military offensive or defensive advantage inherent in certain types of equipment or material. The term includes mutilation, dumping at sea, cutting, crushing, scrapping, melting, burning or alteration designed to prevent the further use of this equipment and material for its originally intended military or lethal purpose and applies equally to material in unserviceable or serviceable condition, that has been screened through the Inventory Control Point (ICP) and declared surplus or foreign excess.

Munitions List item means any item contained in the U.S. Munitions list (22 CFR part 121).

Security trade controls means control procedures designed to preclude the sale or shipment of Munitions List or Strategic List property to any entity whose interests are inimical to those of the United States. These controls are also applicable to such other selected property as may be designated by the Deputy Under Secretary of Defense (Trade Security Policy).

Strategic List item means an item assigned a code letter "A" or "B" following the export control classification number (ECCN) on the Commerce Control List, Supplement No. 1 to § 799.1 of the Export Administration Regulations, Department of Commerce.

(b) This contract requires the manufacture, assembly, test, maintenance, repair, and delivery of items that are, or include, Munitions List items or Strategic List items. The contract may also require the manufacture, assembly, test, maintenance, repair, delivery or use of special tooling, special test equipment, or plant equipment that is a Munitions List item or Strategic List item. When such items become excess to the needs of the Contractor in performing this contract, the Contractor shall—

(1) Ensure a demilitarization code is included in the item description on

inventory schedules generated to report the excess Government property, utilizing the guidelines provided in the Defense Demilitarization Manual, DoD 4160.21–M–1;

(2) Demilitarize the items, as required; and

(3) Apply security trade controls as required by the Arms Export Control Act and Export Administration Act of 1979.

(c) The Contractor also shall include this clause, including this paragraph (c) in any subcontract issued under this contract that provides Munitions List items or Strategic List items to the subcontractor or requires the subcontractor to manufacture, assemble, test, maintain, repair, or deliver items that are or include Munitions List items or Strategic List items.

(End of clause)

[FR Doc. 94–5819 Filed 3–15–94; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 35]

RIN 2127–AF02

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document addresses the possible need to add a greater array of test dummies to Standard 213 for use in compliance tests. It is the second of two proposals on child booster seat safety resulting from the Intermodal Surface Transportation Efficiency Act of 1991. That Act directed NHTSA to initiate rulemaking on child booster seat safety. The first NPRM proposed to amend Standard 213's requirements for child booster seats designed for use with a vehicle's lap and shoulder belts. Today's NPRM is intended to improve the safety of booster seats and other types of child restraint systems by providing for their more thorough compliance testing.

DATES: Comments on this document must be received by the agency no later than May 16, 1994. The proposed effective date is 180 days after the date of publication of a final rule.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590 (telephone 202–366–4919).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

This document follows an advance notice of proposed rulemaking (ANPRM) published on May 29, 1992 about child booster seat safety (57 FR 22682). The ANPRM was issued in response to the National Highway Traffic Safety Administration Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA")). That Act directed the agency to initiate rulemaking on child booster seat safety and other issues.

The legislative history of the ISTEA directive on booster seats sheds light on the source of Congress's concerns about booster seats. That history, and Congress's concerns, were discussed in detail in the May 1992 ANPRM, and are briefly summarized below.

The ISTEA directive originated in S. 1012, a bill reported by the Senate Committee on Commerce, Science, and Transportation and added verbatim to the Senate's surface transportation bill (S. 1204). The Senate Commerce Committee report on S. 1012 expressed concern about suggestions that booster seats, "depending on their design, can be easily misused or are otherwise harmful," and that some child seat boosters "may not restrain adequately a child in a crash."

The committee's concerns about the possible inability of a booster seat to restrain some children adequately stemmed from a study[1] performed by Calspan Corporation. Calspan found that when the then-manufactured booster seats were tested with test dummies representing the range of children for whom the seats were recommended, the booster seats did not appear to be able to adequately restrain all of those test dummies. When tested to the requirements of Standard 213, however, the booster seat passed the requirements because the standard specifies the use of only one dummy, a dummy representing a 3-year-old (33 pound) child, for testing a booster seat. (See S7.2 of Standard 213.) The implication of these test results was that test dummies representative of a wide range of child sizes were needed in Standard 213 to more effectively test the performance of booster seats and other child restraint systems. What seemed especially needed was an array of dummies representing children at or near the extremes of the weight ranges identified by a manufacturer as being suitable for any type of child restraint.

a. Purpose of Today's NPRM

This document proposes to add additional sizes of child compliance test dummies to Standard 213, consistent with ISTEA's mandate and the potential safety problems shown in the Calspan study. NHTSA's efforts to address those safety problems, including the possibility of new test dummies, were begun prior to ISTEA. Amending Standard 213 to incorporate additional test dummies for use in compliance tests has been one of NHTSA's main initiatives for upgrading Standard 213, as stated in NHTSA's "Planning Document on the Potential Standard 213 Upgrade," July 1991 (docket 74–09–N21). To that end, NHTSA developed specifications for three new test dummies and completed rulemaking in 1991 and 1993 incorporating those specifications into part 572, the agency's regulation on anthropomorphic test dummies. This step facilitated the use of those dummies in the development of improved child restraints.

Today's document, together with a companion NPRM published on September 1, 1993 (discussed in the next section), responds to ISTEA as well as follows up on the agency's 1991 planning document regarding possible ways of upgrading Standard 213. As explained in the "Other Issues" section of this document, some of the ways of upgrading Standard 213 will be addressed over the course of several

[1] "Evaluation of the Performance of Child Restraint Systems" (DOT HS 807 297, May 1988).

rulemakings. As to the other ways, some are being further evaluated; the remaining ones do not appear viable candidates for rulemaking. The agency notes that, in accordance with its plan to convert to the metric system pursuant to the Omnibus Trade and Competiveness Act and E.O. 12770, today's proposal uses metric units. Thus, English units that are in sections of Standard 213 affected by this NPRM would be converted to metric units. For example, "nine kilograms (kg)" would replace references in the standard to "20 pounds."

b. Previous NPRM

The companion NPRM to this document was published on September 3, 1993 (58 FR 46928). The NPRM, which also resulted from the May 1992 ANPRM, proposed to amend Standard 213 to permit the manufacturer and sale of belt-positioning booster child seats (child seat boosters designed for use with a vehicle's lap/shoulder belt system). NHTSA said it believes that facilitating the manufacture of belt-positioning booster seat could improve booster seat safety because belt-positioning seats appear to be capable of accommodating a wider range of child sizes than currently manufactured shield-type boosters. Also, NHTSA stated that it believes there is a possibility that belt-positioning booster seats used with vehicle lap/shoulder belts would perform better than shield booster seats. NHTSA proposed amending Standard 213's compliance test procedures to specify that belt-positioning booster seats would be dynamically tested when restrained to the test apparatus with a lap/shoulder belt. NHTSA also proposed labeling and informational requirements to decrease the possibility that booster seats would be misused.

II. Specific Proposals in Today's NPRM

a. Child Dummies

Three new child dummies have been tentatively selected to be added to Standard 213 for use in the compliance testing of child restraints.These dummies are the newborn infant dummy described in subpart K of 49 CFR part 572, the 9-month-old dummy in subpart J, and the instrumented 6-year-old dummy in subpart I. The biofidelity, reliability and repeatability of the test dummies were discussed in the documents incorporating the dummies into part 572 for the purpose of facilitating child restraint development. See, final rule for newborn dummy (January 8, 1993, 58 FR 3229); 9-month-old dummy (August 19, 1991; 56 FR 41077); 6-year-old dummy (November 14, 1991; 56 FR 57830).

This document proposes detailed descriptions of the clothing, conditioning and positioning procedures for the dummies to ensure that the test conditions are carefully controlled. The clothing that would be specified is the same, except for size, as that used for the 3-year-old dummy. The conditioning specifications are the same as those currently used for the 3-year-old dummy.

With the addition of the three new dummies, there would be four child test dummies used for Standard 213 compliance testing. The fourth dummy would be the existing 3-year-old dummy (subpart C) for Standard 213 testing. As to the other existing dummy, the 6-month-old, 17 pound (8 kg) dummy (subpart D), the agency has tentatively decided that it would no longer use that dummy to test child restraints. The agency has tentatively decided that testing child restraints with that dummy is unnecessary since the newborn and 9-month-old dummies appear sufficient to evaluate the performance of a child restraint recommended for infants. Comments are requested on whether the 6-month-old, subpart D dummy would still be needed to test child restraints, and if so, which restraints should be tested with that dummy.

In its comment on the ANPRM, General Motors (GM) expressed concern about the 6-year-old and the 3-year-old dummies. GM asked NHTSA to refer to GM's comments on the agency's earlier rulemaking proposals to incorporate these dummies in part 572 to aid in child restraint development. According to GM, those comments "detail (GM's) concerns regarding limitations of these test devices * * *." While the comment is unclear as to what GM means by "limitations," NHTSA assumes the commenter is referring to the biofidelity and suitability of the dummies as test devices, or the ability of the dummies to measure various crash forces imposed on them. NHTSA responded to issues about the biofidelity and suitability of the dummies in the previous rulemakings on part 572. The agency is not aware of any information, submitted by GM or arising elsewhere, indicating that these dummies have "limitations" warranting their exclusion from use in Standard 213 testing. Moreover, information on the performance of the dummies in tests conducted subsequent to their incorporation into part 572 does not indicate any problems with their performance. Recently, these dummies were used along with the part 572 three-year-old in a large number of sled tests that NHTSA conducted as part of its child safety research program that was described in the agency's 1991 planning document to upgrade Standard 213. These dummies appeared to perform satisfactorily, without any problem that would prevent their incorporation into FMVSS 213. The findings of this research program were summarized in a series of reports that were published in October 1992, under project VRTC–82–0236 "Child Restraint Testing (Rulemaking Support)." These reports are available from the National Technical Information Service, Springfield, Virginia, 22161.

GM suggested in its ANPRM comments that the child test dummies should provide a "more complete set of measurements" than currently provided by the three-year-old dummy. GM suggested including the additional measurement of forces imposed on the dummy's neck, abdomen, and femur areas. GM stated that injuries to children's neck, abdomen, and hip, thigh and knee areas can be serious, and that performance criteria for these injuries should be developed. GM said that these criteria can be measured and the neck and femur load cells are currently available for most child dummies. The commenter also said that the development of a device to measure abdominal injury is both possible and essential.

NHTSA responded to an identical comment from GM on this issue in the rulemaking adopting the 6-year-old dummy specifications into part 572. The part 572 6-year-old dummy, referred to as SA106C, can provide measurements of crash forces imposed on the dummy's femurs, in addition to measurements of head and chest accelerations. In the rulemaking adopting the SA106C dummy (the same dummy being considered today) into part 572, GM suggested that NHTSA adopt a 6-year-old dummy based on the 50th percentile male Hybrid-III dummy instead of the SA106C 6-year-old dummy, because the Hybrid-III child dummy was superior in its instrumentation.

NHTSA responded: Ford and GM might be correct that the Hybrid-III type 6-year-old dummy (which has yet to be completed and evaluated) might eventually have potential advantages over the NHTSA/Humanoid dummy in the number of parameters the dummies can measure. However, NHTSA does not believe that this rulemaking should be delayed to further consider the potential advantages of future dummies. The SA106C dummy's ability to measure HIC, chest acceleration and femur loads, and its ability to replicate

the motions and excursions of a child in a crash are sufficient to provide valid assessment of the injury potential of child restraint systems in a reliable manner. Since the SA106C dummy is ready now, and a final rule specifying the dummy will help improve safety, the agency believes it is appropriate to proceed with adding the dummy to part 572. NHTSA intends to evaluate the Hybrid-III type 6-year-old dummy after the dummy's design and development are completed and the dummy is commercially available.

NHTSA is not aware of any information showing that an alternate child test dummy, such as the Hybrid-III 6-year-old dummy, instead of the part 572 dummy, should be incorporated into Standard 213. Accordingly, NHTSA has decided to proceed with this proposal to incorporate the part 572 6-year-old dummy.

1. Dummy Selection Based on Recommended Weight of Restraint Users

NHTSA proposes amending the provisions is S7 of Standard 213 that specify the child dummy or dummies to be used in testing a particular child restraint system. Currently, S7 specifies that the 6-month-old dummy is used for testing a child restraint system that is recommended by its manufacturer for children weighing up to 20 pounds, and the 3-year-old dummy is used for testing a child restraint that is recommended for children weighing more than 20 pounds. If a child restraint system is recommended for use by children in a weight range that includes some children below 20 pounds and others above 20 pounds, the both dummies are to be used.

The ANPRM discussed how the agency might determine which new test dummies might be used under Standard 213 in the compliance testing of a particular child restraint system: S7.2 of the standard could be amended in the following manner. A restraint that is recommended for use by children in a weight range that includes children weighing not more than 7.5 pounds would be tested with the newborn dummy; from 7.5 to 20 pounds, with both the newborn and the nine-month-old dummy; from 20 to 33 pounds, with both the nine-month-old and three-year-old dummy; from 33 to 40 pounds, with the three-year-old dummy; and 40 pounds and above, with the six-year-old dummy. The agency anticipates proposing these, or similar, weight ranges in the near future.

The commenters generally supported using the newborn, 9-month-old, 3-year-old and 6-year-old dummies for Standard 213 compliance testing. Gerry, Cosco, Century Products and New York State supported using the 3-year-old and 6-year-old dummies to test booster seats recommended for children weighing more than 35 pounds.

However, commenters also had suggestions for revising the weight ranges discussed in the ANPRM. Advocates believed that the weight ranges were deficient because only two of the ranges (7.5 to 20 pounds and 20 to 33 pounds) would have two test dummies, one for the lower weight limit and another for the upper weight limit. SafetyBeltSafe believed the 3-year-old (33 pound) dummy should be used to test booster seats recommended for children weighing more than 40 pounds, to address the possibility that parents might "rush" a child into a booster seat when a second child needs to use the toddler restraint. Cosco believed that any child seat recommended for children weighing over 40 pounds should be tested with both the 3-year-old and the 6-year-old dummies, so that dummies at the extreme weight ranges are used.

NHTSA generally agrees with these comments. The agency proposes to amend the weight specifications in S7 of Standard 213 so that to the extent possible, each child restraint system would be subject to being tested using at least two test dummies. To ensure that all children recommended for a restraint are adequately restrained, the dummies used to test a restraint would represent a wide range of child sizes.

However, NHTSA has not proposed to combine the 20 to 33 pound and the 33 to 40 pound ranges into a 20 to 40 pound range, as Cosco suggested. Cosco stated that it believes that the weight ranges should be combined so that child restraints in the 20 to 40 pound range are tested with the 9-month-old and 3-year-old dummies. NHTSA has tentatively determined that booster seats (typically recommended for children 30 pounds and above) need not be tested with the 9-month-old (20 pound) dummy. This is because the September 1993 NPRM on child booster seat safety included a proposal that booster seats must be labeled for children weighing not less than 30 pounds. If that proposal is adopted, the label would likely reduce the chances that a booster seat would be used with children weighing in the 20 pound range. Comments are requested on this issue.

NHTSA proposes the following provisions for determining which dummy or dummies are to be used for testing child restraints, based on child mass:

- A child restraint that is recommended by its manufacturer for children in a specified weight range that includes any children having a mass less than 4 kilograms (i.e., 9 pounds or less) is tested with a newborn test dummy conforming to part 572 subpart K.
- A child restraint that is recommended for children in a specified weight range that includes any children having masses from 4 to not more than 9 kilograms (weights of 9 to 20 pounds) is tested with a newborn test dummy and a 9-month-old test dummy conforming to part 572 subpart J.
- A child restraint that is recommended for children in a specified weight range that includes any children having masses from 9 to not more than 13.5 kilograms (weights of 20 to 30 pounds) is tested with a 9-month-old test dummy and a 3-year-old test dummy conforming to part 572 subpart C.
- A child restraint that is recommended for children in a specified weight range that includes any children having masses equal to or greater than 13.5 kilograms (30 pounds and above) is tested with a 3-year-old test dummy and a 6-year-old test dummy conforming to part 572 subpart I.

If a child restraint is recommended for a weight range of children that overlaps, in whole or in part, two or more of the weight ranges set out above, the restraint would be tested with the dummies specified for each of those ranges. Thus, for example, if a child restraint were recommended for children having masses greater than 13 kilograms, it would be tested with the 9-month-old dummy, the 3-year-old dummy and the 6-year-old dummy.

2. Dummy Selection Based on Recommended Sitting Height of Restraint Users

The fundamental purpose of today's proposal is to ensure that each child restraint performs as intended in restraining the range of children recommended for it. Thus, in addition to the above specifications for selecting test dummies based on recommended weight ranges, the agency proposes to supplement those specifications with provisions for selecting test dummies based on recommended sitting height ranges. More specifically, NHTSA would establish supplementary provisions specifying the use of a particular test dummy based on the child restraint manufacturer's recommendations regarding the sitting height of the children for whom the restraint is intended. The effect of those

provisions might in some cases be to increase the number and variety of dummies with which a child restraint would otherwise have been tested based solely on the manufacturer's recommendations regarding the weight of children for whom it's restraint is suitable. Since the Standard currently requires manufacturers to provide recommendations concerning (standing) height, this document proposes to change the Standard to require recommendations regarding sitting height instead of standing height. The sitting height of a seated child is measured from the seating surface to the top of the child's head. Comments are requested on the merits of using a sitting height criterion.

This issue relating to the height of the restrained child was addressed by some commenters. Advocates commented that ". . . child restraints must be compliance tested for specific ranges of child occupant sizes that appropriately match the restraint use recommendations to the size, weight, and height, of the intended child occupants." Cosco stated that as children get older, it is the height, instead of the weight, that becomes more of a determining factor in correct car seat use.

The agency tentatively agrees that a manufacturer's recommendations about the suitability of the restraint for children of a particular height should be a factor in determining the size of the dummy or dummies to be used to test the restraint. NHTSA is concerned that if height were not a factor, it might be possible for a restraint to be tested with a dummy or dummies insufficiently representative of the range of children recommended for the restraint. This could occur if a manufacturer were to recommend inconsistent mass and height ranges. A manufacturer could create an inconsistency by recommending a height range that corresponds to children who are of greater mass (weight) than the masses expressly recommended by the manufacturer for the restraint.

For instance, suppose an infant restraint were recommended for children with masses not more than 4 kilograms (approximately 9 pounds) and a sitting height of up to 475 mm. Although the use of both the newborn and 9-month-old dummies would be more representative of the users of the restraint, only the newborn dummy would be used if dummy selection were based solely on the mass recommendation. However, according to a report by the University of Michigan on "Physical Characteristics of Children as Related to Death and Injury for Consumer Product Safety Design," Report No. PB–242–221, of children with masses of 4 kilograms, those in the 95th percentile have a sitting height of approximately 450 mm. Since the restraint is recommended for children with heights greater than the 95th percentile child, NHTSA has tentatively determined that it would be appropriate to test the infant restraint not only with the infant dummy, but also with a test dummy representative of a taller child (i.e., with the 9-month-old dummy).

NHTSA proposes the following provisions for determining which dummy or dummies to use for testing child restraints, based on child sitting height.

- A child restraint that is recommended for children in a specified sitting height range that includes any children whose sitting height is not more than 450 mm (450 mm is approximately the sitting height for a 95th percentile newborn male child), is tested with a newborn test dummy conforming to part 572, subpart K.
- A child restraint that is recommended for children in a specified sitting height range that includes any children whose sitting height is between 451 mm and 500 mm (500 mm is approximately the sitting height for a 95th percentile nine-month-old male child whose mass is 9 kilograms), is tested with a newborn test dummy and a 9-month-old test dummy conforming to part 572, subpart J.
- A child restraint that is recommended for children in a specified sitting height range that includes any children whose sitting height is between 501 mm and 600 mm (600 mm is approximately the sitting height for a 95th percentile three-year-old male child whose mass is 13.5 kilograms), is tested with a 9-month-old test dummy and a 3-year-old test dummy conforming to part 572, subpart C.
- A child restraint that is recommended for children in a specified sitting height range that includes any children whose sitting height is equal to or greater than 600 mm is tested with a 3-year-old test dummy and a 6-year-old test dummy conforming to part 572, subpart I.

If a child restraint is recommended for a sitting height range of children that overlaps, in whole or in part, two or more of the height ranges set out above, the restraint would be tested with the dummies specified for each of those ranges. Thus, for example, if a child restraint were recommended for children having sitting heights greater than 480 mm, it would be tested with the 9-month-old dummy, the 3-year-old dummy and the 6-year-old dummy.

b. Performance Criteria

The performance criteria which a child restraint must meet when restraining a dummy would generally be unchanged, except as described later in this section. Thus, the requirements regarding dynamic performance (including the head and chest injury criteria and excursion), force distribution, installation, child restraint belts and buckles and flammability would generally be uniform for all restraints, regardless of the size of the dummy used. For example, Standard 213 currently requires a child restraint to limit forces on the head and chest of the 3-year-old test dummy, to 1000 HIC (head) and 60 g's (chest). These criteria would be unchanged for testing done with the 6-year-old dummy.

GM commented on the general appropriateness of the existing injury criteria for children. The HIC and chest g's injury criteria are the same as those specified in Standard 208, Occupant Crash Protection (49 CFR 571.208) for motor vehicles when they are tested with the 50th percentile adult male dummy. GM stated that it believes the values for the child dummies should be separately scaled from the adult dummy "to reflect anatomical differences and differing injury tolerance of children."

NHTSA does not agree. As to specifying different HIC values for each child dummy, the agency does not believe that a consensus exists on values for such limits. No person commenting on the agency's rulemaking proposals for child restraint systems, or otherwise providing information to the agency, has been able to provide actual data on head injury of children of various ages to support any suggested value for HIC other than 1000 HIC. Moreover, comments on NHTSA's planning document agreed that the limits of 1000 HIC and 60g chest are acceptable for the three- and six-year-old dummies. The commenters believed that those limits are not appropriate for smaller sized dummies, which is an issue not addressed by this NPRM. Based on this information, NHTSA is proposing to use the 1000 HIC and 60g chest acceleration limits of Standard 213 for the six-year-old dummy.

Some requirements in Standard 213 would differ depending on the child test dummy used. As noted above, a child restraint might be tested with multiple dummies under this proposal. In that event, the largest of the dummies used in the testing would also be used for determining the applicability of the seat

back requirement and for determining compliance with that requirement.

However, the 6-year-old dummy would not be used to determine either whether a seat back is needed on a child restraint or whether a required seat back is high enough although that restraint had been tested for compliance with the dynamic performance requirements using a 6-year-old dummy. Standard 213 currently requires certain child seats to have a seat back to provide restraint against rearward movement of the child's head (rearward in relation to the child). (S5.2.1) The determination of whether a seat back is required on a child restraint is based on the dummy used in the compliance testing of the restraint. A child restraint need not have a seat back if a specified point on the dummy's head (approximately located at the top of the dummy's ears) is below the top of the standard seat assembly to which the restraint is attached for compliance testing. (S5.2.1.2) Booster seats are currently tested with the 3-year-old dummy, which sits low enough on the standard seat assembly that the point on the dummy's head is not above the top of the seat assembly. Since that dummy is used, booster seats need not have seat backs. If the 6-year-old dummy were to be incorporated into Standard 213 and if S5.2.1 were to remain unchanged, the impact on booster seats could be substantial. Most, if not all, booster seats (and perhaps other types of child seats) might have to be redesigned to have a seat back. This is because the sitting height of the 6-year-old dummy is higher than that of the 3-year-old. As a result, the critical point on the head of the 6-year-old dummy is likely to be above the top of the seat assembly. There may be additional costs associated with such redesign.

NHTSA does not know of real world crash data that indicate a problem with head or neck injuries in rear impact crashes. (See also, denial of petition for rulemaking to require a special warning on child seats addressing possible whiplash injuries due to lack of head restraint. 56 FR 3064, January 28, 1991.) In view of the possible redesign costs and the apparent lack of a safety need for a seat back on boosters, NHTSA has tentatively determined that S5.2.1.1 should provide that the 6-year-old dummy is not used to determine the applicability of or compliance with the seat back requirements. Comments are requested on this issue. NHTSA is particularly interested in crash data indicating a need for a requirement for a seat back on booster seats. Comments are also requested on any additional costs that might result from redesigning child restraints to provide a seat back.

A requirement that currently differs accordingly to the test dummy or dummies used in testing a child restraint, and would continue to do so under this proposal, is that regarding post-impact buckle force release (S5.4.3.5(b)). Currently, S5.4.3.5(b) requires each child seat belt buckle to release when a force of not more than 16 pounds is applied, while tension (simulating a child restrained in the child seat) is applied to the buckle. Tension is applied because a child in the seat could impose a load on the belt buckle which increases the difficulty of releasing it. The test procedures for this requirement (S6.2) specify that the applied tension is 20 pounds in the case of a system tested with a 6-month-old dummy and 45 pounds in the case of a system tested with a 3-year-old dummy. In both cases, the force level is based on the heaviest children who are likely to use the restraint. NHTSA proposes to amend S6.2 so that the tension would be 50 Newtons when the system is tested with a newborn dummy, 90 Newtons for tests with a 9-month-old dummy, 200 Newtons for tests with a 3-year-old dummy, and 270 Newtons for tests with a 6-year-old dummy.

c. Clarifying Amendments

NHTSA is also proposing three clarifying amendments unrelated to the addition of new sizes of dummies to Standard 213. Two of the amendments would clarify the standard's excursion requirements. The excursion requirement for built-in child restraints (S5.1.3.1(b)) prohibits the dummy's knee pivot from passing through a plane that is specified distance "forward of the hinge point of the specific vehicle seat into which the system is built." Chrysler suggested (docket 74–09–N24–001) that NHTSA amend the reference point because the "hinge point of the specific vehicle seat" cannot be readily defined for most vehicle seats. This is because most vehicle seats into which a built-in child restraint is fabricated do not have hinges for their backs, or are configured so that the hinge is not easily seen during dynamic testing.

NHTSA is addressing this concern by proposing to reference the H-point on the seat, which is a reference point used in S11 of Standard 208, "Occupant Crash Protection," and in S4.3 of Standard 210, "Seat Belt Assembly Anchorages." The H-point of a specific vehicle seating position is determined by using equipment and procedures specified in the Society of Automotive Engineers (SAE) recommended practice SAE J826 (May 1987), "Devices for Use in Defining and Measuring Vehicle Seating Accommodation." The H-point is identified either during the seat's design by means of a two-dimensional drafting template, or after the vehicle is completely manufactured, by means of a three-dimensional device. The H-point is located at approximately the same location as the "hinge point" on a vehicle seat. However, since the H-point already must be identified by the vehicle manufacturer for purposes of Standards 208 and 210, it appears using the H-point for Standard 213 would be expedient.

The other clarifying amendment relates to the excursion requirement for rear-facing child restraints (S5.1.3.2). S5.1.3.2 currently states that "no portion of the target point on either side of the dummy's head" shall pass through an area on the child restraint. The quoted language would be revised to remove the reference to a "portion" of the target point. The use of "portion" is incorrect since the target point is dimensionless.

The third clarifying amendment relates to the requirement in the standard that limits the force that may be imposed on a child from the vehicle belt used to anchor the child seat to the vehicle (S5.4.3.2). S5.4.3.2 currently limits the force that is imposed by "each belt that is part of a child restrain system and that is designed to restrain a child using the system and to attach the system to the vehicle." NHTSA proposes to also limit the force imposed by each Type 1 and the lap portion of a Type 2 vehicle belt that is used to attach the child seat to the vehicle. These belts, which anchor the child seat to the vehicle, function to absorb the forces of the crash into the frame of the vehicle. NHTSA is thus proposing that these belts not transfer those crash forces to the occupant child.

d. Other Issues

The July 1991 planning document identified several possible ways in which Standard 213 could be upgraded. These were incorporating the newborn, 9-month-old and 6-year-old dummies, changing aspects of Standard 213's test procedure (e.g., the characteristics of the seat assembly used to test child seats and the severity of the dynamic test); changing the injury criteria (HIC, chest g's); reducing allowable head excursion; facilitating the manufacture of belt-positioning child seats; and addressing the interaction of air bags and infant seats. Since issuance of the planning document, some of these issues have been addressed through the issuance of rulemaking notices, such as today's NPRM and the September 1993 NPRM

on belt-positioning child seats. NHTSA has also issued an NPRM on the interaction of airbags and infant seats (NPRM at 58 FR 19792; April 16, 1993).

All of the issues identified in the 1991 planning document as subjects of possible rulemaking have been explored in research projects. In some instances, research has shown that rulemaking does not appear warranted. For example, NHTSA determined that the configuration of today's vehicle interiors does not appear to pose a safety need to reduce allowable head excursion. This is based on a survey of late model vehicles that NHTSA conducted to assess vehicle interior dimensions and the fit of the three-year-old and six-year-old dummies, as well as on the fact that child restraints provide about 70 percent effectiveness in reducing serious injuries and fatalities when used in today's vehicle interiors. The findings of the research were summarized in a report titled, "Assessment of Vehicle Interior Dimensions and Lap/Shoulder Belt Fit," October 1992 (VRTC–82–0236, "Child Restraint Testing (Rulemaking Support)"). Another example where the agency's research has shown that rulemaking is not warranted was research addressing whether flexibility of the back of the test seat assembly affects that test dummy's performance during compliance testing of shield-type booster seats. The findings of this research were summarized in a report titled, "Evaluation of Effects of FMVSS 213 Seat Back's Flexibility on Booster Seat Responses," October 1992, (VRTC–82–0236, *id.*)

In other instances, more information on the issue is needed. For instance, as mentioned in section IIb ("Performance criteria") of this preamble, information is generally unavailable on new, possibly more appropriate injury criteria for children. Relatedly, new, more sophisticated child test dummies are being developed, but more must be known about their performance, reliability and availability as possible Standard 213 test devices.

NHTSA also seeks to learn more about a particular type of child restraining device that appears to be proliferating. These devices are designed to be attached to a vehicle Type II belt system to improve the fit of the system on children, and in some cases, on small adults. The agency seeks information on whether Standard 213 should be applied to these devices, and if so, which of the standard's requirements would be appropriate for those devices.

The agency notes that the regulatory text proposed in this notice includes language that was proposed in the September 1993 NPRM on child booster seat safety. In some instances, comments were received on aspects of the September 1993 NPRM that are included in today's NPRM. For example, this notice includes text proposing specifications for the seat belt anchorage points on the standard seat assembly used to test belt-positioning booster seats. See proposed S6.1.1(c) of this notice. The agency is including the text that was proposed in the earlier notice simply to illustrate the complete appearance of the affected section. The agency is fully aware of the issues raised by commenters to various aspects of the September 1993 NPRM; it is not necessary for commenters to resubmit views on today's notice that were expressed in previous comments on the earlier NPRM. NHTSA emphasizes that inclusion of text from the September 1993 notice does not imply that such text will necessarily be adopted as proposed.

III. Rulemaking Analyses and Notices

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

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. NHTSA has prepared a preliminary regulatory evaluation for this action which discusses its potential costs, benefits and other impacts. A copy of that evaluation has been placed on the docket for this rulemaking action. Interested persons may obtain copies of the evaluation by writing to the docket section at the address provided at the beginning of this notice.

To briefly summarize the evaluation, cost estimates from NHTSA contractor tests indicate that if two dummies were used to test each adjustable position of each restraint, the cost per position would be approximately $1,500. There are approximately 47 different models of child restraints on the market, with an estimated total of 185 adjustable positions. The total cost for all manufacturers of testing child restraints with two dummies instead of one would result in an incremental increase of $138,750 ($750×185 adjustable positions).

Redesign costs are unknown, and have not been estimated. It appears this rulemaking would affect shield-type boosters. Tests of some of these boosters indicated that they generally could not adequately restrain the nine-month-old and six-year-old test dummies, even though they were recommended for children weighing the same as those dummies. NHTSA believes that some manufacturers might cease producing shield boosters that could not be certified as meeting Standard 213 when tested with an additional dummy, rather than redesign the shield boosters. The shield booster could be replaced with belt-positioning boosters, which are relatively easy to design. Some manufacturers might also relabel their restraints as being suitable for a narrower weight range of children, to avoid having their restraints tested with a particular test dummy (i.e., one representing a size of child that the restraint cannot restrain). The cost impact of the rule on child restraints other than shield boosters is unknown.

NHTSA cannot quantify the benefits of this rulemaking. However, the agency believes this rulemaking would improve the safety of child restraint systems by providing for their more thorough compliance testing. The result of the rule would be to better ensure that each child restraint safely restrains the children for whom the restraint is recommended.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. The agency knows of fourteen manufacturers of child restraints, seven of which NHTSA considers to be small businesses (including Kolcraft, which with an estimated 500 employees, is on the borderline of being a small business). A rule adopting today's proposals would increase the testing that NHTSA conducts of child restraints, which in turn would increase the certification responsibilities of manufacturers. However, the agency does not believe such an increase would constitute a significant economic impact on small entities, because these businesses currently must certify their products to the dynamic test of Standard 213. That is, the products of these manufacturers already are subject to dynamic testing using child test dummies. The effect of this rule on most child seats is to subject them to testing with an additional dummy. Assuming there are shield boosters that could not be certified as meeting Standard 213 when tested with an additional dummy, small manufacturers producing those boosters would have to redesign those restraints systems to meet the standard.

However, those manufacturers could decide to replace nonconforming shield boosters with belt-positioning boosters, which are relatively easy to design. NHTSA expects that all manufacturers will enter the belt-positioning booster market. Some manufacturers might also relabel their restraints as being suitable for a smaller weight range of children, to avoid having their restraints tested with a particular test dummy (i.e., one representing a size of child that the restraint cannot restrain).

Small organizations and governmental jurisdictions might be affected by a rule if these entities procure child restraint systems for programs such as loaner programs. However, available information indicates that only a small percentage of loaner programs carry booster seats. Further, while the cost of child restraints could increase, the agency believes the cost increase would be minimal. Thus, loaner program procurements would not be significantly affected by a final rule.

Executive Order 12612 (Federalism)

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

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This proposed rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

IV. Comments on the Proposal

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.213 would be amended by—

a. revising S5, S5.1.3.1 (a) and (b), S5.1.3.2, the introductory paragraph of S5.2.1.2, S5.4.3.2, the introductory text of S5.4.3.5, S5.4.3.5 (a) and (b), S5.5.2(f), S5.5.5(f), S6 through S6.1.2, S6.2.2, S6.2.3, S7 through S7.2, S8.2.1, S8.2.3, and S8.2.4,

b. removing S6.1.2.1 through S6.1.2.6 and S7.2.1 through S7.3, and

c. adding S9 and S10, to read as follows:

§ 571.213 Standard No. 213, Child restraint systems.

* * * * *

S5. *Requirements.* (a) Each motor vehicle with a built-in child restraint system shall meet the requirements in this section when, as specified, tested in accordance with S6.1 and this paragraph.

(b) Each child restraint system manufactured for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1 and this paragraph. Each add-on system shall meet the requirements at each of the restraint's seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (e.g., forward, rearward or laterally) pursuant to S5.6, and tested with the test dummy specified in S7.

(c) Each child restraint system manufactured for use in aircraft shall meet the requirements in this section and the additional requirements in S8.

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S5.1.3.1 * * *

(a) In the case of an add-on child restraint system, no portion of the test dummy's head shall pass through a vertical, transverse plane that is 813 millimeters forward of point Z on the standard seat assembly, measured along the center SORL (as illustrated in figure 1B), and neither knee pivot point shall pass through a vertical, transverse plane that is 914 millimeters forward of point Z on the standard seat assembly, measured along the center SORL.

(b) In the case of a built-in child restraint system, neither knee pivot shall pass through a vertical, transverse plane that is 686 millimeters forward of the H-Point as described in the Society of Automotive Engineers Recommended

Practice "Devices for Use in Defining and Measuring Vehicle Seating Accommodation," SAE J826, May 1987 (specified in "S4.3.2, Seat Belt Anchorages for the Upper Torso Portion of Type 2 Seat Belt Assemblies," of 49 CFR (§ 571.210), Seat Belt Assembly Anchorages) of the specific passenger car seat into which the system is built, measured along a horizontal line passing through the H-Point and parallel to the vehicle's longitudinal center plane.

S5.1.3.2 *Rear-facing child restraint systems.* In the case of each rear-facing child restraint system, all portions of the test dummy's torso shall be retained within the system and neither of the target points on either side of the dummy's head and on the transverse axis passing through the center of gravity of the dummy's head and perpendicular to the head's midsagittal plane, shall pass through the transverse orthogonal planes whose intersection contains the forward-most and top-most points on the child restraint system surfaces (illustrated in Figure 1C).

* * * * *

S5.2.1.2 The applicability of the requirements of S5.2.1.1 to a front-facing child restraint, and the conformance of any child restraint other than a car bed to those requirements is determined using the largest of the test dummies specified in S7.1 for use in testing that restraint; provided, that the 6-year-old dummy described in subpart I of part 572 of this title is not used to determine the applicability of or compliance with S5.2.1.1. A front-facing child restraint system is not required to comply with S5.2.1.1 if the target point on either side of the dummy's head is below a horizontal plane tangent to the top of—

* * * * *

S5.4.3.2 *Direct restraint.* Each belt that is part of a child restraint system and that is designed to restrain a child using the system and to attach the system to the vehicle, and each Type 1 and lap portion of a Type 2 vehicle belt that is used to attach the system to the vehicle shall, when tested in accordance with S6.1, impose no loads on the child that result from the mass of the system, or

(a) In the case of an add-on child restraint system, from the mass of the seat back of the standard seat assembly specified in S6.1, or

(b) In the case of a built-in child restraint system, from the mass of any part of the vehicle into which the child restraint system is built.

* * * * *

S5.4.3.5 *Buckle release.* Any buckle in a child restraint system belt assembly designed to restrain a child using the system shall:

(a) When tested in accordance with S6.2.1 prior to the dynamic test of S6.1, not release when a force of less than 40 Newtons is applied and shall release when a force of not more than 62 Newtons is applied;

(b) After the dynamic test of S6.1, when tested in accordance with the appropriate sections of S6.2, release when a force of not more than 71 Newtons is applied;

* * * * *

S5.5.2 * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum weight and sitting height of children who can safely occupy the system:

(1) This infant restraint is designed for use by children who weigh _____ pounds or less and whose sitting height is _____ inches or less (the sitting height of a seated child is measured from the seating surface to the top of the child's head); or

(2) This child restraint is designed for use only by children who weigh between _____ and _____ pounds and whose sitting height is _____ inches or less and who are capable of sitting upright alone (the sitting height of a seated child is measured from the seating surface to the top of the child's head); or

(3) This child restraint is designed for use only by children who weigh between _____ and _____ pounds and whose sitting height is between _____ and _____ inches (the sitting height of a seated child is measured from the seating surface to the top of the child's head).

* * * * *

S5.5.5 * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum weight and sitting height of children who can safely occupy the system:

(1) This infant restraint is designed for use by children who weigh _____ pounds or less and whose sitting height is _____ inches or less (the sitting height of a seated child is measured from the seating surface to the top of the child's head); or

(2) This child restraint is designed for use only by children who weigh between _____ and _____ pounds and whose sitting height is _____ inches or less and who are capable of sitting upright alone (the sitting height of a seated child is measured from the seating surface to the top of the child's head); or

(3) This child restraint is designed for use only by children who weigh between _____ and _____ pounds and whose sitting height is between _____ and _____ inches (the sitting height of a seated child is measured from the seating surface to the top of the child's head).

* * * * *

S6. *Test conditions and procedures.*

S6.1 *Dynamic systems test for child restraint systems.*

The test conditions described in S6.1.1 apply to the dynamic systems test. The test procedure for the dynamic systems test is specified in S6.1.2. The test dummy specified in S7 is placed in the test specimen (child restraint), clothed as described in S9 and positioned according to S10.

6.1.1 *Test conditions.* (a) Test devices. (1) The test device for add-on restraint systems is a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is described in Drawing Package SAS–100–1000, addendum A (dated July 1, 1993) (consisting of drawings and a bill of materials). The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented.

(2) The test device for built-in child restraint systems is either the specific vehicle shell or the specific vehicle.

(i) *Specific vehicle shell.* (A) The specific vehicle shell, if selected for testing, is mounted on a dynamic test platform so that the longitudinal center line of the shell is parallel to the direction of the test platform travel and so that movement between the base of the shell and the platform is prevented. Adjustable seats are in the adjustment position midway between the forwardmost and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forwardmost and rearmost position, the closest adjustment position to the rear of the midpoint is used. Adjustable seat backs are in the manufacturer's nominal design riding position. If such a position is not specified, the seat back is positioned so that the longitudinal center line of the child test dummy's neck is vertical, and if an instrumented test dummy is used, the accelerometer surfaces in the dummy's head and thorax, as positioned in the vehicle, are horizontal. If the vehicle seat is equipped with adjustable head

restraints, each is adjusted to its highest adjustment position.

(B) The platform is instrumented with an accelerometer and data processing system having a frequency response of 60 Hz channel class as specified in Society of Automotive Engineers Recommended Practice J211 JUN80 "Instrumentation for Impact Tests." The accelerometer sensitive axis is parallel to the direction of test platform travel.

(ii) *Specific vehicle.* For built-in child restraint systems, an alternate test device is the specific vehicle into which the built-in system is fabricated. The following test conditions apply to this alternate test device.

(A) The vehicle is loaded to its unloaded vehicle weight plus its rated cargo and luggage capacity weight, secured in the luggage area, plus the appropriate child test dummy and, at the vehicle manufacturer's option, an anthropomorphic test dummy which conforms to the requirements of subpart B or subpart E of part 572 of this title for a 50th percentile adult male dummy placed in the front outboard seating position. If the built-in child restraint system is installed at one of the seating positions otherwise requiring the placement of a part 572 test dummy, then in the frontal barrier crash specified in (c), the appropriate child test dummy shall be substituted for the part 572 adult dummy, but only at that seating position. The fuel tank is filled to any level from 90 to 95 percent of capacity.

(B) Adjustable seats are in the adjustment position midway between the forward-most and rearmost positions, and if separately adjustable in a vehicle direction, are at the lowest position. If an adjustment position does not exist midway between the forward-most and rearmost positions, the closest adjustment position to the rear of the midpoint is used.

(C) Adjustable seat backs are in the manufacturer's nominal design riding position. If a nominal position is not specified, the seat back is positioned so that the longitudinal center line of the child test dummy's neck is vertical, and if an anthropomorphic test dummy is used, the accelerometer surfaces in the test dummy's head and thorax, as positioned in the vehicle, are horizontal. If the vehicle is equipped with adjustable head restraints, each is adjusted to its highest adjustment position.

(D) Movable vehicle windows and vents are, at the manufacturer's option placed in the fully closed position.

(E) Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

(F) Doors are fully closed and latched but not locked.

(G) All instrumentation and data reduction is in conformance with SAE J211 JUN80.

(b) the tests are frontal barrier impact simulations of the test platform or frontal barrier crashes of the specific vehicles as specified in S5.1 (§ 571.208) and for:

(1) Test Configuration I, are at a velocity change of 30 mph with the acceleration of the test platform entirely within the curve shown in Figure 2, or for the specific vehicle test with the deceleration produced in a 30 mph frontal barrier crash.

(2) Test Configuration II, are set at a velocity change of 20 mph with the acceleration of the test platform entirely within the curve shown in Figure 3, or for the specific vehicle test, with the deceleration produced in a 20 mph frontal barrier crash.

(c) Attached to the seat belt anchorage points provided on the standard seat assembly (illustrated in Figures 1A and 1B) are Type 1 seat belt assemblies in the case of add-on child restraint systems other than belt-positioning seats, or Type 2 seat belt assemblies in the case of belt-positioning seats. These seat belt assemblies meet the requirements of Standard No. 209 (§ 571.209) and have webbing with a width of not more than 2 inches, and are attached to the anchorage points without the use of retractors or reels of any kind.

(d) Performance tests under S6.1 are conducted at any ambient temperature from 19° to 26° F and at any relative humidity from 10 percent to 70 percent.

(e) In the case of add-on child restraint systems, the restraint shall meet the requirements of S5 at each of its seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (e.g., forward, rearward or laterally) pursuant to S5.6, and tested with the test dummy specified in S7.

S6.1.2 *Dynamic test procedure.*

(a) Activate the built-in child restraint or attach the add-on child restraint to the seat assembly as described below:

(1) *Test configuration I.* (i) In the case of each add-on child restraint system other than a belt-positioning seat, child harness, a booster seat with a top anchorage strap, or a restraint designed for use by physically handicapped children, install a new add-on child restraint system at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the add-on restraint shall be secured to the standard vehicle seat using only the standard vehicle lap belt. A child harness, a booster seat (other than a belt positioning seat) with a top anchorage strap, or a restraint designed for use by physically handicapped children shall be installed at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1. A belt-positioning seat shall be installed at either outboard seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the belt-positioning seat shall be secured to the standard vehicle seat using only the standard vehicle lap and shoulder belt.

(ii) In the case of each built-in child restraint system, activate the restraint in the specific vehicle shell or the specific vehicle, in accordance with the manufacturer's instructions provided in accordance with S5.6.2.

(2) *Test configuration II.* (i) In the case of each add-on child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, or a booster seat with a top anchorage strap, install a new add-on child restraint system at the center seating position of the standard seat assembly using only the standard seat lap belt to secure the system to the standard seat.

(ii) In the case of each built-in child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, or a built-in booster seat with a top anchorage strap, activate the system in the specific vehicle shell or the specific vehicle in accordance with the manufacturer's instructions provided in accordance with S5.6.2.

(b) Tighten all belts used to attach the add-on child restraint system to the standard seat assembly to a tension of not less than 53.5 Newtons and not more than 67 Newtons, as measured by a load cell used on the webbing portion of the belt.

(c) Place in the child restraint any dummy specified in S7 for testing systems for use by children of the heights and weights for which the system is recommended in accordance with S5.6.

(d) Assemble, clothe, prepare and position the dummy as specified in S7 through S10 and part 572 of this chapter, as appropriate.

(e) If provided, shoulder and pelvic belts that directly restrain the dummy in add-on and built-in systems shall be adjusted as follows:

Tighten the belts until a 9-Newton force applied (as illustrated in figure 5) to the webbing at the top of each dummy shoulder and to the pelvic webbing 50 millimeters on either side of the torso midsagittal plane pulls the webbing 7 millimeters from the dummy.

(f) Accelerate the test platform to simulate frontal impact in accordance with Test Configuration I or II, as appropriate.

(g) Determine conformance with the requirements in S5.1, as appropriate.

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S6.2.2 After completion of the testing specified in S6.1 and before the buckle is unlatched, tie a self-adjusting sling to each wrist and ankle of the test dummy in the manner illustrated in Figure 4, without disturbing the belted dummy and the child restraint system.

S6.2.3 Pull the sling tied to the dummy restrained in the child restraint system and apply a force whose magnitude is: 50 Newtons for a system tested with a newborn dummy; 90 Newtons for a system tested with a 9-month-old dummy; 200 Newtons for a system tested with a 3-year-old dummy; or 270 Newtons for a system tested with a 6-year-old dummy. The force is applied in the manner illustrated in Figure 4 and as follows:

(a) *Add-on Child Restraints.* For an add-on child restraint other than a car bed, apply the specified force by pulling the sling horizontally and parallel to the SORL of the standard seat assembly. For a car bed, apply the force by pulling the sling vertically.

(b) *Built-in Child Restraints.* For a built-in child restraint other than a car bed, apply the force by pulling the sling parallel to the longitudinal center line of the specific vehicle shell or the specific vehicle. In the case of a car bed, apply the force by pulling the sling vertically.

* * * * *

S7. *Test dummies.* (Subparts referenced in this section are of part 572 of this chapter.) S7.1 *Dummy selection.* (a) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass less than 4 kilograms, or by children in a specified sitting height range that includes any children whose sitting height is equal to or less than 450 mm, is tested with a newborn test dummy conforming to part 572 subpart K.

(b) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass equal to or greater than 4 but less than 9 kilograms, or by children in a specified sitting height range that includes any children whose sitting height is greater than 450 mm but not greater than 500 mm, is tested with a newborn test dummy conforming to part 572 subpart K, and a 9-month-old test dummy conforming to part 572 subpart J.

(c) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass equal to or greater than 9 but not greater than 13.5 kilograms, or by children in a specified sitting height range that includes any children whose sitting height is greater than 500 mm but not greater than 600 mm, is tested with a 9-month-old test dummy conforming to part 572 subpart J, and a 3-year-old test dummy conforming to part 572 subpart C and S7.2.

(d) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 13.5 kilograms, or by children in a specified sitting height range that includes any children whose sitting height is greater than 600 mm, is tested with a 3-year-old test dummy conforming to part 572 subpart C and S7.2, and a 6-year-old test dummy conforming to part 572 subpart I.

(e) A child restraint that meets the criteria in two or more of the preceding paragraphs in S7.1 is tested with each of the test dummies specified in those paragraphs.

S7.2 *Three-year-old dummy head.* Effective September 1, 1993, this dummy is assembled with the head assembly specified in § 572.16(a)(1) of this chapter.

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S8.2.1 A standard seat assembly consisting of a representative aircraft passenger seat shall be positioned and adjusted so that its horizontal and vertical orientation and its seat back angle are the same as shown in Figure 6.

* * * * *

S8.2.3 In accordance with S10, place in the child restraint any dummy specified in S7 for testing systems for use by children of the heights and weights for which the system is recommended in accordance with S5.5 and S8.1.

S8.2.4 If provided, shoulder and pelvic belts that directly restrain the dummy shall be adjusted in accordance with S6.1.2.

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S9 *Dummy clothing and preparation.* S9.1 *Type of clothing.* (a) *Newborn dummy.* When used in testing under this standard, the dummy is unclothed.

(b) *Nine-month-old dummy.* When used in testing under this standard, the dummy is clothed in terry cloth polyester and cotton size 1 long sleeve shirt and size 1 long pants, with a total mass of 0.136 kilograms.

(c) *Three-year-old and six-year-old dummies.* When used in testing under this standard, the dummy is clothed in thermal knit, waffle-weave polyester and cotton underwear or equivalent, a size 4 long-sleeved shirt (3-year-old dummy) or a size 5 long-sleeved shirt (6-year-old dummy) having a mass of 0.090 kilograms, a size 4 pair of long pants having a mass of 0.090 kilograms and cut off just far enough above the knee to allow the knee target to be visible, and size 7M sneakers (3-year-old dummy) or size 12½ sneakers (6-year-old dummy) with rubber toe caps, uppers of dacron and cotton or nylon and a total mass of 0.453 kilograms.

S9.2 *Preparing clothing.* Clothing other than the shoes is machine-washed in 71° C to 82° C and machine-dried at 49° C to 60° C for 30 minutes.

S9.3 *Preparing dummies.* Before being used in testing under this standard, dummies must be conditioned at any ambient temperature from 19° C to 25.5° C and at any relative humidity from 10 percent to 70 percent for at least 4 hours.

S10. *Positioning the dummy and attaching the system belts.* S10.1 *Car beds.* Place the test dummy in the car bed in the supine position with its midsagittal plane perpendicular to the center SORL of the standard seat assembly, in the case of an add-on car bed, or perpendicular to the longitudinal axis of the specific vehicle shell or the specific vehicle, in the case of a built-in car bed. Position the dummy within the car bed in accordance with the instructions for child positioning that the bed manufacturer provided with the bed in accordance with S5.6.

S10.2 *Restraints other than car beds.* S10.2.1 *Newborn dummy and nine-month-old dummy.* Position the test dummy according to the instructions for child positioning that the manufacturer provided with the system under S5.6.1 or S5.6.2, while conforming to the following: (a) Prior to placing the 9-month-old test dummy in the child restraint system, place the dummy in the supine position on a horizontal surface. While placing a hand on the center of the torso to prevent movement of the dummy torso, rotate the dummy

legs upward by lifting the feet 90 degrees. Slowly release the legs but do not return them to the flat surface.

(b)(1) When testing forward-facing child restraint systems, holding the 9-month-old test dummy torso upright until it contacts the system's design seating surface, place the 9-month-old test dummy in the seated position within the system with the mid-sagittal plane of the dummy head—

(i) Coincident with the center SORL of the standard seating assembly, in the case of the add-on child restraint system, or

(ii) Vertical and parallel to the longitudinal center line of the specific vehicle shell or the specific vehicle, in the case of a built-in child restraint system.

(2) When testing rear-facing child restraint systems, place the newborn or 9-month old dummy in the child restraint system so that the back of the dummy torso contacts the back support surface of the system. For a child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2 which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2. If the dummy's head does not remain in the proper position, it shall be taped against the front of the seat back surface of the system by means of a single thickness of ¼-inch-wide paper masking tape placed across the center of the dummy's face.

(c)(1) When testing forward-facing child restraint systems, extend the arms of the 9-month-old test dummy as far as possible in the upward vertical direction. Extend the legs of the 9-month-old dummy a far as possible in the forward horizontal direction, with the dummy feet perpendicular to the centerline of the lower legs.

Using a flat square surface with an area of 2580 square millimeters, apply a force of 178 Newtons, perpendicular to:

(i) The plane of the back of the standard seat assembly, in the case of an add-on system, or

(ii) The back of the vehicle seat in the specific vehicle shell or the specific vehicle, in the case of a built-in system, first against the dummy crotch and then at the dummy thorax in the midsagittal plane of the dummy. For a child restraint system with a fixed or movable surface described in S5.2.2.2, which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2.

(2) When testing rear-facing child restraints, position the newborn and 9-month-old dummy arms and legs vertically upwards and then rotate each arm and leg downward toward the dummy's lower body until the arm contacts a surface of the child restraint system or the standard seat assembly in the case of an add-on child restraint system, or the specific vehicle shell or the specific vehicle, in the case of a built-in child restraint system. Ensure that no arm is restrained from movement in other than the downward direction, by any part of the system or the belts used to anchor the system to the standard seat assembly, the specific shell, or the specific vehicle.

S10.2.2 *Three-year-old and six-year-old test dummy.* Position the test dummy according to the instructions for child positioning that the restraint manufacturer provided with the system in accordance with S5.6.1 or S5.6.2, while conforming to the following:

(a) Holding the test dummy torso upright until it contacts the system's design seating surface, place the test dummy in the seated position within the system with the midsagittal plane of the test dummy head—

(1) Coincident with the center SORL of the standard seating assembly, in the case of the add-on child restraint system, or

(2) Vertical and parallel to the longitudinal center line of the specific vehicle, in the case of a built-in child restraint system.

(b) Extend the arms of the test dummy as far as possible in the upward vertical direction. Extend the legs of the dummy as far as possible in the forward horizontal direction, with the dummy feet perpendicular to the center line of the lower legs.

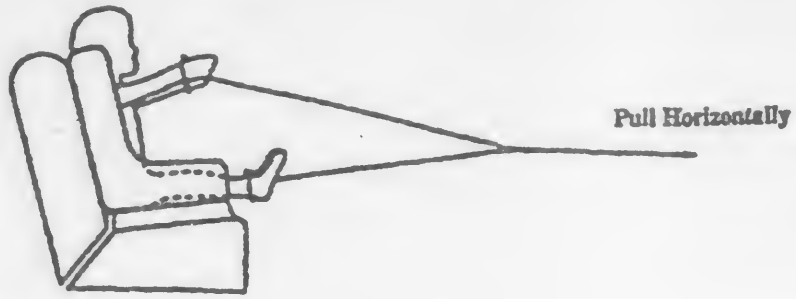
(c) Using a flat square surface with an area of 2580 square millimeters, apply a force of 178 Newtons, perpendicular to:

(1) The plane of the back of the standard seat assembly, in the case of an add-on system, or

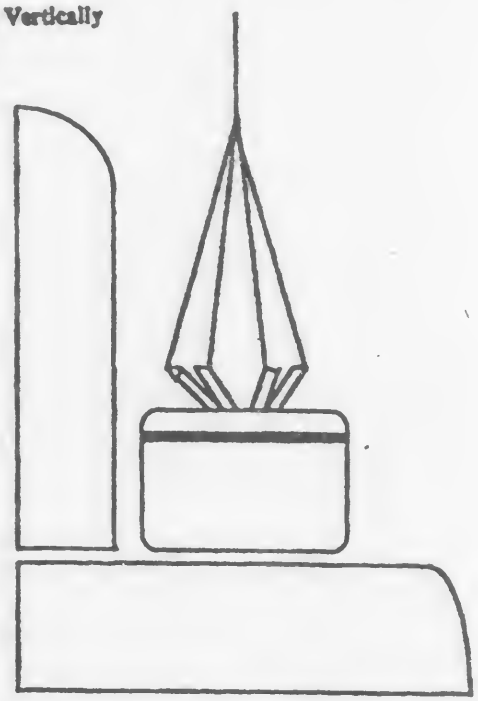
(2) The back of the vehicle seat in the specific vehicle shell or the specific vehicle, in the case of a built-in system, first against the dummy crotch and then at the dummy thorax in the midsagittal plane of the dummy. For a child restraint system with a fixed or movable surface described in S5.2.2.2, which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2.

3. Figure 4 of § 571.213 would be removed and Figures 4A and 4B would be inserted in its place to read as follows:

BILLING CODE 4910-59-M



a)



b)

FIGURE 4 – Buckle Release Test

BILLING CODE 4910-59-C

Issued on March 8, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–5768 Filed 3–15–94; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 59, No. 51
Wednesday, March 16, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration and Committee on Rulemaking; Public Meetings

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Administration and the Committee on Rulemaking of the Administrative Conference of the United States.

Committee on Administration

Date: Friday, March 25, 1994, 10:00 a.m.

Address: Office of the Chairman, Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

For Further Information: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Committee on Rulemaking

Date: Monday, April 4, 1994, from 2:00 p.m. to 4:00 p.m.

Address: Office of the Chairman, Administrative Conference, 2120 L Street NW., suite 500, Washington, DC.

For Further Information: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Supplementary Information: The Committee on Administration will discuss Professor Kratzke's report which examines the basis for each of the major exemptions to governmental liability under the Federal Tort Claims Act and urges repeal or modification of most of the exemptions.

The Committee on Rulemaking will meet to continue discussion of Professor Roy A. Schotland's report on Exemption 8 of the Freedom of Information Act, which covers certain bank information. The issue is whether recommendations should be made that the exemption be modified or eliminated.

Attendance at the meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least two days prior to the meeting. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: March 10, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–6188 Filed 3–15–94; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–94–001]

Beef Promotion and Research: Recertification, Certification, and Nomination Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture's Agricultural Marketing Service (AMS) is accepting applications from State cattle producer and general farm organizations as well as beef importers who desire to be certified to nominate cattle producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. With regard to previously certified organizations, a review will be conducted to ascertain whether organizations may remain certified as eligible to make nominations. Such organizations will be provided an official application form by AMS. Only those organizations which are newly certified or recertified will be eligible to nominate cattle producers or beef importers to the Board. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by April 15, 1994.

ADDRESSES: Certification forms as well as copies of the certification and nomination procedures may be requested from Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, room 2624–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp at 202/720–1115 (FTS 720–1115).

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), approved December 23, 1985, authorizes the implementation of a national Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 101 cattle producers and 6 importers appointed by the Secretary. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of the Secretary that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order (7 CFR 1260.143(b)(2)). Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets.

Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557). Since an organization's membership may change over time and since many organizations were certified in 1986, AMS will conduct a review to ascertain whether an organization may remain certified as eligible to make nominations. Previously certified organizations must be recertified to nominate producers and importers for upcoming vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of three (3) years. The Order also requires the Department to announce when a Board vacancy does or will exist. The following States or units have one or more members whose terms will expire in 1994:

State or unit	Number of vacancies
Arizona	1
California	2
Colorado	1
Iowa	2
Kansas	2
Louisiana	1
Michigan	1
Minnesota	1
Mississippi	1
Missouri	1
Nebraska	2
Nevada	2
New Mexico	1
North Carolina	1
Oklahoma	1
South Carolina	1
South Dakota	2
Tennessee	1
Texas	4
Utah	1
Wisconsin	2
Wyoming	2
Mid-Atlantic	1
Northeast Unit	1
Importers	2

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or units.

Noncertified and existing certified eligible producer organizations in all States that are interested in being certified or recertified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by April 15, 1994. Noncertified and existing certified eligible importer organizations that are interested in being certified or recertified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received by April 15, 1994 will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR 1260.530 as published in 51 FR 11557, 11559 (April 4, 1986) are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(3) There must be a history of stability and permanency.

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (i.e., beef or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

The Department may review any certified organization's books, documents, papers, records, files, and facilities to verify any of the information submitted and may procure such other information as may be required to determine the organization's eligibility for certification. In addition, the information submitted on the application must be timely, complete, and correct to the best of one's knowledge.

All organizations and associations, newly certified and recertified in the States or units having vacant positions on the Board will be notified in writing of the beginning and ending dates of the nomination period and will be provided nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to the Secretary of Agriculture for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: March 8, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–6140 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Establishment of Gold Basin Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Gold Basin Purchase Unit.

SUMMARY: On February 23, 1994, the Deputy Assistant Secretary, Natural Resources and Environment, created the Gold Basin Purchase Unit. This purchase unit comprises approximately 80 acres within Snohomish County, Washington. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Creation of this purchase unit was effective February 23, 1994.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street SW., Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090; telephone: (202) 205–1248.

Dated: March 9, 1994.

Gordon H. Small,

Acting Deputy Chief.

Pursuant to the Secretary of Agriculture's authority under Section 17, Public Law 94–588 (90 Stat. 2949), the Gold Basin Purchase Unit is being created in Snohomish, Washington. The lands within the purchase unit are described as follows:

Snohomish County, Washington, Willamette Meridian

T. 30 N., R. 8 E.

Sec. 14: E½SW¼.

The area described contains 80 acres, more or less, and is adjacent to the Mt. Baker-Snoqualmie National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: February 23, 1994.

Adela Backiel,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 94–6123 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–11–M

Animal and Plant Health Inspection Service

[Docket No. 94–010–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the months of December 1993 and January 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the months of December 1993 and January 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 10th day of March 1994.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–6036 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

All-Terrain Vehicle & Motorcycle Trail, Salem and Potosi Ranger Districts, Mark Twain National Forest; Crawford, Dent, Iron, Reynolds, Shannon and Washington Counties, MO

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On September 16, 1991, a notice was published in the **Federal Register** (56 FR 46764) stating that an environmental impact statement would be prepared for an all-terrain vehicle and motorcycle trail on the Salem and Potosi Ranger Districts, Mark Twain National Forest, Missouri.

That notice is hereby canceled.

DATES: This Action is effective March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Darsan Wang, Recreation Specialist, 314–364–4621.

SUPPLEMENTARY INFORMATION: This environmental impact statement process was initiated in September, 1991. Since that time the interdisciplinary team has been pursuing the development of a draft environmental impact statement in accord with the NEPA process. Public involvement has been promoted throughout the process. On December 23, 1993, a notice of DEIS availability was published in the **Federal Register** (58 FR 68143). The public review period ends as of this notice.

I am withdrawing this DEIS at this time because upon my review of the document, I have found that certain issues were not adequately analyzed and the public comments revealed overwhelming opposition to the scope of the ATV proposal.

Dated: March 11, 1994.

B. Eric Morse,

Forest Supervisor.

[FR Doc. 94–6061 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–11–M

Newberry National Volcanic Monument Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Advisory Council meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on April 8, 1994 at the Bend/Fort Rock Ranger District, 1230 NE 3rd Street in Bend, Oregon. The meeting will begin at 9 a.m. and continue until 4 p.m. Agenda items to be covered include: Reviewing the Draft

Environmental Impact Statement for the Monument, staff reports on recreation and other issues, public comments on the draft plan for the Monument, and a discussion of vegetation management in the Monument.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct question regarding this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE 3rd, Bend, OR 97701, (503) 383–4702 or 383–4704.

Dated: February 28, 1994.

Ranotta K. McNair,

Acting Deputy.

[FR Doc. 94–5926 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: User Satisfaction Surveys.

Form Numbers: Agency—ITA–4015P, ITA–4099P–1, ITA–4103P, ITA–4106P, ITA–4107P, ITA–4108P–A1, ITA–4108P–A2, ITA–4108P–C1, ITA–4108P–C2, ITA–4108P–E, ITA–4108P–I, ITA.–4108P–T, ITA–4108P–W, ITA–4110P, ITA–4117P, ITA–4120P, ITA–4121P, ITA–4122P, ITA–4123P, ITA–4124P, ITA–4125P, ITA–4126P, ITA–4129, ITA–4130P, ITA–4131P, ITA–735P and ITA–4132P, OMB–0625–0217.

Type of Request: Revision of a currently approved collection.

Burden: 27,195 respondents; 4,698 reporting hours.

Average Hour per Response: Range from six to 60 minutes.

Needs and Uses: The International Trade Administration (ITA) provides information and counseling products and services that help give U.S. exporters a leading edge in world markets. There is a continuous need to assess user satisfaction with these products and services. The proposed survey instruments will provide ITA offices with flexible information collection forms to send out to customers following any transaction. This information will be used by individual offices within ITA to improve their ability to deliver services or enhance products. In addition, the information will enable staff to set priorities, maximize resources, develop base performance measures, and establish indicators for use with other available benchmarks.

Affected Public: Businesses or other for profit organizations; state or local governments; small businesses or organizations; non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: March 10, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 94–6002 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Amendment to notice of opportunity to request administrative review of a suspended investigation.

BACKGROUND: On March 4, 1994, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of an antidumping or countervailing duty order, finding, or suspended investigation. The Department inadvertently omitted Noncontinuous Noncellulosic Yarns from Thailand under the heading Suspension Agreements. The amended change should be added as follows:

Suspension agreements	Period
Thailand:	
Noncontinuous Noncellulosic Yarns (C–549–401)	01/01/93–12/31/93

In accordance with § 355.22(a) of the Commerce regulations, each year during the anniversary month of the publication of a suspension of investigation, an interested party as defined in § 355.2(i) may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which suspension of investigation was based.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. In accordance with § 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping and Countervailing Duty Administrative Reviews" for requests received by March 31, 1994.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 10, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–6126 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–702]

Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 6, 1994, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on stainless steel butt-weld pipe and tube fittings (SSPFs) from Japan (59 FR 740). The review covers one manufacturer/exporter, Benkan Corporation (Benkan), and the period March 1, 1992, through February 28, 1993.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, the final results remain unchanged from the preliminary results.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: David Genovese or Michael Heaney, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce,

Washington, DC 20230; telephone (202) 482–5254.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1993, the petitioner, Flowline Division of Markovitz Enterprises, Inc. (Flowline), requested that the Department conduct an administrative review of the antidumping duty order on SSPFs from Japan for Benkan. The Department initiated the review on May 6, 1993 (58 FR 26960), covering the period March 1, 1992, through February 28, 1993. On January 6, 1994, the Department published the preliminary results of review of the antidumping duty order on SSPFs from Japan (59 FR 740). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review include certain stainless steel butt-weld pipe and tube fittings. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants and other areas.

This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item number 7307.23.0000. The HTS item number is provided for convenience and Customs purposes. The written product description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner, Flowline.

Comment 1: Flowline argues that Benkan's date of sale methodology, which is based on the invoice date, does not provide an accurate, reasonable method for determining the date that price and quantity are set. Petitioner contends that since prices are agreed to over the telephone prior to the order being placed, the date of sale should be the date that a customer places an order (*i.e.*, the date that the order receipt slip is generated), rather than the invoice date, which is also the shipment date.

Department's Position: We disagree with Flowline. The Department has used the invoice date provided by Benkan as the date of sale because the invoice represents the first document which systematically records agreement as to prices and quantities. Order receipt slips are neither systematically generated nor comprehensive enough for these purposes. Thus, the invoice date represents an accurate, reasonable, verifiable, consistent methodology to determine the date of sale.

Moreover, this is consistent with the position that we have taken in past cases where determination of the date of sale methodology was at issue (see Antifriction Bearings (Other Than Tapered Rolling Bearings) and Parts Thereof From France, *et al.* (*AFBs*) (58 FR 39729, 39783; July 26, 1993)).

Comment 2: Flowline asserts that Benkan should be required to provide level-of-trade (LOT) information since Benkan sells to different categories of customers in the home market and in the U.S. market. Flowline refers to the Department's Policy Bulletin (92/1, July 29, 1992) to argue that Benkan has failed to demonstrate that no correlation exists between prices and LOT. Additionally, Flowline claims that Benkan has only shown that there is no significant correlation between selling expenses and LOT, as opposed to no correlation between prices and LOT.

Department's Position: The Department disagrees with Flowline. There is no evidence on the record to suggest that Benkan's prices vary based on the customer category. Moreover, Flowline has misinterpreted Department policy by improperly assuming that Benkan has the burden of demonstrating that prices are not affected by LOT; Flowline has provided no evidence to contradict Benkan's assertion that prices are not affected by LOT.

Final Results of Review

Based on our analysis of the comments received we have not changed the final results from those presented in the preliminary results of review. Accordingly, we have determined that a final margin of 8.06 percent exists for Benkan for the period March 1, 1992 through February 28, 1993.

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Benkan will be 8.06 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the "all others" rate will be 49.31 percent, as explained below.

On May 25, 1993, the CIT, in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Accordingly, the cash deposit rate for any future entries from all other manufacturers or exporters, who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firms or any previously reviewed firm, will be the "all others" rate established in the original LTFB investigation, which is 49.31 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of

APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 9, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–6125 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 14, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. The review covers 85 exporters, and the period April 1, 1992, through March 31, 1993. We have now completed the review and determine that margins exist for the period.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or 482–3814, respectively.

Background

On December 14, 1993, the Department of Commerce published the preliminary results of its administrative review (58 FR 65333) of 85 exporters, listed below, subject to the antidumping duty order on fresh and chilled Atlantic salmon from Norway (56 FR 14920) for the period April 1, 1992, through March 31, 1993. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.03. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

We determine that the following margins exist for the period April 1, 1992, through March 31, 1993:

	Percent
Adeco A/S	31.81
Arne Lund & Sonner A/S	31.81
Aalesundfisk A/S	**23.80
Aqua Star A/S	31.81
Austevoll Fiskeindusti A/S	**23.80
Atlantic Salmon A/S	31.81
Brodrene Reme	**23.80
Brodrene Sirevag A/S	**23.80
Chr. Bjelland Seafoods A/S	31.81
Domstein Salmon A/S	*31.81
Edal Laks A/S	31.81
Edda Seafood A/S	31.81
Fjord Aqua Group A/S	**23.80
Flatanger Laks A.S. K.S	31.81
Fonn Rogaland A/S	31.81
Fossen Senter—Valestrand A/S	**23.80
Fremco Fresh Marine A/S	31.81
Fremstad Group A/S	31.81
Fresh Marine Co. Ltd	31.81
Frionor Norsk Frossenfisk A/S	**23.80
Halco Norway A/S	31.81
Hallvard Leroy A/S	*31.81
Handels-Huset Nord A/S	**23.80
Heroyfisk A/S	31.81
Iglo Aqua Group A/S	31.81
Janas A/S	31.81
Janas Rokeri A/S	31.81
J.H. Fremstad A/S	31.81
Johan J. Helland A/S	**23.80
Kaldfjord Handel & Fiskeforr	31.81
Karl Abrahamsens Rokeeri A/S	31.81
Karsten J. Ellingsen A/S	**23.80
King of Norway A/S	31.81
Konrad Sekkingstand A/S	31.81
Knut Nero Exp	31.81
Kr. Kleiven & Co. A/S	31.81
Kvalos Trading A/S	31.81
Leica Fiskeprodukter	31.81
Manger Seafood A/S	31.81
Marinor Edelfisk A/S	31.81
Marinus A/S	**23.80
Misundfisk A/S	**23.80
M. Loining & Sonner A/S	31.81
More Seafood A/S	31.81
Noa Gourmet Seafood A/S	31.81
Nordic Group Inc	31.81
Norfood Group A/S	31.81
Norfra A/S	**23.80
Norsk Akvakultur A/S	**23.80
Nor-Star Seafood A/S	31.81
Northern Seafood A/S	**23.80
Norwegian Seadeli A/S	31.81
Norwegian Salmon A/S	31.81
Norwegian Seafood A/S	**23.80
Nova Sea A/S	31.81
Oddvin Bjorge A/S	**23.80
Prima Seafood	31.81
R. Domstein & Co	31.81
Reinhertsen & Co	31.81
Saga A/S	*26.55
Salmar A/S	**23.80
Salmonex A/S	**23.80
Salmonor A/S	31.81
Seanor A/S	**23.80
Scandinavian Seafood Ltd	31.81
Scandinavian Superior Seafood	31.81
Scanfarm A/S	31.81
Sea Eagle Group A/S	**23.80
Sea Star International A/S	31.81
Smefa A/S	**23.80
Sotra Smoked Fish A/S	31.81
Stabburet A/S	**23.80
Stabburet Marine Produkter A/S	31.81
Stavanger Rokeri & Fisk A/S	**23.80
Sunnmorsfisk A/S	31.81
Terra Seafood A/S	31.81
Troll Salmon A/S	**23.80
Tromsfisk A/S	31.81
Uniprawns A/S	**23.80
Vikenco A/S	**23.80
Vikin A/S	31.81
West Fish Norwegian Salmon A/S	**23.80
Westfood A/S	31.81

*No shipments during the period; margin from original investigation.

**No shipments during the period; margin for "all others" from the original investigation.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided for by section

751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firms will be each firm's rate as listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters not previously reviewed will be 23.80 percent, the all other rate from the less-than-fair-value investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversation to judicial protective order is hereby requested. Failure to comply with regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 4, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–6003 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–122–404]

Live Swine From Canada; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On October 20, 1993, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (58 FR 54,112). We have now completed that review and determine the total subsidy to be Can$0.0295 per kilogram for all live swine.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Stephanie Moore, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 54,112) the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (50 FR 32,880; August 15, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Case briefs were submitted by the National Pork Producers' Council, Petitioner, the Government of Canada (GOC), the Gouvernement du Québec (GOQ), the Canadian Pork Council (CPC), Pryme Pork, Ltd. (Pryme), P. Quintaine & Son (Quintaine), and Earle Baxter Trucking LQ (Baxter). Rebuttal Briefs were submitted by Petitioner, the GOC, the GOQ, and the CPC. On December 1, 1993 the Department held a public hearing at the request of Petitioner and the GOQ.

In response to the comments made by the parties, the Department has recalculated benefits under the Alberta Crow Benefit Offset Program, the Feed Freight Assistance Program, and the Saskatchewan Hog Assured Returns Program. The total subsidy determined in the preliminary results of review, Can$0.0289/kg, has been recalculated. The Department now determines the total subsidy to be Can$0.0295/kilogram.

Scope of Review

The merchandise covered by this review is all live swine, except breeding swine, from Canada. Such merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers the period April 1, 1990 through March 31, 1991 and the following programs: (1) Feed Freight Assistance Program; (2) National Tripartite Stabilization Scheme for Hogs (Tripartite); (3) Québec Farm Income Stabilization Insurance Program (FISI); (4) Saskatchewan Hog Assured Returns Program (SHARP); (5) Alberta Crow Benefit Offset Program (ACBOP); (6) Alberta Livestock and Beeyard Compensation Program (Livestock Predator Sub-Program); (7) Ontario Farm Tax Rebate Program; (8) Livestock Improvement Program for Northern Ontario; (9) Ontario Pork Industry Improvement Plan (OPIIP); (10) Ontario Rabies Indemnification Program; (11) Saskatchewan Livestock Investment Tax Credit; (12) Saskatchewan Livestock Facilities Tax Credit Program; (13) Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement; (14) Canada/Québec Subsidiary Agreement of Agri-food Development; (15) Canada/Manitoba Agri-Food Development Agreement; (16) Western Diversification Program; (17) Agricultural Products Board Program; (18) Canada/Alberta Swine Improvement Programs Study; (19) Canada/Ontario Canadian Western Agribition Livestock Transportation Assistance Program; (20) British Columbia Swine Herd Improvement Program; (21) Ontario Export Sales Aid; (22) Ontario Bear Damage to Livestock Program; (23) Ontario Dog Licensing and Livestock and Poultry Compensation Program; (24) New Brunswick Agriculture Development Act—Swine Assistance Program; (25) New Brunswick Swine Industry Financial Restructuring Program; (26) British Columbia Farm Income Insurance Program; (27) New Brunswick Livestock Incentives Program; (28) New Brunswick Hog Marketing Program; (29) New Brunswick Hog Price Stabilization Program; (30) New Brunswick Swine Assistance Policy on Boars; (31) Prince Edward Island Hog Price Stabilization Program; (32) Prince Edward Island Swine Development Program; (33) Prince Edward Island Interest Payment on Assembly Yard Program; (34) Nova Scotia Swine Herd Health Policy; (35) Nova Scotia Improved Sire Policy; (36) Newfoundland Farm Products Corporation Hog Price Support Program; (37) Newfoundland Weanling Bonus Incentive Policy; (38) Canada-Saskatchewan Agri-Food Development Agreement; (39) British Columbia Feed

Grain Market Development Program; (40) Ontario Soil Conservation and Environmental Assistance Program; (41) Ontario Weaner Pig Stabilization Plan; (42) Nova Scotia Natural Products Act—Pork Price Stabilization Program; and, (43) Québec Productivity and Consolidation of Livestock Production Program. Of the above-listed programs, we found subsidies were provided to live swine producers during the review period under 12 programs. See *Final Results of Review* section below.

Analysis of Comments

Comment 1: Petitioner urges the Department to reexamine its practice of not finding a program *de jure* specific based on its availability only to the agricultural sector. Petitioner argues that the Department's practice with respect to agricultural subsidies is inconsistent with its treatment of subsidies bestowed upon other sectors of the economy, and is reminiscent of the discarded "general availability test," presuming that a program available to all of agriculture is somehow "generally available." Petitioner cites both Federal Circuit and Court of International Trade opinions in advancing the argument that the Department has considerable discretion in determining when a subsidy program is *de jure* specific and what practices are countervailable. Petitioner argues that the Department should exercise its discretion, and focus on factors such as the size of the agricultural sector relative to the economy as a whole, and therefore conclude that Tripartite is *de jure* specific because it is limited, by law, to an enterprise or industry or group of enterprises or industries.

Both the GOC and the CPC argue that it would be inappropriate for the Department to now reverse a longstanding practice with regard to agricultural programs, and to do so would be tantamount to rulemaking. The GOC states that "[b]y any standard, the agricultural sector is too broad to constitute a 'specific * * * group of enterprises or industries' as required by the statute." The CPC states that what Petitioner refers to as "misguided policy" has been upheld by the Court of International Trade as a reasonable exercise of the Department's discretion. See *Roses Inc.* v. *United States*, 774 F. Supp. 1376, 1383 (CIT 1991).

Department's Position: The Department's policy with respect to agricultural programs has been incorporated into the proposed regulations, which provide that the Department "will not regard a program as being [*de jure*] specific * * * solely because the program is limited to the agricultural sector." Notice of Proposed Rulemaking and Request for Public Comments (54 FR 23,366, 23,380; May 31, 1989) (Proposed Regulations), at section 355.43(b)(8). See, e.g., *Fuel Ethanol from Brazil* (51 FR 3361; 1986). Although these proposed regulations are not final, we have determined that, for the present, it is appropriate to maintain the current policy with respect to subsidies provided to the industries within the agricultural sector. We recognize, however, that certain policies such as this one may warrant reconsideration in the future, and we agree with Petitioner that the Department's discretion permits it the authority to reverse such policies by way of the proper procedure, depending upon the policy in question.

We note, in addition, that, as with other subsidy programs, in publishing the proposed regulation relating to the current agricultural sector exception, the Department emphasized in its commentary that "an agricultural program may be deemed specific if, for example, benefits under the program are limited to, or provided disproportionately to, producers of particular agricultural products." 54 FR at 23,368 (emphasis added). The use of the disjunctive "or" demonstrates the Department's recognition that an affirmative finding based upon a single factor could reasonably support a determination of *de facto* specificity within the meaning of section 771(5) of the Act.

Comment 2: Petitioner argues that the Department should conduct its *de jure* specificity analysis of the Tripartite program by focusing on the individual Tripartite plans and their implementing subsidiary agreements, rather than on the implementing legislation, Canada's Agricultural Stabilization Act (ASA), as amended by Bill C–25 to provide for Tripartite agreements. Petitioner argues that this approach is appropriate because the Tripartite Agreement for Hogs is not integrally linked with any of the other Tripartite agreements. Contrary to the Department's determination in the fourth review of this order, Petitioner argues that all Tripartite schemes were not part of one program because they are "structured pursuant to the enabling legislation and basic principles in Bill C–25 * * *" *Final Results of Countervailing Duty Administrative Review; Live Swine from Canada* (56 FR 28,531; June 21, 1991) (*Fourth Review Final*).

According to Petitioner, the basis of the Department's determination appears to have been its consideration of only one factor, the purpose of the program as stated in the enabling legislation. Petitioner argues, however, that there is no evidence of a government policy to treat industries equally under the agreements because each individual agreement specifies the manner in which benefits are calculated and paid, thereby describing the class of eligible producers. Petitioner cites *Certain Fresh Atlantic Groundfish from Canada; Final Affirmative Countervailing Duty Determination* (51 FR 10,041, 10,049; March 24, 1986) (*Groundfish*), *aff'd*, *Comeau Seafoods* v. *United States*, 13 CIT 923, 724 F. Supp. 1407, 1416 (1989), in which the Court of International Trade (CIT) affirmed the Department's determination to examine the specificity of the Canadian Economic and Regional Development Agreements by focusing on the terms of the individual ERDA subsidiary agreements.

Petitioner also argues that even if the Department examines the Tripartite schemes collectively, they are *de jure* limited to a specific group of industries, namely the eleven commodities covered by Tripartite agreements during this review period.

Respondents counter that it is appropriate for the Department to employ an integral linkage analysis when the Department is determining whether to examine two or more programs as one. Applying the integral linkage policy here shows that the Tripartite agreements meet all of the integral linkage criteria and should therefore be considered as one program, consistent with the Department's practice in reviewing this program. According to the GOC and the CPC, the analogy which Petitioner draws between Tripartite and the regional development agreements in *Groundfish* provides no support for the approach endorsed by Petitioner. The GOC and the CPC also object to Petitioner's arguments on the basis that the Department has already determined Tripartite to be *de jure* not specific in earlier reviews of this order, and Petitioner has presented no new facts or evidence of changed circumstances which would justify reconsideration of this determination. Therefore, the Department should not revisit the question of *de jure* specificity.

Department's Position: For purposes of the Department's *de jure* specificity analysis, we have continued to treat Tripartite as a single subsidy program providing benefits to several identifiable beneficiaries through individual agreements reached between the federal government, the provincial governments and the various agricultural commodity producers.

Petitioner's reliance on *Groundfish* and *Comeau Seafoods* is misplaced. In

upholding the Department's determination in *Comeau Seafoods*, the CIT correctly identified the determinative issue as being "*at what level* Commerce may apply the specificity test." *Comeau Seafoods*, 724 F. Supp. at 1416 (emphasis in original). As the CIT found, the individual Economic and Regional Development Agreements (ERDAs) at issue there were "designed to 'establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments.'" *Id.* at 1415 (quoting *Groundfish From Canada*, 51 FR at 10,049). In addition, the ERDAs were designed to provide only a procedure for "the establishment of economic development programs with stated general economic development goals." *Id.* at 1415 n. 13. For these reasons, the "agreements" in *Groundfish* were effectively separate subsidy programs, making the proper level of specificity analysis the agreements themselves.

By contrast, as the Department found in the fourth administrative review, Tripartite's enabling legislation, Canada's ASA, as amended by Bill C–25, provides for established administrative procedures and funding commitments. *Fourth Review Final*, 56 FR at 28,532. Moreover, Tripartite's enabling legislation creates a framework for providing only one type of assistance, income stabilization to producers of agricultural commodities which establish agreements. See *id.* Therefore, although the record is not clear as to whether the Government of Canada retains discretion regarding when to enter into particular agreements, it is clear that Tripartite is a single program, of which the Tripartite agreements, or product-specific schemes, are "integral parts." Accordingly, the appropriate level for the Department's specificity analysis is not the individual agreements but the Tripartite program itself. In reaching this determination, we note that, contrary to the arguments of Respondents, the Department did not conduct an integral linkage analysis of Tripartite in the fourth administrative review or at any other time. See *id.*

Finally, as we found in the preliminary results, Petitioner has not presented any new facts or evidence of changed circumstances during the present review which would warrant reconsideration of the issue of whether the Tripartite is *de jure* specific. *Preliminary Results* at 54,116. Therefore, we have declined to reconsider the Department's determination that Tripartite is not *de jure* specific.

Comment 3: The GOC disagrees with the Department's preliminary determination that Tripartite is not integrally linked to the other provisions of the Agricultural Stabilization Act (ASA), in accordance with the Department's proposed regulations, and that the programs examined together are not *de facto* specific. Furthermore, the GOC considers unreasonable the Department's reliance on non-regulatory factors such as "a documentary statement of an overall government policy to treat industries equally" and the expectation of identical treatment and benefits among the different programs at the operational level. In relying on these factors, the Department is introducing a more stringent standard than is required by the proposed regulations and is, therefore, acting contrary to law.

More specifically, the GOC argues that the relationship between Tripartite and the named and designated commodity provisions of the ASA satisfies all of the Department's regulatory factors for finding integral linkage. According to the GOC, there is one statute which provides the same benefits, for the same purpose, under a centralized administration "to the producers of all agricultural commodities in Canada." The GOC further states that the Department errs by equating a policy to treat industries equally with a requirement that benefits, purposes, and administration be identical; a policy to treat industries equally is evident under the ASA, the GOC argues, because it provides every Canadian agricultural producer access to stabilization payments, when needed, in the amounts required, without regard to regional differences in a complementary fashion.

The GOC further argues that, because identicality should not be expected or required, the Department's conclusion is unwarranted that the existence of Tripartite Stabilization Committees indicates that the programs are not administered in common. Equally unwarranted is the Department's distinction between Tripartite (which requires producer contributions) on the one hand, and named and designated commodities on the other (which require no producer contributions). According to the GOC, the Tripartite producer contribution requirement does not disadvantage producers because producers enter Tripartite agreements only if the benefits, such as flexibility in negotiating a payment schedule, outweigh the drawbacks.

Petitioner agrees with the Department's finding that Tripartite is not integrally linked to any other support program. Citing *Carbon Steel Wire Rod from Saudi Arabia; Final Results of Countervailing Duty Administrative Reviews* (57 FR 8303; March 9, 1992), Petitioner argues that the GOC has failed to demonstrate that the factors considered by the Department are outside the Department's scope of authority under its proposed regulations, or otherwise not in keeping with earlier determinations. Petitioner argues that, unless the Department interprets the integral linkage standard in a strict fashion, despite the GOC's claim that the Department's interpretation is "more stringent" than that which is required by the proposed regulations, any government would be able to immunize its support programs against findings of specificity by merely articulating a very broad purpose which encompasses all programs.

Petitioner also argues that the analysis of equal treatment applied by the Department is neither extraregulatory nor unreasonable. Contrary to the GOC's allegations, neither the Department's analysis in this case, nor the linkage test in general, requires identical treatment, but rather equality in receipt of benefits.

Department's Position: We disagree with Respondents and affirm our preliminary determination that the "named" and "designated" provisions of the ASA are not integrally linked to the Tripartite provision of the ASA. Contrary to the contention of Respondents, the Department's interpretation of the integral linkage policy, and the Department's integral linkage analysis in this case, are not more stringent than permitted by the Department's authority. The integral linkage policy is only an exception to the normal application of the specificity test. As the drafting of the integral linkage provision in the proposed regulations indicates, the policy was created to permit evaluating whether, in particular circumstances, the Department should deviate from its normal approach to analyzing *de facto* specificity in order to consider the coverage of two or more programs together instead of just one. See Proposed Regulations at § 355.43(b)(6). Considering the purpose of the specificity test as a whole, we have interpreted the standard narrowly for granting an affirmative integral linkage determination.

The specificity test was designed to avoid carrying the countervailing duty law to absurd results by countervailing government actions or programs such as public highways and bridges which clearly benefit the economy at large, as opposed to identifiable and specific segments of the economy. *See, e.g.,*

Carlisle Tire & Rubber Co. v. *United States*, 564 F. Supp. 834, 838 (CIT 1983). In implementing the appropriate standard to determine whether to permit a particular exception to the specificity test, however, such as an affirmative integral linkage finding, the Department cannot create a loophole which would allow *de facto* specific subsidy programs benefiting only particular segments of the economy—or particular segments of the agricultural sector—to escape the imposition of countervailing duties.

Permitting respondent governments to loosely connect two or more programs which are otherwise designed to serve different purposes would create just the type of loophole the Department seeks to avoid. Besides being contrary to the Department's specificity practice, doing so would also be contrary to Congress' express requirement in the legislative history that Commerce avoid taking an "overly narrow" or "overly restrictive" view of its authority to determine specificity. S. Rep. No. 71, 100th Cong., 1st Sess. 123 (June 12, 1987). This statement, implies that Congress intended the Department to view its authority to find specificity broadly and its authority to create exceptions to its normal approach narrowly. The very fact that the programs at issue must be found to be "integrally linked" rather than merely "linked" demonstrates the limited circumstances which would warrant an affirmative finding.

The evidentiary standard for establishing that two or more programs are integrally linked is two-fold. First, as we explained in the preliminary results, the government must point to an express statement in the statute or elsewhere, either at the time the first program was created or later when the additional programs were added, which reasonably documents the government's underlying intent to develop two or more programs designed as "complementary parts of an overarching governmental policy directive." *Integral Linkage Analysis Memorandum*, October 13, 1993 (on file in Room B–099, Department of Commerce) (quoting *Carbon Steel Wire Rod From Saudi Arabia*, 57 FR at 8303) (*Integral Linkage Memo*). The need to provide this type of objective legal evidence relates to all of the integral linkage factors set forth in the proposed regulations. The government must also provide factual evidence documenting that its original intent has been implemented, and that the programs are actually functioning in a complementary manner. This type of evidence also relates to each of the proposed factors and other relevant evidence.

Contrary to the claim of the GOC, the Department does not require that the programs be "identical" in order to prevail on a claim of integral linkage. As petitioner correctly notes, however, the supporting evidence must go beyond simply identifying a broad underlying purpose encompassing several otherwise distinct programs which provide access to benefits to all or most eligible industries. For instance, in this case, the Department's linkage standard requires more than the GOC's broad statement that Tripartite and the other ASA provisions are each designed to provide income stabilization to all agricultural industries. *See* Integral Linkage Memo at 4.

As stated above, the respondent government must demonstrate through objective record evidence that, due to an "overall policy or national development plan," it created two or more programs with the express purpose that they complement one another, not only in terms of breadth of availability and coverage, but in similarity of intent, purpose, and administration as well. *Preliminary Results* at 54,115 (quoting *Carbon Steel Wire Rod from Saudi Arabia*). Furthermore, the evidence must establish that any differences between the nature and administration of the programs are necessary because of differences in the nature of the industries being offered benefits; and despite these differences, the recipient industries are actually treated equally in terms of availability, type, and receipt of benefits.

As the Department indicated in the preliminary results, the GOC was unable to point to the necessary documentation demonstrating the existence of an overall policy or development plan to create two or more complementary programs. That fact alone renders a claim of integral linkage insupportable. See *id.*; *Integral Linkage Memo* at 3–4. The Department also found that the information in the record does not establish that the named, designated, and Tripartite provisions of the ASA are administered in an equal or complementary manner. *Id.*

In light of these basic, essential requirements, the Department's interpretation of the integral linkage policy in the preliminary results, is fully consistent with the Department's practice, proposed regulations and the legislative guidance regarding the appropriate approach to specificity analysis in general. See, *e.g.*, *Groundfish*.

Comment 4: The GOC and the CPC disagree with the Department's determination that Tripartite is *de facto* specific. They argue that the Department's reliance on its finding that there are "too few users" of Tripartite is legally insufficient. According to Respondents, the statute and proposed regulations require consideration of all four factors enumerated in the proposed regulations at section 355.43(b)(2) before the Department can determine whether benefits under this program are provided to a specific enterprise or industry or group of enterprises or industries. The GOC argues that in reaching its preliminary results, the Department misinterpreted and misapplied *Final Results of Review: Carbon Black from Mexico*, 51 FR 30,385 (1986) and *Cabot Corp.* v. *United States*, 620 F. Supp. 722 (CIT 1985) (*Cabot*). According to the GOC, *Cabot* does not stand for the proposition that the Department may halt its specificity analysis upon finding "too few users" without consideration of the other regulatory factors and relevant evidence. As support, Respondents argue that a single-factor specificity test has been consistently rejected by the CIT, the Court of Appeals for the Federal Circuit, and several United States Canada Free Trade Agreement (FTA) binational panels. See *Live Swine from Canada*, USA–91–1904–03, at 25 (October 30, 1992) (*Second Swine IV Panel Decision*); *In the Matter of Softwood Lumber from Canada*, USA–92–1904–01 (May 6, 1993); see also *Roses, Inc.* v. *United States* 774 F. Supp. 1376 (CIT 1991) (*Roses II*); and *Roses, Inc.* v. *United States*, 743 F. Supp. 870 (CIT 1990) (*Roses I*).

Respondents point out that although the binational panel reviewing the fifth administrative review of live swine from Canada upheld the Department's specificity finding with regard to Tripartite, it did not uphold the use of a single-factor specificity test. In fact, the panel rejected the Department's finding that Québec's Farm Income Stabilization Insurance scheme is specific based upon only one factor.

Petitioner argues that the sequential application of the specificity test is not inconsistent with U.S. law and has been held repeatedly to be a reasonable interpretation of the statute. Furthermore, according to Petitioner, *Cabot* supports a *de facto* specificity finding based solely on the existence of too few users, with no inquiry into policy or discretion. On the other hand, the binational panel decisions on which the GOC relies have no precedential value, and are only to be considered if they are "intrinsically persuasive." Accordingly, they do not supersede the binding case law which uniformly supports the Department's sequential application of the specificity test.

Petitioner also notes that binational panel decisions on this issue directly contradict one another. *Compare Second Swine IV Panel Decision; In the Matter of Live Swine from Canada*, USA–91–1904–04 (August 26, 1992) (*Swine V Panel Decision*); and *In the Matter of Pure and Alloy Magnesium from Canada*, USA–92–1904–03 (August 16, 1993) (*Magnesium*). Petitioner also disagrees with the claim of the GOC and the CPC that the Department did not consider all factors in its analysis.

Department's Position: The test for determining *de facto* specificity requires that the Department "consider, among other things," several particular factors. *Proposed Regulations* at section 355.43(b)(2). Respondents misinterpret the purpose of the Department's inquiry, as set forth in the proposed regulations, when they incorrectly argue that the Department's practice "plainly calls for a finding on all four factors." As the Department has stated previously, and as the Court of Appeals for the Federal Circuit has agreed, we "must consider all of these factors in light of the evidence on the record in determining specificity in a given case." *PPG Indus. v. United States*, 928 F.2d 1568, 1577 (Fed. Cir. 1991) (*PPG I*). Moreover, while decisions of binational panels may be considered intrinsically persuasive, they are not binding on the Department. We have carefully reviewed the panel decisions cited by the GOC and do not consider them intrinsically persuasive for the reasons set forth below. See also the Department's response to Comment 12, below, regarding the specificity of Québec's FISI program.

The GOC's reliance on the CIT's two *Roses* decisions is misplaced as well. In *Roses*, the CIT did not reject an affirmative *de facto* specificity determination based upon evidence relating to only one factor. Instead, the CIT rejected a finding of *non*-specificity which was reached without considering evidence relating to all four factors. It was in this context, after examining the Department's determination that a program was *not* specific based on the large number of users, that the Court properly held that the Department "does not perform a proper *de facto* specificity analysis if it merely looks at the number of companies that receive benefits under a program; the discretionary aspects of the program must be considered from the outset." *Roses II*, 774 F. Supp. at 1380. Although the CIT did not rule on the question of whether the Department could properly base an affirmative specificity determination on evidence related to only one factor, the context of the two decisions supports the Department's interpretation. See *id.*; see also *Magnesium* at 35 (cited in the *Preliminary Results* at 54,116).

In this review, the Department determined that Tripartite provided *de facto* specific benefits to swine producers based upon its examination of evidence related to the first factor, the number of actual users or beneficiaries. We considered the evidence in the record regarding dominant users and disproportionate use, and the exercise of government discretion. We determined that this evidence did not detract from an affirmative *de facto* specificity determination on the basis of too few users. *Preliminary Results* at 54,116–17. Accordingly, the Department's determination is based upon substantial evidence and is otherwise in accordance with law.

Comment 5: The GOC contests the Department's failure to specifically identify, and reach a finding regarding, "a discrete, selective, targeted" class, industry or group of industries benefitting from Tripartite. The GOC cites *PPG I*, 928 F.2d at 1577 and *PPG Indus., Inc. v. U.S.*, 978 F.2d 1232, 1240 (Fed. Cir. 1992) (*PPG II*), in support of its claim that the Department must identify a beneficiary class or industry which includes live swine producers before concluding that Tripartite is specific.

Petitioner argues that neither the statute nor the regulations require governmental targeting or intent as a precondition for determining de facto specificity; the fact that the Department declined to make this finding is reasonable and in accordance with law.

Department's Position: We disagree with the GOC's contention that absent a finding that a bestowing government intended to benefit a "discrete, selective or targeted class," we may not properly find a program *de facto* specific regardless of how few users there are or other relevant evidence. The statute does not require and the Department's policy has not established that the Department must ascertain, or base its specificity determinations upon, the intent of the bestowing government. *See* 19 U.S.C. § 1677(5)(B); *Proposed Regulations* at section 355.43(b)(2). The Department's interpretation of the statute has been expressly upheld by the CIT. *Saudi Iron and Steel Co. (Hadeed) v. United States*, 675 F. Supp. 1362, 1367 (1987), *appeal after remand*, 686 F. Supp. 914 (CIT 1988); see also *Cabot*, 620 F. Supp. at 732. Moreover, a binational panel in an earlier review of this order cited the legislative history underlying section 771(5)(B) of the Act to reject the GOC's same basic argument: "Under the statutory scheme, the pertinent inquiry is not whether Canada has intentionally targeted benefits to swine producers, but rather whether it has done something, intentionally or otherwise, that confers a benefit upon a 'specific enterprise or industry or group of enterprises or industries.'" *In the Matter of Live Swine From Canada*, USA–91–1904–03, at 19–20 (May 19, 1992) (*First Swine IV Panel Decision*).

Similarly, the Court of Appeals for the Federal Circuit did not hold, in either *PPG I* or *PPG II*, that the Department must find intent. The court recognized that the statute provides a two-part test for specificity and that the *de facto* aspect is purely an inquiry into the factual question of whether, "'*in its application*, the program results in a subsidy only to an enterprise or industry or specific group of enterprise or industries.'" *PPG II*, 978 F.2d at 1239 (quoting *PPG I*, 928 F.2d at 1576) (emphasis in original). While the court certainly did not attempt to foreclose the possibility that intent might be shown, see *PPG II* at 1240 n. 12, nowhere did the court indicate that the statute requires an express finding of intent in order to support an affirmative *de facto* specificity determination. In both decisions, the court merely used the phrase "discrete, selective, or targeted industry" to describe the industry, enterprise or group thereof that, as a factual matter, was eligible for (or should have been eligible for) or had actually received a benefit under the programs at issue. *PPG II* at 1240; *PPG I* at 1577.

In this regard, we note the decision of yet another binational panel which rejected the GOC's argument by finding that the authorities cited by the GOC "generally use the term 'targeting' as a synonym for 'specific' or 'exercise of discretion.'" *Swine V Panel Decision* at 16 n. 17. Similarly, we have interpreted the Court of Appeals' use of the same term in *PPG* as a synonym for "specific" or the "exercise of discretion." Therefore, no further findings are required by law to determine specificity in this review.

Comment 6: Petitioner argues that the Department's determination that there are "over 80 agricultural commodities" produced in both Canada and Québec understates the actual number of agricultural commodities which are eligible for benefits under the Tripartite and FISI programs, respectively. Petitioner states that the *1991 Agricultural Profile of Canada*, provided to the Department by the GOC, represents the best quantification of agricultural commodities produced in Canada. It lists 131 commodities and

supports the Department's determination in previous reviews that there are over 100 agricultural commodities produced in Canada.

Petitioner further argues that the Department found in its memorandum on *The Universe of Agriculture in Canada and Québec*, Memorandum from Dana Mermelstein to Barbara Tillman, dated October 12, 1993 (*Agricultural Universe Memo*), that "the GOC has provided no indication of the criteria it applies to determine how and when a product should be listed in the [Farm Cash Receipts]," and "it is not possible to determine * * * how the GOC would reasonably and objectively determine which of the 131 commodities listed in the *Profile* meet these criteria."

According to Petitioner, this uncertainty is a result of the failure by the GOC to provide information regarding Tripartite eligibility criteria. Therefore, Petitioner argues, the Department should draw an adverse inference and base its determination of the extent of the agricultural universe for purposes of the *de facto* specificity analysis on the *1991 Profile*.

Petitioner makes the same argument with regard to Québec's FISI program, alleging that the Government of Québec's failure to provide information about FISI eligibility requires the Department to rely on the *Profile*, and to make adverse inferences in determining the number of agricultural commodities produced in Québec.

The GOC counters that Petitioner's criticisms of the Department's reasoning are invalid especially in light of the Petitioner's failure to provide substitute criteria for determining which products to include in the universe, a substitute list of products, or a definite final tally. The GOC and the CPC argue that the shortcomings in the explanation of how the *Profile* and the FCRs are compiled do not relate to Tripartite eligibility, nor would the law allow the Department to make the adverse assumptions Petitioner urges.

The GOQ responds with three points: first, there is ample record evidence explaining and illustrating the "reasonable limitations" on FISI eligibility; second, adverse inferences are unwarranted in light of Québec's responsiveness to the Department's inquiries; and third, the *Profile* lists products at a level of aggregation which is not appropriate for defining the universe of products eligible for FISI.

Department's Position: We agree with the GOC, GOQ and CPC that Respondents' failure to provide information regarding the eligibility requirements for Tripartite and FISI is not a basis for the Department to draw an adverse inference with regard to the number of agricultural commodities produced in Canada and Québec, which are eligible for coverage. As the Department stated in the preliminary results, the goal of determining the number of commodities produced in Canada and Québec is to approximate the extent of the relevant agricultural universes and thus evaluate the coverage of the programs under consideration for the purpose of performing the *de facto* specificity analysis. We fully explained in the *Agricultural Universe Memo* how we evaluated the various sources of information in reaching the determination that there are over 80 agricultural commodities produced in both Canada and Québec.

Comment 7: The GOC argues that substantial record evidence does not support a finding that there are "too few users" of Tripartite; therefore, Tripartite is *de facto* non-specific. According to the GOC, benefits under Tripartite were provided during the review period to a "sizeable portion of the agricultural universe."

With regard to the number of Tripartite users, the GOC argues that the Department's counting of the products shows that at least 9 industries or groups thereof, or 11 percent of the universe by number of products is covered by Tripartite. The GOC avers that a program need not reach all eligible users to be found not specific. The GOC points out that the binational panel ruling on the final results in the fourth review refused to sustain the Department's finding that Tripartite was specific based upon "too few users." In this review period, the Department's determination of specificity on the same grounds is all the more inappropriate because there are two more Tripartite agreements covering two additional commodities.

Because Tripartite reaches more than a "trivial" number of users but less than the entire agricultural universe, the GOC claims that the Department's inquiry should extend into non-statistical factors, such as the availability of other stabilization options, and the length and complexity of the Tripartite negotiating process, to understand the reason for the limited number of Tripartite agreements. The GOC also reiterates its argument that Tripartite is an expanding program; products were added through the fifth review period, and enrollees were added in the current (sixth) review period.

In addition, the CPC argues that in analyzing whether Tripartite is *de facto* specific, the Department must also consider the fact that commodities participating in Tripartite accounted for 33 percent of the total value of Canadian agricultural production during the review period. The Department asked for this information and, according to the CPC, cannot now simply ignore it.

Petitioner rebuts that Respondents are attempting to inject into the specificity analysis several criteria that do not exist. Petitioner claims that the Department has consistently used statistical analyses in determining whether a program is *de facto* specific by virtue of the number of program users; in fact, the regulations require the Department to consider the number of users. Moreover, Petitioner, citing the Department's redetermination in the fifth review of this order, notes that the Department correctly does not consider that a program covering a variety of industries is necessarily *de facto* not specific. Petitioner further agrees with the Department's redetermination regarding the number of industries currently using Tripartite: it does not represent a variety of different types of agricultural commodities.

Department's Position: We disagree with the GOC. As we explained in the preliminary results, the Department determined that there were 11 beneficiaries of Tripartite during the review period (which the GOC now disaggregates into 13 beneficiaries), covered by eight agreements. *Preliminary Results* at 54,116. Tripartite's enabling legislation, Bill C–25, an amendment to the ASA, states that Tripartite benefits are available to "all natural or processed products of agriculture," thus requiring a determination that the program is not *de jure* specific under the Department's current policy toward agricultural subsidy programs. For purposes of its *de facto* specificity analysis, the Department has determined the appropriate universe of potential users in Canada against which to evaluate the number of actual users of Tripartite. That universe was comprised of over 80 agricultural commodities during the period of review. See Agricultural Universe Memorandum. Based on the Department's comparison of this evidence, we have reasonably determined that only 11 (or 13) out of over 80 is a sufficiently small number of actual beneficiaries so as to warrant a determination that Tripartite benefits a "specific enterprise or industry or group thereof" within the meaning of section 771(5)(B) of the Act.

The Department disagrees with the GOC's claim that comparing the number of users to the number of potential users of a subsidy program is not probative of

de facto specificity. This analysis is more than mere counting, as asserted by the GOC. The proposed regulations correctly provide that the Department will examine the *number* of enterprises or industries actually benefitting from a program in determining *de facto* specificity. See Proposed Regulations at section 355.43(b)(2). That is what the Department did here. In addition, the GOC itself acknowledges that, based upon the number of agricultural commodities, only 11 percent of the agricultural universe in Canada is covered by Tripartite. Such a finding would certainly not detract from a determination that Tripartite is *de facto* specific based upon the small number of users.

In this same regard, we have considered the CPC's argument that the agricultural commodities participating in Tripartite accounted for 33 percent of the total value of Canadian agricultural production during the review period based on FCRs. This evidence also does not detract from a determination that Tripartite is *de facto* specific based upon the small number of only 11 (or 13) actual users. The statute states that a domestic subsidy is countervailable if it is limited to a specific enterprise or industry or group thereof, and the Department's proposed regulations provide that the Department will examine the number of actual beneficiaries, whether industries or enterprises, in determining *de facto* specificity. The Department has previously not engaged in an analysis of the percentage of production value covered by a program in making specificity determinations. However, because the CPC has raised this issue and because the proposed regulations provide that other factors may be considered, we have now considered this information in our specificity analysis. As discussed below, the Department determines that in the context of Tripartite this information has little, if any significance, in light of the relatively small number of actual beneficiaries compared to the relatively large number of eligible beneficiaries.

The Department found that several of the relatively few commodities benefiting from Tripartite were produced in very small quantities during the review period. Thus, each accounted for a relatively small percentage of the total value of Canadian agricultural production. At the same time, certain Tripartite beneficiaries (*e.g.*, swine and cattle) accounted for relatively large percentages of total agricultural production. Similarly, of the relatively large number of remaining commodities in the agricultural universe which did not receive Tripartite, some accounted for a small percentage of production value while others accounted for a large percentage. Because the relative value of agricultural production accounted for by a particular commodity is apparently, and properly, not determinative of whether it may receive Tripartite benefits, it follows that each of these non-covered commodities, whether large or small, must be equally eligible for Tripartite benefits. Accordingly, the fact that the relatively small number of commodities receiving Tripartite benefits happened to account for 33 percent of the total agricultural production value during the review period is of little, if any, significance when viewed alongside the fact that a far greater number of both large and small commodities in Canada did not receive Tripartite benefits. Finally, we note that 33 percent of production value, viewed alone, still represents only a small percentage of the eligible universe, and if that were the sole factor that we had considered, the Department would find Tripartite *de facto* specific.

In addition, we have determined that Tripartite is not integrally linked to other income stabilization programs in Canada. Therefore, the Department is precluded from examining evidence such as that regarding the availability of other stabilization programs, which may or may not explain why there were a small number of Tripartite agreements during the review period.

Similarly, we do not consider the growth of the Tripartite program during past review periods to be relevant to an analysis of whether Tripartite is *de facto* specific during this review period. We acknowledge that commodities were added during the fifth review period. The Department found that Tripartite was *de facto* specific during that review, however, based upon evidence related to the small number of users, among other things. That determination was upheld by the binational panel reviewing the Department's findings following remand. *Swine V Panel Decision* at 17–19. Had additional agricultural commodities been added to Tripartite's coverage during this review period, the Department would have considered that evidence and reevaluated the determination that there are too few users of Tripartite to find it not *de facto* specific. Furthermore, although Tripartite may have added enrollees during this review period, this evidence does not detract from the Department's finding, which properly focused upon the industries, or agricultural commodities, receiving benefits. The additional enrollees produce the same 11 (or 13) commodities that we have determined comprise a specific group of enterprises or industries.

Based upon this analysis, we determine that substantial evidence supports the Department's determination that there were too few beneficiaries of Tripartite during the review period to warrant finding the program not *de facto* specific.

Comment 8: The GOC argues that the Department's determination that live swine producers benefit disproportionately from Tripartite improperly ignores the nature of payments under the program. The GOC claims that dollar payout levels do not show dominant or disproportionate use. First, because payouts are determined by market forces, there will always be variations in the amount of payouts to different commodities and even to the same commodity at different times. Second, the percentage of payouts received by hog producers declined substantially during the review period, suggesting that over time, the percentage of Tripartite benefits received by hog producers will return to relatively low levels. In addition, the GOC questions the value of the dominant or disproportionate use criteria in evaluating Tripartite. Because the benefits are determined by market forces, the dominant use test yields inconsistent findings regarding Tripartite's specificity.

Petitioner argues that the Department's analysis of dominant or disproportionate use is supported by substantial evidence in the record, and is otherwise in accordance with law. The GOC's argument, on the other hand, is unsupported by law. Petitioner contends that the Department has previously considered arguments regarding the role of market forces in triggering payments and has concluded that these effects relate to whether a particular industry receives benefits rather than the *de facto* specificity of a program.

Department's Position: We disagree with the GOC. First, we note that in the preliminary results, the Department determined that Tripartite was *de facto* specific solely on the basis of the small number of actual beneficiaries during the review period in relation to the large universe of eligible beneficiaries. *Preliminary Results* at 54,116. We also found that swine producers were dominant users of Tripartite based upon the fact that they have received 70 percent of the benefits over the history of the program. In making this dominant use finding, the Department intended to demonstrate only that, assuming the

Department had made no finding regarding the number of users, Tripartite could still have been found *de facto* specific. *Id.* at 54,117. Therefore, because we reasonably determined that the number of actual Tripartite users was small, no dominant use finding was required by the statute. Accordingly, inasmuch as the Department's dominant use finding was not necessary in order to support our affirmative *de facto* specificity finding on the basis of the small number of users, we have considered the parties' dominant use arguments only to determine whether they identify evidence in the record which would somehow detract from the Department's affirmative determination. We have determined that no such evidence has been identified.

Contrary to the argument of the GOC, a dominant or disproportionate use finding could well be relevant to an income stabilization program such as Tripartite if we were unable to make a specificity finding based upon the small number of users. However, the question of whether the subject merchandise happens to constitute a large or small industry (agricultural commodity) is immaterial to the Department's specificity analysis when the Department has already determined that a program is *de facto* specific based on the small number of users. Assuming the number of users in a case was not small, which is not the situation here, the Department could very well determine that the subject merchandise was a dominant user regardless of its relative size.

Similarly, the fact that Tripartite payments are triggered by market forces cannot be considered in determining whether the program is *de facto* specific. It may be that swine producers consistently receive a disproportionate share of benefits because they happen to experience consistently bad years which trigger higher payouts. Subsidies are often provided when companies or industries experience downturns in their markets, and it would be unreasonable for the Department to find that such market forces render subsidies not specific and thus not countervailable. Neither the statute nor the proposed regulations permit the Department to alter its specificity analysis on this basis.

Comment 9: The GOC also takes issue with the Department's findings that the "government of Canada may exercise discretion in the administration of" Tripartite, and that this evidence does "not detract from [our] finding of specificity" based on evidence relating to the small number of users. The GOC argues first that in relying on the legislative history of the Tripartite program to show that the Minister of Agriculture has a great amount of discretion, the Department has improperly relied on non-record evidence. According to the GOC, documents submitted by Petitioner as Tripartite legislative history were stricken from the record, and may not be considered in the Final Results.

The GOC argues that, as a matter of law, the Department's proposed regulations require the Department to consider "the extent to which a government exercises discretion in conferring benefits under a program." The Department's consistent practice has been to look for the actual exercise of discretion, and the *Swine V* panel specifically declined to sustain the Department's approach to the contrary. Therefore, according to the GOC, the Department's finding that the government "may retain" discretion is erroneous.

The GOC claims that the record on Tripartite fails to show that the GOC has ever exercised the relevant discretion, and the verification report establishes that there have been no actions limiting the availability of Tripartite agreements. Moreover, the Department persists in overlooking the extensive criteria provided in the ASA for evaluating Tripartite agreement requests. The GOC urges the Department to consider the nature of the program, which in the case of Tripartite precludes government manipulation. The government cannot control the market factors which dictate when payouts are made. Neither can the government control which producer groups will seek Tripartite agreements, and which producers will enroll once an agreement is reached. Therefore, there is no opportunity for the GOC to influence, or use its discretion in, the granting of benefits under Tripartite. The absence of evidence of government discretion must weigh against a *de facto* specificity determination.

Petitioner claims that it is not improper for the Department to rely on the legislative history of the ASA in analyzing whether the government retains discretion. Petitioner cites the CIT decision in *Central Soya Co.* v. *United States*, 15 CIT 35, 13 ITRD 1085, 1087 (1991), which held that "the court has broad power or discretion to take judicial notice of legislative facts."

Moreover, Petitioner argues that record evidence indicates that Tripartite benefits may be awarded in a discretionary manner; the negotiating process is discretionary in and of itself. The government does not automatically establish a Tripartite agreement for any producer group interested in obtaining one. Therefore, Petitioner argues that the Department's finding with regard to discretion is supported by substantial evidence in this review. Petitioner concludes that, regardless, a flawed discretion finding does not nullify the Department's specificity determination since the Department stated in the preliminary results that it "historically has not placed great emphasis on this factor."

Department's Position: We disagree with the GOC regarding the Department's approach to the evidence relating to the exercise of government discretion during this review. The Department found that the Government of Canada "may exercise discretion" in the administration of Tripartite. The Department did not base its determination of specificity on this evidence, however. As explained in the previous comments, the Department determined that Tripartite was *de facto* specific solely on the basis of the small number of only 11 (or 13) actual beneficiaries during the review period in relation to the universe of eligible beneficiaries. Preliminary Results at 54,116. At the same time, after reviewing all the information in the record, we were not able to identify an established, publicized and consistent review process leading to Tripartite agreements. The fact that negotiations are involved appears to indicate that the outcome may be unpredictable and inconsistent from one agreement to another. Thus, the resulting Tripartite agreements do not necessarily reflect identical terms or conditions. Preliminary Results at 54,117.

We also disagree with the GOC that the Department may not rely upon the Canadian legislative history relating to the Tripartite program. First, the legislative history is arguably publicly available, published information and it may be relied on at any time during the proceeding. We determined earlier in the review, however, that it was not appropriate to permit Petitioner to add this information to the record after the deadline provided for in the Department's regulations for submitting factual information. See 19 CFR 355.31(a)(1)(ii). Regardless, the Department's regulations do not preclude the Department from adding factual information to the record at any time during a proceeding, *id.* at § 355.31(b)(1), especially prior to the preliminary results.

Therefore, the fact that the Department did not permit Petitioner to add this information to the record did not preclude the Department from adding it to the record itself and relying upon the same information in reaching

its determination. Because it was plain that the Department had indeed relied upon this information, the parties had an adequate opportunity to comment upon it substantively.

Comment 10: The GOQ argues that the Department's reexamination of the FISI program, notwithstanding the decisions of two binational panels, is inconsistent with administrative practice and with the international obligations of the United States. According to the GOQ, the panels reviewing the fourth and fifth administrative reviews held that the evidence on the record did not support a determination of countervailability. By reinvestigating FISI, the Department is departing from its administrative practice not to revisit a decision absent new evidence or facts which indicate a change in the program. There is no new evidence regarding FISI; the program has remained essentially unchanged from prior reviews. The GOQ also maintains that the Department is reexamining FISI because it has never managed to compile a record sufficient to find FISI countervailable. This continuous and unjustifiable examination of FISI constitutes a restraint of international trade in violation of U.S. obligations under the General Agreements on Tariff and Trade and the FTA.

Petitioner responds that the countervailability of FISI has neither been explicitly affirmed by a reviewing binational panel, nor explicitly rejected. The panel in *Fresh, Chilled and Frozen Pork from Canada*, USA–89–1904–06, at 19 (March 8, 1991), and *Fresh, Chilled and Frozen Pork*, USA–89–1904–06, at 2 (June 3, 1991) (collectively *Pork*), concluded that the evidence on the record was insufficient to sustain the Department's countervailability determination regarding FISI. The binational panel in the fifth review of the order on live swine ordered the Department to remove FISI benefits from its calculation for the review period because of defects in the supporting record. Thus, by examining FISI in this review, the Department has not violated its own practice of not reinvestigating a program previously found not countervailable.

Department's Position: The Department's practice is not to reexamine a specificity finding made in the investigation or in a subsequent review absent new facts or evidence of changed circumstances. In this review, however, as we explained in the preliminary results, the Department's determination to reexamine FISI is reasonable in light of new evidence compiled by the Department regarding the number of potential beneficiaries of the program and other evidence. *Preliminary Results* at 54,117–18. In each proceeding reviewed by a binational panel, the panel highlighted what it considered to be deficiencies either in the supporting evidence or in the Department's analysis. For instance, the *Swine V* panel found that the Department had failed to provide a "properly articulated rationale for determining that FISI was countervailable" based on record evidence, and ordered the Department "to remove FISI benefits from its duty calculations for that review period." The *Pork* panel's holding was the same. Therefore, in this review, as explained above and in the preliminary results, we have compiled new evidence.

Comment 11: If the Department does not rescind its investigation of FISI, the GOQ urges the Department not to consider FISI in isolation but together with two other Québec programs: Crop Insurance and Supply Management. According to the GOQ, these programs serve jointly to meet the province-wide objective of stabilizing farm income. Taken together they cover 81.2 percent of the value of Québec's agricultural production; they also meet the differing needs of the agricultural sector, covering each farmer's most significant risk. Furthermore, this common purpose is best demonstrated by the administrative overlap between FISI and Crop Insurance, which are both administered by the Régie des Assurances Agricoles du Québec (the Régie). These facts illustrate a unified provincial objective, fulfilled through complementary activities which reflect the diverse production and market risks faced by Québec's farmers. On this basis, the Department must conclude that FISI benefits are not *de facto* specific.

Petitioner counters that the GOQ is really arguing that these various programs are integrally linked. Therefore, Petitioner argues, the Department should reject this argument because, having been raised only at the briefing stage of the administrative review, it is untimely. Should the Department entertain the GOQ's argument, Petitioner argues that there is insufficient record evidence to support a claim that the programs should be considered together. At the very least, the GOQ's arguments fail to address two of the factors the Department must consider when examining an integral linkage argument: funding and equality of treatment.

Department's Position: Although the GOQ did provide timely information about the programs which it now appears to contend are integrally linked to FISI, the GOQ did not present a timely allegation that these programs were integrally linked. Without a timely allegation during the investigation or administrative review that a program is integrally linked to other programs, the Department is unable to solicit and consider evidence relating to this question, and other parties are unable to comment on any determination the Department might reach. Therefore, for purposes of the Department's *de facto* specificity analysis, we have continued to base our determination of the specificity of FISI on the availability and use of that program standing alone. See Proposed Regulations at section 355.43(b)(6).

Comment 12: Like the GOC, the GOQ takes issue with the Department's interpretation of the statute that a *de facto* specificity determination may be based on only one of the factors listed in the proposed regulations. Consequently, the GOQ contests the Department's determination that FISI is *de facto* specific based only upon the small number of users participating in the program. It is the GOQ's view that the Department only briefly mentioned the other factors in its preliminary results, determining summarily that no other factors detracted from the specificity finding.

The GOQ maintains that the Department must collect and fully evaluate all reasonably available evidence, and that it "may not rely on isolated tidbits of data which suggest a result contrary to the clear weight of the evidence." *USX Corporation* v. *United States*, 655 F. Supp. 487, 489 (CIT 1987). See also *Universal Camera Corp.* v. *United States*, 340 U.S. 474 (1950). In addition, the GOQ states that every binational panel, except one, which has examined this issue has agreed that the Department cannot find specificity after examining only a single factor. The GOQ argues that the *Magnesium* panel, which held that the Department may find specificity after examining only one of the *de facto* specificity criteria, did not face this issue squarely because it found that the Department had considered three of the four specificity criteria, and there was evidence in the record indicating specificity under the fourth. The GOQ also argues that because there are different bases for analyzing *de jure* and *de facto* specificity, the Department may not properly rely upon its practice of basing a specificity finding on the single *de jure* factor as a justification for relying upon a single factor to determine *de facto* specificity.

In rebuttal, Petitioner cites *Alberta Pork* v. *United States*, 669 F. Supp. 445,

451–52 (CIT 1987), the CIT decision which held that FISI is countervailable expressly because of the limited number of program users.

Department's Position: We disagree with the GOQ's interpretation of the Department's statutory and regulatory requirements as well as the GOQ's assessment of how the Department conducted its analysis of FISI. Under *Universal Camera* (and *USX Corp.*), the Department and other administrative agencies are required to base determinations upon substantial evidence "when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the [agency's] view." *Universal Camera*, 340 U.S. at 488.

Like the GOC, the GOQ implies that in a situation like the present one, in which the Department considers evidence regarding several evidentiary factors in reaching a determination, we are somehow required to reach affirmative findings on two or more of those factors in order to support an affirmative determination.

This reading of the statute and applicable case law is mistaken. The holding of the Supreme Court in *Universal Camera* and other cases requires only that the Department *consider* all evidence.

In addition, the statute does not draw a distinction between consideration of *de jure* and *de facto* evidence, as the GOQ claims. As with *de facto* specificity, when determining whether a program is *de jure* specific, the Department will consider any evidence in the record which fairly detracts from an affirmative determination. As a matter of practice and logic, however, once the Department determines that a program is *de jure* specific on the basis of a finding relating to certain evidence, the Department is not required to reinforce that finding with additional findings supporting an affirmative determination. Similarly, when the Department determines that a program is *de facto* specific based upon too few users (or evidence relating to a different factor), that finding alone warrants an affirmative specificity determination, provided the Department views the evidence "in the light that the record in its entirety furnishes, including the body of evidence opposed to the [Department's] view." *Universal Camera*, 340 U.S. at 488.

In the present review, the Department correctly applied this standard. As the preliminary results demonstrate, we considered evidence related to all four factors outlined in the proposed regulations. As with Tripartite, we concluded that FISI was *defacto* specific during the review period based upon the small number of actual beneficiaries in relation to the very large number of eligible beneficiaries. *Preliminary Results* at 54,117–18. No evidence in the record fairly detracts from this determination. Thus, it is clear that the Department properly examined and considered all relevant evidence in the record, and its determination that FISI was *de facto* specific based upon the small number of users is supported by substantial evidence and is otherwise in accordance with law.

Comment 13: The GOQ challenges the Department's determination that FISI is *de facto* specific based upon what the Department found to be the small number of users. According to the Department's findings, FISI covered 15 products out of an eligible universe of over 80 during the review period. The GOQ states that this conclusion is flawed.

First, the Department's finding that there are "over 80 agricultural commodities produced in Québec" is based on incorrect assumptions and is not consistent with other information in the record. While the Department defined Québec's agricultural universe with reference to the combined product listings applicable to both FISI and Crop Insurance, the Department never determined whether products covered by Crop Insurance are defined at the same level of aggregation as those covered by FISI.

Further, the list provided by the Department in its November 4, 1993 memorandum includes 66 products and appears to have aggregated some products listed in the original documents but not others. This list includes certain products which were not produced in Québec during the review period, while not providing an accounting of this aggregation or the basis for combining various products. It also includes certain other products on the basis that they were produced in quantities and values similar to other livestock covered by FISI. However, there is no information about the value of production in the *1991 Agricultural Profile*, and the fact that certain livestock were produced in similar quantities is not relevant to whether the products were produced at commercially comparable levels. In addition, in at least two instances, the Department double-counted: the Department should not have listed ewes and wethers separately because the *Profile* doesn't indicate whether both were produced in Québec; and the Department should not have listed bee colonies because it already counted honey (and bee colonies are not a commercial product).

According to the GOQ, the 29-product listing which it provided defines the agricultural universe at the same level of aggregation as the FISI-covered products. Based on this list, FISI covered 15 out of the 29 products produced in Québec, which would render the program not specific based on the number of users.

In addition, this simple comparison is an inadequate evidentiary basis for finding *de facto* specificity. The Department must examine the program coverage in terms of other factors such as the percentage of the total farm production. Agricultural commodities covered by FISI in this review accounted for 38.6 percent of the total value of agricultural production. The GOQ maintains that coverage of over a third of Québec's farm sector contradicts the Department's conclusion that FISI covered too few users.

Petitioner responds that the assumptions the Department made with regard to Québec's agricultural universe are based on record evidence, and that in assessing the number of FISI-eligible products, the Department conducted extensive analysis, consulting three different alternative sources in addition to examining the undocumented list provided by the GOQ. Petitioner asserts that the GOQ's claim that the Department's classification methodology is imprecise is without merit, because the GOQ itself neglected to provide adequate guidelines to the Department. Finally, Petitioner states that the GOQ's suggested product aggregations themselves demonstrate the absurdity of their complaints.

Department's Position: We disagree with the GOQ. It is undisputed that during the period of review, FISI covered only 15 agricultural commodities under 11 schemes. As the Department explained at length in the preliminary results, in order to estimate the universe of eligible agricultural commodities in Québec, we examined the two different lists provided by the GOC (Farm Cash Receipts (FCRs)) and the GOQ, both of which listed 29 commodities. We determined that these estimates were not sufficiently reasonable because they disaggregated commodities much too broadly and contained unexplained inconsistencies. For instance, while listing "all vegetables for processing" as one category, the GOQ listed feeder hogs and piglets as two categories. By contrast, the actual coverage of FISI is disaggregated on a much more reasonable and consistent individual commodity basis, providing FISI

schemes for such narrowly defined commodities as grain corn, sugar beets and silage wheat. See *Agricultural Universe Memorandum.*

Therefore, as Petitioner notes, the Department relied upon several independent sources of information, including the 1990–91 Annual Report of the Régie des Assurances Agricoles du Québec (Régie Report) and the *1991 Agricultural Profile of Canada,* and found that there are over 80 agricultural commodities in Québec which should reasonably be eligible for FISI schemes. We determined that compared to this relatively large number of eligible recipients, the 15 agricultural commodities actually receiving FISI benefits was a small number of recipients.

In this regard, we noted that the Department considers FISI *de jure* not specific because, according to the FISI Act, it is supposed to be available to all "farm products" in Québec. The GOQ's arguments above demonstrate the difficulty of agreeing on what is the appropriate definition of "farm products" (or "agricultural commodities") for the purpose of assessing which farm products reasonably should be eligible for FISI. For instance, the GOQ appears to argue in its brief that a commodity's level of "commercial significance" bears on whether it should be eligible for FISI. However, record evidence indicates that although sugar beets remained covered by a FISI scheme during the review period, none were actually produced in the province. Similarly, the GOQ's arguments regarding wethers and ewes and bee colonies are largely unsupported in the record. Even if the GOQ is correct, the Department stressed that its estimate of the agricultural universe in Québec (and Canada) could not be expected to be an exact count. We also stressed, however, that the Department's estimate was conservative.

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Finally, we have considered the GOQ's argument that commodities covered by FISI accounted for 38.6 percent of the total agricultural production value in Québec during the review period. We determine that this evidence does not detract from a determination that FISI is *de facto* specific based upon the small number of only 15 actual users. The statute provides that a domestic subsidy is countervailable if it is provided to a specific enterprise or industry or group thereof, 19 U.S.C. 1677(5)(B), and the Department's proposed regulations provide that the Department will examine the number of actual beneficiaries, whether industries or enterprises, in determining *de facto* specificity. Thus, although the Department has not previously engaged in an analysis of the percentage of production value covered by a program, as we explained in Comment 7 above with regard to Tripartite, we have done so here pursuant to the GOQ's argument. As discussed below, the Department has determined that, in the context of FISI, as with Tripartite, it has little, if any, significance in light of the relatively small number of actual beneficiaries compared to the relatively large number of eligible beneficiaries.

Like Tripartite, FISI benefits are apparently granted and administered on an equal basis, without consideration of the commodity's relative production value. The production value of some commodities receiving FISI is small, while that of others is large. The same holds for commodities not receiving FISI. Therefore, it is reasonable to assign roughly equal significance to each beneficiary for the purpose of determining whether the actual coverage of FISI is small. Accordingly, the fact that the relatively small number of commodities receiving FISI benefits happened to account for 38.6 percent of the total agricultural production value during the review period is of little, if any, significance when viewed alongside the fact that a far greater number of both large and small commodities in Québec did not receive FISI benefits. Finally, we note that 38.6 percent of production value, viewed alone, still represents a small percentage of the eligible universe, and if that were the sole factor that we had considered, the Department would find FISI *de facto* specific.

In conclusion, the Department has determined that Québec's arguments are unpersuasive. Accordingly, the Department determines that the relatively small number of 15 actual FISI users out of over 80 eligible agricultural commodities is small and, on that basis, FISI is *de facto* specific within the meaning of section 771(5)(B).

Comment 14: The GOQ argues that live swine producers are not dominant users of the FISI program, nor did they receive disproportionate benefits. The Department used "insured value" as the measure of dominant use when, in fact, this data provides no measure of the benefits which FISI participants actually receive. According to the GOQ, the fact that the insured value of live swine is greater than the insured value of other FISI-covered products does not indicate anything more than that the actual value of live swine is greater than the value of other relevant products. The actual benefit is the provincial government's share of the payouts, not the relative insured values of the products. The Régie Report shows that live swine received less than 20 percent of the payouts made under FISI during the review period; thus, according to the GOQ, live swine producers are clearly not dominant users of FISI.

The GOQ further argues that swine producers did not receive disproportionate FISI benefits during the review period. Although the Department did not address the issue of disproportionality in its preliminary results, the GOQ asserts that it must do so now, assuming the Department finds that swine producers are not dominant users of FISI. Having received less than 20 percent of total FISI payouts during the review period, the GOQ claims that swine producers received far less than their proportional share of the payouts.

Department's Position: We agree with the GOQ that the insured value of a product is not an appropriate measure of whether a particular beneficiary is a dominant or disproportionate user of the program in question. Contrary to the assertion of the GOQ, however, it would be equally inappropriate to compare the percentage of FISI benefits received by swine producers during the review period (approximately 20 percent) to the total FISI-insured production value of live swine (approximately 51 percent) in an effort to determine whether swine producers received a disproportionate share of benefits. Most importantly, this is because FISI only benefited a small segment of the relevant universe, rendering it unnecessary to also determine whether live swine or any other beneficiary was a dominant user or received a disproportionate share of benefits. If live swine were one of two actual beneficiaries, the Department would not need to determine that one of the two was a dominant or disproportionate user in order to reasonably determine that the program provided *de facto* specific benefits. Similarly, even in light of all of the other evidence in the record, the fact that swine producers are one of only fifteen actual beneficiaries out of a much larger universe of over 80 eligible beneficiaries warrants a determination that FISI is *de facto* specific. Accordingly, inasmuch as no dominant use finding was necessary in order to support our affirmative *de facto* specificity finding on the basis of the small number of users, we have considered the GOQ's dominant use arguments only to determine whether they identify evidence in the record which would somehow detract from the Department's affirmative determination.

We have determined that no such evidence has been identified.

Only if the number of beneficiaries of a program is sufficiently large so as to call into question a determination of *de facto* specificity based upon the number of users would it be necessary to determine whether one or more of the beneficiaries was a dominant or disproportionate user. See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil, 58 FR 37,295, 37,299 (1993). In other words, a comparison similar to that advocated by the GOQ could be meaningful in the context of "a program in which virtually every segment of the economy [or the agricultural sector] in the market naturally participates to some extent." *Final Affirmative Countervailing Duty Determinations and Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37,338, 37,343 (1993). That is not the case here, and it would not be meaningful to compare swine producers' share of FISI benefits to their proportionate share of FISI production coverage because FISI covered so few industries.

Comment 15: The GOQ argues that there is no evidence that the government exercised discretion in administering FISI: each of the propositions on which the Department relied in concluding that the FISI Act "appears to allow the GOQ considerable discretion in determining which products receive schemes" is taken out of context, inaccurate and must be reexamined.

As for the Department's conclusion that discretion is evident because "schemes are established for any product * * * which the Gouvernement 'indicates,'" the GOQ argues that the producers themselves request the Régie to create a FISI scheme. Moreover, the GOQ claims that the Department's determination that the FISI Act contains no explicit criteria for the establishment of a scheme is clearly erroneous. For one, only farm products which are marketed under a joint plan created at the producers' discretion, and products derived from the participant's own operations are eligible for FISI.

The GOQ also argues that in citing the possibility of regional FISI schemes as evidence of possible government discretion, the Department overlooked the fact that the producers themselves, not the GOQ, determine the geographic scope of a FISI scheme. Moreover, the fact that the FISI Act permits the establishment of regional FISI schemes merely ensures that all joint plans created under the Farm Products Marketing Act, even plans reflecting a collection of producers grouped by region, are eligible for FISI if the producers so desire. Finally, the record demonstrates that no regional FISI scheme has ever been created.

The GOQ also contests the Department's finding of discretion on the basis that the FISI hog scheme was the only scheme during the review period which did not set a limit on the maximum level of insurance available. The GOQ contends that the ceilings were administratively burdensome and had virtually no economic impact, and that it eliminated the ceiling for the hog scheme in August 1988. Ceilings under other FISI schemes were deemed burdensome as well, and by 1992 most of them had been eliminated. Thus, the absence of a ceiling for the hog scheme during the review period, which the Department deemed to be evidence of discretion, was merely an administrative matter; its elimination cannot be cited as evidence of discretion.

Finally, the GOQ argues that differences among FISI schemes in the method of computing net annual income and stabilized net annual income, and differences in eligibility and participation requirements are not evidence of discretion. The GOQ argues that these differences are necessitated because each FISI scheme experiences a unique cycle of income fluctuation, and each scheme must be self-sustaining over the life of the program. In addition, the self-sustaining level which must be achieved reflects the same income level for all of Québec's farmers as reflected in the average farm worker's salary in Québec. The GOQ argues that this is not evidence of discretion, but illustrates the non-discriminatory provision that, over the long term, all schemes will render the same degree of protection.

Department's Position: Like the GOC, the GOQ mischaracterizes the Department's findings in the preliminary results with regard to government discretion in the administration of FISI. The Department found that the FISI Act "appears to allow the GOQ considerable discretion in determining which products receive schemes." *Preliminary Results* at 54,118. We did not base our determination that FISI is *de facto* specific on this evidence, however. As explained in the previous comments, the Department determined that FISI was *de facto* specific solely on the basis of the small number of only 15 actual beneficiaries during the review period in relation to the universe of over 80 eligible beneficiaries. *Id.* At the same time, after reviewing all the information in the record, we were not able to identify an established, publicized and consistent review process leading to FISI schemes. Thus, the resulting FISI schemes do not necessarily reflect identical terms or conditions. *Id.*

Comment 16: The GOQ argues that the Department has incorrectly calculated FISI benefits by aggregating FISI payments paid to hog producers with those paid to piglet producers. The GOQ points out that during the review period, Québec exported no piglets to the United States. In addition, there is no evidence in the record which indicates that benefits paid to piglet producers are passed on to hog producers. Citing the upstream subsidies test provided for in section 771A of the Act (19 U.S.C. 1677–1(a)), the GOQ argues that the majority of piglets raised in Québec are sold to hog producers at arm's-length market prices. There is no evidence to support the assertion that payments received by piglet producers under the FISI piglet scheme have any effect on the price at which these piglets are sold. Therefore, the piglet payments provide no "competitive benefit" to the exported hogs, as required by 19 U.S.C. 1677–1(a), and this analysis fails on the second and third prongs of the upstream subsidies test. Should the Department determine in the final results that FISI bestows countervailable benefits on live swine, the Department should eliminate the payments under the piglet scheme and only countervail the payments under the hog scheme.

Petitioner counters that payments under the piglet scheme are not upstream subsidies, but rather payments which directly benefit producers of market hogs, the merchandise which is subsequently exported. Because payments under the piglet scheme reduce the production costs in farrowing operations, the costs of producing market hogs are thus reduced. Furthermore, Petitioner rejects the GOQ's argument that "arm's-length, market price" transactions negate the benefits to hog producers from the piglet scheme: If there were no subsidies to piglets, fewer would be produced, driving up the price and therefore increasing the cost of hog production. Therefore, the Department has correctly countervailed payments to hog producers at all phases of production regardless of whether pigs are exported in all phases of development.

Department's Position: We disagree with the GOQ. Both piglets and market hogs are included within the class or kind of merchandise subject to the order on live swine from Canada. When calculating the benefits attributable to

the FISI program, the Department has consistently aggregated the benefits provided under the scheme for piglets and the scheme for hogs. In this regard, the *Swine IV* binational panel correctly stated that "[a]n upstream subsidy inquiry is only required when benefits are provided to an input producer that does not produce the product under investigation." *Swine IV Panel Decision* at 73.

The GOQ's argument that benefits provided by the piglet scheme should be analyzed under the statute's upstream subsidy provision is misplaced. An upstream subsidy analysis is concerned with determining the effect of benefits received by producers of a product which itself is not subject to a countervailing duty investigation or order, but which is an input into the subject merchandise. 19 U.S.C. § 1677–1(a). For instance, in Final Affirmative Countervailing Duty Determination; Steel Wheels from Brazil (54 FR 15,523, 15,525–28; April 18, 1989), the Department examined whether subsidies provided to the Brazilian steel industry constituted upstream subsidies within the meaning of section 771A. The steel was an input product; it was not included in the class or kind of merchandise being investigated.

As noted, piglets are subject to the countervailing duty order on live swine. Therefore, they cannot be considered recipients of an "upstream subsidy" and section 771A does not apply. Because FISI is a domestic subsidy program, because the class or kind of merchandise includes all live swine, and because live swine were exported to the United States during the review period, the fact that Québec did not export piglets during the review period is not relevant to the Department's analysis. Whether or not benefits to piglets benefited market hogs, domestic subsidies conferred on the class or kind of merchandise are countervailable. The benefits bestowed on the entire class or kind of merchandise, including piglets, are appropriately included in the Department's calculations.

Comment 17: The CPC, Quintaine, and Baxter argue that sows and boars are a lawful subclass, and based upon its own practice and its statutory authority, the Department should reconsider its preliminary determination to eliminate the sows and boars subclass. According to these respondents, in the first review of this order, the Department's decision to calculate a separate rate for sows and boars was compelled by what the Department referred to as "exceptional circumstances" and the "considerable" differences between sows and boars and market hogs. The Department also found that the "distinction between slaughter sows and boars and other live swine cannot be used as a means to circumvent the countervailing duty order." Furthermore, Petitioner did not object to the Department's decision. These circumstances and differences still exist, as do the Department's statutory authority and considerable discretion to establish a subclass. In the absence of a change in circumstances, Respondents argue that the Department must carefully consider whether such a change should be made *sua sponte*.

Respondents acknowledge the Department's determination that the criteria adopted in *Diversified Products* v. *United States*, 572 F. Supp. 883 (CIT 1983), should only be used to distinguish between, not within, a class or kind of merchandise. Respondents argue, however, that the original sows and boars subclass determination was also based upon the Department's comparative analysis of the amount of subsidies applicable to sows and boars and the amount of subsidies applicable to the other products within the class or kind. While the Department explained its recent rejection of the *Diversified Products* criteria for distinguishing among products within a class or kind, the Department failed to explain its apparent repudiation of the second part of the test, which the statute clearly supports. According to the CPC, although the statute "creates a presumption in favor of a country-wide rate," it does provide for separate rates whenever a state-owned enterprise is involved or when there are substantial differences between companies in terms of subsidies received. Therefore, the law requires the Department to take into account extreme differences in subsidies received, and when necessary, to overcome the presumption in favor of a country-wide rate.

Respondents cite section 355.47(a) of the proposed regulations to argue that the Department's statutory responsibility requires it to ensure that there is a rational connection between the countervailable benefits received by a product, and the calculation of a countervailing duty for that product. Quintaine and Baxter also cite *U.S.* v. *Zenith Radio Corp.*, 562 F. 2d 1209 (1977), *affirmed* 437 U.S. 443 (1978), in which the Court of Customs and Patent Appeals held that "countervailing duties should equate to the true bounty actually conferred."

Finally, the CPC argues that the Department's subclass methodology has been contemplated in at least two previous investigations, *Certain Steel Products from the United Kingdom* (47 FR 35,668; August 16, 1982) (*UK Steel*), and *Fresh Chilled and Frozen Pork from Canada* (54 FR 30,774, 30,787; July 24, 1989) (*Pork*). Moreover, the binational panel reviewing the Department's fourth administrative review of this order determined that the Department's initial subclass analysis was reasonable. The binational panel reviewing the fifth administrative review of this order upheld the Department's determination that information about the existence and value of benefits is necessary for the agency to make a subclass determination.

Petitioner acknowledges that the Department's reconsideration of the sows and boars subclass decision is consistent with the statute and the regulations, which create the presumption in favor of country-wide countervailing duty rates.

Department's Position: We disagree with Respondents. As we explained in the preliminary results, the Department has determined that the methodology relied upon to separate the class or kind of merchandise into "subclasses" was inappropriate, and we will no longer calculate a separate rate for sows and boars or any other product on this basis. See *Preliminary Results* at 54,113; *Memorandum on Product-Specific Rates in Countervailing Duty Administrative Reviews*, from Barbara Tillman to Joseph Spetrini, July 19, 1993 (*Subclass Memorandum*).

The decision during the first administrative review to grant sows and boars a separate countervailing duty rate based upon the subclass determination represented an exception to the Department's normal practice of calculating one rate for the entire class or kind of merchandise subject to a countervailing duty order. See 19 U.S.C. § 1677e(a). The Department based its finding of a subclass exception upon a test consisting of two parts, each of which we considered necessary to warrant granting the separate rate. See *Preliminary Results of Countervailing Duty Administrative Review; Live Swine From Canada* (53 FR 22,189; June 14, 1989); *Preliminary Results* at 54,113. However, during the present review, we determined that the *Diversified Products* criteria, the first part of the test, "were designed to differentiate between classes or kinds of merchandise, not among products within a class or kind." *Preliminary Results* at 54,113. On this basis, we determined "that it was inappropriate to grant the slaughter sows and boars 'subclass' exception on the basis of a *Diversified Products* criteria analysis." *Id.* Because the reversal of the subclass exception was premised upon the Department's

decision that the *Diversified Products* criteria were not appropriate for this purpose, it was not necessary to attempt to repudiate the second part of the subclass test, *i.e.*, the comparative analysis of the difference in benefits granted to the producers of slaughter sows and boars vis-a-vis those granted to the producers of other products within the class or kind of merchandise. See id.

The CPC's reliance on *UK Steel* is misplaced. That investigation was terminated when the petition was withdrawn. Therefore, the Department never reached a final determination nor did it issue an order. Accordingly, the Department neither reached a final determination regarding the scope of that investigation nor fully considered the scope issues referred to by the CPC.

Further, the fact that the statute provides exceptions to the presumption in favor of country-wide rates does not imply that the subclass exception should be continued simply because sows and boars receive a different amount of subsidies. As we stated in the preliminary results, the express exceptions under the statute recognize differences between individual companies (and government ownership), not between products within the class or kind of merchandise covered by the order. See 19 U.S.C. 1671e(a)(c). Therefore, the Department is only required to examine the possibility of a significant differential when the producer or exporter is government-owned. Beyond government-owned companies, the Department may examine, to the extent practicable, other producers or exporters whose benefits differ significantly from the country-wide rate. See *id.*; 19 CFR 355.22(d)(1).

Finally, Respondents misinterpret the Department's proposed regulations with regard to the requirement that the countervailing duty rate accurately reflect the benefits bestowed on the merchandise under review. Section 355.47 of the proposed regulations only draws a distinction between subject merchandise and non-subject merchandise, and precludes the Department from countervailing benefits tied to non-subject merchandise. Sows and boars are clearly merchandise subject to the countervailing duty order on live swine from Canada.

Comment 18: Quintaine argues that the Department cannot discontinue its recognition of the sows and boars subclass and its practice of calculating a separate rate for the subclass for the following reasons. First, because the Department specifically sought information in its questionnaire with which to calculate a separate rate for the sows and boars subclass, and this information was provided by the GOC, the Department must use the information to calculate a separate rate. Second, nothing in the proceeding prior to the preliminary results indicated the Department's intention to abandon its established practice of recognizing sows and boars as a subclass and granting them a separate rate of duty on that basis. Third, the Department's methodology for calculating the *de minimis* threshold specifically contemplates the differences between sows and boars and the rest of the class of live swine and uses sales data specifically pertaining to sows and boars as the basis for achieving a weighted-average price for all live swine.

Quintaine and Baxter also argue that in abandoning its subclass practice, the Department has acted without notice and created an *ex post facto* burden on trade not contemplated by the parties at the time of export. Sows and boars which entered during the review period were subject to a product-specific deposit rate substantially lower than the rate for other live swine. The producers and exporters did not contemplate that these entries would be liquidated at the much higher live swine rate determined in the preliminary results in light of the Department's recognition of the sows and boars subclass since the first administrative review of the order. Therefore, Respondents claim that the Department's abandonment of its subclass practice is unfair, inequitable, unprecedented, and an arbitrary abuse of the Department's discretion.

Quintaine, Baxter, and Pryme add that the implication in the Department's *Subclass Memorandum*, that it may further analyze the use of product-specific rates in future cases, will likely result in a product-specific application of the countervailing duty law. Thus, although sows and boars will no longer be entitled to subclass treatment, other products may enjoy such treatment in the future.

Department's Position: We disagree with Respondents. Although the Department collected the information necessary to calculate a separate rate for sows and boars, we subsequently determined that doing so was not appropriate for the reasons articulated in the *Subclass Memorandum*, the preliminary results and the above comment. After the preliminary results, all parties had ample opportunity to comment on the Department's decision. Respondents provided comments, which we have fully considered.

Respondents are also mistaken in claiming that the Department is precluded from changing its policy in this area. "The mere fact that an agency reverses a policy, or a statutory or regulatory interpretation, does not indicate the agency's decision is unreasonable, arbitrary, or capricious." *Mantex, Inc.* v. *United States*, Slip Op. 93–242 at 27 (CIT December 22, 1993) (citing *Rust* v. *Sullivan*, ——— U.S. ———, 111 S. Ct. 1759, 1769 (1991)). The courts have long recognized that agency policies must be permitted to evolve under judicial supervision. See, *e.g.*, *Motor Vehicle Mfrs. Assn. of United States* v. *State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). An agency "is not required to 'establish rules of conduct to last forever,'" *Rust* v. *Sullivan*, 111 S.Ct. at 1769 (citations omitted), but rather "must be given ample latitude to adapt [its] rules and policies to the demands of changing circumstances." *Motor Vehicle Mfrs. Assn.*, 463 U.S. at 42. The Supreme Court has repeatedly upheld the fundamental principle that an agency's "revised interpretation deserves deference because '[a]n initial agency interpretation is not instantly carved in stone' and the 'agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis.'" *Rust* v. *Sullivan*, 111 S.Ct. at 1769 (citations omitted).

It is clear that this necessary decision-making process may be accomplished on a case-by-case basis, permitting the Department to adapt its policy during successive reviews, with the only limitation being that it "justi[fy a] change of interpretation with a 'reasoned analysis.'" *Id.* (citations omitted). As explained by the Department in the previous comment and elsewhere, the record in this proceeding reflects the Department's "reasoned" analysis and the justification for its change of interpretation. See, *e.g.*, *Subclass Memorandum*.

Furthermore, contrary to Respondents' claims, the Department's change in policy does not create an unjustified *ex post facto* burden for exporters and importers of slaughter sows and boars. It is not uncommon for a product covered by an order to enter with a low (or zero) cash deposit rate and to ultimately be assessed a much higher rate as a result of an administrative review covering those entries. Such entries are also routinely assessed interest as required by the regulations. See 19 CFR 355.24. This is a reasonable contingency of which importers and exporters are well aware

when entering merchandise under an order and making deposits of estimated duties.

Moreover, the Department's statement in the *Subclass Memorandum* that we "may further analyze the issue of granting product-specific rates in fi ture cases" in no way qualified the Department's rejection of the subclass policy. With this statement, the Department indicated that it had not determined whether to consider product-specific rates on some other basis, outside the framework of the rejected subclass analysis. Therefore, we affirm our determination in the preliminary results that one country-wide rate will be assessed on all subject merchandise.

Finally, we also disagree with Quintaine regarding the *de minimis* calculation methodology. Because countervailing duties on live swine are calculated on a per-kilogram basis, rather than *ad valorem*, we must determine what *de minimis* is on a per-kilogram basis. Our methodology for determining this merely accounts for the *price* differences between sows and boars and the rest of the class or kind of merchandise within the order on live swine. We must recognize this difference, just as we recognize and account for the difference in provincial prices of other live swine, in order to establish an overall weighted-average price per kilogram for the subject merchandise, from which we then determine the *de minimis* value, in Canadian dollars (*i.e.*, 0.5 percent of the weighted average price per kilogram). The subject merchandise includes slaughter sows and boars. Therefore price data for sows and boars must be factored into that calculation. However, mere recognition that sows and boars sell at a different price level for purposes of this calculation does not require the Department to calculate a separate rate for sows and boars, as Quintaine would suggest.

Comment 19: For many of the same reasons given above, Pryme argues that the Department must recognize a subclass for weanlings. First, the recognition of subclasses has been an established and consistent expression of the Department's analysis since the determination in the first administrative review to calculate a separate countervailing duty rate for sows and boars. In the case of weanlings, in the fourth and fifth reviews of this order, the Department concluded that it lacked sufficient information in the record to calculate a subclass rate. See *Fourth Review Final* at 28536; *see also Final Results of Countervailing Duty Administrative Review; Live Swine from Canada* (56 FR 50,560, 50,564; October 7, 1991) *(Fifth Review Final)*. Pryme argues that the Department's statement in the Final Results of the fifth review that "[t]he Department has considered Pryme's request, but determines that further information would be required to reach a determination, and that it would be inappropriate to delay the processing of the review to solicit such information," indicates that a timely request and the proper information could have resulted in the finding of a weanling subclass in the fifth review. By virtue of Pryme's timely request in this review, the Department solicited and Pryme and the GOC provided information in order to establish a subclass for weanlings. Therefore, provided the established subclass criteria are met, Pryme argues that the weanling subclass should be granted.

Department's Position: As we determined in our preliminary results, and as explained in Comments 17 and 18 above, we have determined that it is inappropriate to establish subclasses within the class or kind of merchandise covered by an order, as the Department previously did with regard to sows and boars. The fact that the Department denied Pryme's requests to establish a subclass for weanlings in two earlier reviews, based on the untimeliness of the requests and insufficient information with which to conduct the two-part analysis, is not relevant to the issue of whether to grant weanlings a subclass in this review. The Department may alter its practice provided it gives a reasoned analysis for doing so, as explained above. Furthermore, as discussed in Comment 18 above, the Department is not required to establish a subclass for weanlings merely because Pryme made a timely request and responded to the Department's requests for information in this review.

Comment 20: Pryme argues that the Department's failure to recognize the weanlings subclass results in an inaccurate assessment of countervailing duties in contradiction of the purposes of the countervailing duty law. Citing *Zenith*, Pryme argues that countervailing duties must be equivalent to the benefits conferred. Pryme argues that weanlings qualify for substantially different benefits than the other live swine covered by this order because it falls within the company-specific exception to the presumption in favor of country-wide rates provided for in the statute. See 19 U.S.C. 1671e(a)(2). Pryme argues that benefits received by weanling exporting companies as compared with those received by other exporters of live swine demonstrate the significant difference in the subsidies received by the companies.

Department's Position: We disagree with Pryme that the statute requires the Department to calculate a separate rate for weanlings. Pryme's reliance on the statute's language allowing the Department to determine "that there is a significant difference between companies receiving subsidy benefits" to support this argument is misplaced. This provision requires the Department to consider whether to distinguish among *companies* receiving different subsidies, not among different products included in the class or kind of merchandise covered by an order. Pryme's request for a weanling subclass is not premised upon its status as a company, but upon its status as a weanling exporter. See *Department's Position* at *Comment 18*, above.

Comment 21: Pryme argues that it has met all of the Department's requirements for a company-specific rate. Pryme made a timely request for an individual review, and provided the Department with information with which to calculate a company-specific rate. Record evidence indicates that Pryme received no benefits on its exports of live swine during the review period, and any benefits which Pryme did receive during the review period were *de minimis*. According to Pryme, in its preliminary results, the Department improperly declined to calculate a company-specific rate for Pryme based on what the Department referred to as an "incomplete" or "incorrect" certification. Pryme argues that this finding ignores the fact that there is no prescribed form of certification in the statute or the regulations. See 19 CFR 355.22(a). The Department's verification report states that the certifications were accurate as presented with regard to weanlings, but notes that the Department found that, during the review period, Pryme had received Tripartite benefits on market hogs sold in the quarter prior to the review period. Pryme argues that these benefits were *de minimis*; therefore, the certifications were neither incorrect nor incomplete, since Pryme received no cognizable benefits.

In addition, Pryme argues that the Department should not be concerned with the Tripartite payment received by Pryme during the review period because it was made on merchandise sold prior to the review period. As support, Pryme cites the Department's regulations, which provide that an "administrative review * * * normally will cover entries or exports of the merchandise during the most recently completed

reporting year of the government of the affected country." 19 CFR 355.22(b).

Department's Position: We disagree with Pryme. In addition to the subclass request addressed above, Pryme made two other requests. First, Pryme requested what it referred to as a "company-specific rate," *i.e.*, "individual rate" in accordance with section 706(a)(2)(A) of the Act and § 355.22(d) of the Department's regulations. As we explained to Pryme after receiving its request, because of the very large number of exporters of live swine, the Department conducts reviews of this order on an aggregate basis and does not collect individual sales and export data. Therefore, we have determined that it is not practicable to examine whether a significant differential exists between the country-wide rate and the net subsidies received by individual producers. See 19 CFR 355.22(d); 53 FR at 52,325–26 (December 27, 1988) (commentary to the proposed regulations).

In addition, Pryme requested an *individual review*, in accordance with § 355.22(a)(2) of the Department's regulations, which requires that several conditions be met before the Department may review an individual producer or exporter. First, a person requesting an individual review must provide the Department with a certification that the person did not apply for or receive benefits on the subject merchandise from any programs which the Department had previously found countervailable, and that the person will not do so in the future. The person must also provide certifications from the government of the affected country stating that no benefits were provided to the person requesting the review or to any of the person's suppliers. Finally, the person must provide the certifications of its suppliers of the subject merchandise, and of the government regarding those suppliers, stating that they did not apply for or receive benefits under the countervailable programs, and that they will not do so in the future. 19 CFR 355.22(a)(2).

The Department must then verify that all certifications "are complete and accurate." *Id.* at § 355.22(f)(2). If the Department determines that the certifications are complete and accurate, that is, there was no net subsidy received on the merchandise covered by the request, as provided for in § 355.22(f)(1), that person is assessed a zero rate and a corresponding zero cash deposit rate.

Pending the verification required pursuant to § 355.22(f)(1) of the Department's regulations, we accepted Pryme's timely filed certifications which stated that Pryme "did not apply for or receive any net subsidy on the merchandise, i.e., Weanlings, swine weighing less than 40 kg., under the National Tripartite Scheme" during the review period. Although weanlings are part of, but not the entire class or kind of merchandise, the Department accepted the certifications, pending verification, based on the assumption that during the review period, Pryme produced and sold only weanlings and had not received any subsidies on any of the subject merchandise during the review period. However, at verification, we found that during the review period, Pryme had sold market hogs and had received benefits under the Tripartite program, based on market hog sales prior to the review period. See *Verification Report* at 4.

Pryme argues that because the Tripartite payments it received during the review period were based on sales prior to the review period, it is inappropriate for the Department to examine these Tripartite payments. We disagree. The Department's standard practice is to countervail benefits when they affect the cash flow of the company. See Proposed Regulations at § 355.48(a). In all reviews of this order since the inception of the Tripartite program, the Department has requested, and the GOC has provided information regarding Tripartite payments made during the review period. The record shows that quarterly payments are made based on hog sales and hog prices in the prior quarter. Therefore, the payments made in the first quarter of the review period regularly reflect sales and prices in the quarter prior to the review period. Under the Department's methodology the benefits associated with these payments are countervailed during this review period. Similarly, Tripartite payments for hog sales in the fourth quarter of a particular review period are made in the following quarter, outside the review period. They are not examined by the Department until the next review period. Accordingly, we properly accounted for Tripartite payments Pryme received during this review period and determined that Pryme's certifications were not complete and accurate with regard to the subject merchandise.

In a memorandum on Pryme Pork's request for an individual review, dated April 7, 1993 (on file in Room B–099, Department of Commerce), we stated that "although Pryme's certifications were accurate with regard to weanlings [*i.e.*, Pryme received no benefits on its sales of weanlings], the discovery that Pryme did receive benefits on sales of market hogs, other subject merchandise, rendered Pryme's certifications * * * incomplete." In the preliminary results, we stated that Pryme's certification was incorrect, effectively terminating the individual review of Pryme. *Preliminary Results* at 54,113. In addition, although we stated in the preliminary results that "we found that, during the review period, Pryme sold only weanlings" (*Preliminary Results* at 54,113), we have reexamined the record evidence, and it shows that weanlings were the subject merchandise exported by Pryme during the review period, but that Pryme also sold market hogs in April, June and November, 1990, and January and March, 1991 (*Verification Report* at 7). The Department therefore concluded that Pryme's certifications did not cover Pryme's sale of market hogs during the review period, or Pryme's receipt of benefits on the sale of market hogs during the review period.

Although Pryme argues that there is "no prescribed form of certification," the regulations clearly provide that the certifications must state that the "person did not apply for or receive any net subsidy *on the merchandise.*" 19 CFR 355.22(a)(2) (emphasis added). Pryme's certifications, inasmuch as they only applied to weanlings, when in fact, Pryme also sold market hogs, were incomplete.

Furthermore, in reexamining the record pursuant to Pryme's arguments after the preliminary results, we have determined that ManitobaPork, est., which administers Tripartite in Manitoba, declined to certify that Pryme had not received Tripartite payments during the review period. Therefore, Pryme's request for an individual review was not properly accompanied by the government certifications required under § 355.22(a)(ii) of the Department's regulations.

In the case of incomplete or inaccurate certifications, the regulations make no provision for further examination of existing benefits, thus precluding the Department from reaching the issue of whether the benefits received by Pryme are *de minimis*. In objecting to the Department's preliminary determination, which effectively terminated the individual review of Pryme, Pryme contends that although its certifications were not complete and accurate, they were close. Therefore, in Pryme's view, the Department should have accepted them. We disagree. The Department addressed this issue when promulgating the regulations, and stressed that "we must be reasonably satisfied that the producer or exporter is entitled to a zero rate. Thus, we require

the requester's and the government's certifications that the requester is so entitled." 53 FR at 52,328. As described above, the certifications provided by Pryme were not complete and accurate, as required by the regulations. On that basis, the Department should not have initiated an individual review. Once it did, and once the Department determined that Pryme's certifications were not complete and accurate, we properly terminated, in effect, the individual review.

Comment 22: The CPC argues that the Department should reconsider its determination that the Ontario Rabies Indemnification Program is specific to livestock producers and therefore countervailable. The benefits provided under this program reimburse livestock producers for the value of animals which a federal inspector requires to be destroyed because they are determined to be rabid. The CPC argues that such rabid animals are destroyed in the interest of public health and safety; the loss which livestock producers incur is in the interest of a larger, more general good. The CPC cites the General Agreement on Tariffs and Trade to support its proposition that this type of government action is an exception to the countervailing duty laws of member countries: "Nothing in this agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: * * * necessary to protect human, animal or plant life or health * * *." General Agreements on Tariff and Trade, 1947, Art. XX, T.I.A.S. 1700.

Department's Position: We disagree. The reimbursements provided under the Ontario Rabies Indemnification Program are limited by law to livestock producers, and therefore, contrary to the CPC's argument, this is a *de jure* specific program.

Once an animal is determined to have rabies, the producer has a clear incentive to destroy the animal in order to protect the remaining livestock. It is also in the interest of the public to have the animal destroyed. However, it is unclear to the Department how the fact that the government then compensates the producer could be viewed as also in the interest of the public health and safety. Because the government payment does not create an incentive to destroy the animal that is not already present (*i.e.*, since the payment is not necessary to ensure destruction of the animal), we determine that the payment serves no preventive health or safety purpose whatsoever. Payments for the value of the animal cannot be construed to be "necessary to protect human, animal or plant life and health." The payment is, instead, a countervailable benefit under U.S. law and GATT.

Comment 23: Petitioner argues that the Department should revise its calculation methodology for the Alberta Crow Benefit Offset Program (ACBOP) to account more accurately for grain consumed by swine in Alberta. Specifically, Petitioner argues that the Department's current methodology does not accurately account for grain eaten by breeding sows and boars. The sows and boars adjustment which the Department currently uses to determine the grain eaten by hogs only accounts for an additional weight gain by a sow or boar of 2.1 kilograms; according to Petitioner, this adjustment is insufficient to reflect the grain eaten daily by sows and boars as an integral part of swine production.

Petitioner argues that the Department has the discretion to revise its ACBOP calculations, and should do so using another Alberta Agriculture study provided by the GOC in the questionnaire response. Petitioner maintains that this study is a reliable source for feed and grain consumption information because it is recent, comprehensive, and published by Alberta Agriculture.

Petitioner has provided an alternative methodology using information in this study, which Petitioner argues more accurately accounts for grain consumed in the production of swine in Alberta. Petitioner also argues that its methodology simplifies the Department's attempt to account for the difference in weight between market hogs and slaughter sows and boars by recognizing that the grain fed to sows and boars to bring them up to market weight (which they surpass during their breeding careers), as well as the grain they consume during their breeding careers are inputs into the production of live swine.

The CPC counters that Petitioner's proposal is an unsupported and illogical attempt to increase the ACBOP benefit by double-counting the grain consumed by sows and boars. The CPC maintains that the production figures used by the Department already account for grain consumed by sows and boars. Petitioner's methodology also ignores the fact that the Department has carefully examined the issue of average weights for market hogs versus sows and boars in the first review of this order. Those averages accurately reflect the much higher weights and much lower production of sows and boars vis-a-vis market hogs.

The CPC also takes issue with Petitioner's proposal that ACBOP benefits should be allocated on the basis of hog production rather than hog marketings. The CPC argues that such a change in the Department's calculation methodology requires the Department to examine the census of the entire Canadian hog population during the review period rather than relying on a simple accounting of all hogs marketed, as it did in the calculations for the preliminary results and all other reviews. The CPC further argues that Petitioner's proposed methodology misuses data from two entirely different sources and is flawed by an inaccurate conversion from pounds to kilograms. Finally, the CPC notes that the ACBOP methodology has evolved over time; its present incarnation has been upheld by the binational panel reviewing the fifth review of this order and Petitioner has not advanced any evidence which warrants the Department's reconsideration of the ACBOP methodology.

Department's Position: We agree with the CPC regarding the alternative methodology Petitioner proposes. The Department fully analyzed the record document relied upon by Petitioner before rejecting it in favor of the source document which the Department has relied upon in the past. We determine that the study relied upon by Petitioner is not comprehensive, as Petitioner asserts, and therefore the Department chose not to use it in the ACBOP calculation. Petitioner acknowledged that its proposed alternative study does not include information about the composition of "starter" diets, which is necessary to the ACBOP calculation. The study on which the Department did rely, "Diets for Swine," includes complete information about hog diets at all stages of growth. Moreover, we agree with the CPC that it is inappropriate to "mix and match" information from these two distinct sources, because they are based on different underlying assumptions regarding the composition of hog diets.

We also disagree with Petitioner regarding the manner in which the ACBOP methodology accounts for all grain consumed in the production of live swine in Alberta. The sow and boar weight adjustment, while seemingly small, provides an average weight which accurately reflects the much higher weight of sows and boars but the much lower production level. This adjustment enables the Department to accurately account for the additional grain consumed by sows and boars during their breeding careers, and the Department's ACBOP methodology overall reasonably and accurately accounts for grain consumed in the production of swine in Alberta. In addition, we agree with the CPC that

Petitioner's reliance on production rather than marketings represents too great a departure from the Department's methodology in this case for us to consider it at this late stage in the review. Moreover, Petitioner's failure to illustrate that the Department's methodology is flawed or unreasonable further supports the Department's decision not to change its methodology.

Comment 24: The CPC alleges that the Department's preliminary ACBOP calculations contain significant clerical errors which must be corrected: the Department must use the correct figures for the number of live swine produced and for the amount of barley, wheat, and oats grown in Alberta. The correct figures were reported in the questionnaire response, and must be used.

Department's Position: After examining the CPC's allegation, we found minor clerical errors, and have corrected our calculations accordingly. We now determine that the ACBOP benefit is Can$0.0027 per kilogram for all live swine.

Comment *25:* Petitioner argues that the Department should adjust its calculations for the Saskatchewan Hog Assured Returns Program (SHARP) to account for the deficit in the stabilization fund accrued over the life of the program. Petitioner maintains that because SHARP was terminated during this review period, with a large cumulative deficit, the Department must address additional benefits which should have been accounted for in earlier reviews. The size of the deficit indicates that in every year in which the program was operational, payouts to hog producers exceeded contributions by the hog producers and the Province of Saskatchewan. This deficit was financed by loans from the provincial government to the stabilization fund; no repayments appear to have been made. Petitioner argues that, in prior reviews of this order, the Department should have countervailed total payouts to producers, net of any producer contributions into the fund. Thus, the remainder of the fund deficit (the total fund deficit minus the amount of the deficit countervailed in this review) constitutes a subsidy that has never been countervailed. Because the program has been terminated, there is now no hope that the deficit will be repaid with future contributions. Petitioner argues that the record shows that the Government of Saskatchewan has decided to write off this deficit, and forgive the loans which financed it.

Petitioner now urges the Department to treat the deficit amount, less any amounts previously countervailed, as a grant to Saskatchewan swine producers during the review period. Petitioner further argues that this grant does not constitute the full benefit realized by swine producers. The Department must also calculate the benefit attributable to the apparently interest-free nature of this loan since October 31, 1989, the date of an Order-in-Council which provided that no interest will accrue on the loans.

The CPC, in rebuttal, submits that there is no basis for the Department to countervail the entire SHARP deficit. While the SHARP account remains in deficit, without a final decision about the resolution of the fund, there is clearly no benefit to any party, including Saskatchewan live swine producers. The CPC further argues that in its preliminary results, the Department has incorrectly calculated SHARP benefits, by adopting a methodology, without explanation, which is a departure from that established in earlier reviews. The CPC argues that the facts support the Department's use of the earlier established methodology: the Department countervailed one-half of the total stabilization payments made to live swine producers, which accurately reflected the equal contributions made by the provincial government and the live swine producers into the SHARP fund.

Department's Position: Prior to its termination, SHARP provided stabilization payments to hog producers in Saskatchewan at times when market prices fell below a designated "floor price." Hog producers provided one-half of the funds for the SHARP program and the provincial government provided the remaining one-half. Therefore, the Department's practice, in past reviews, has been to countervail one-half of all SHARP payouts to hog producers. In accordance with the establishment of the Tripartite Scheme for Hogs, SHARP was terminated on March 31, 1991, during the review period.

Whenever the balance in the SHARP account was insufficient to cover stabilization payments to participants, the provincial government loaned the needed funds to the program at terms consistent with commercial considerations. As of its termination date, the SHARP fund had a sizeable deficit, representing the cumulation over the operating years by which SHARP payouts were greater than the producers' and government's contribution to the SHARP fund. Therefore, the SHARP deficit represents payments already made to hog producers, half of which the Department has already countervailed in prior reviews.

The Department has reconsidered the calculation methodology used in the preliminary results, and has determined that we will countervail one-half of the SHARP payouts for the current review period, as in previous reviews. While the SHARP account remains in deficit, however, without a final decision on the resolution of the deficit, there is no benefit to Saskatchewan live swine producers beyond the interest not accruing on the deficit. Thus, there is no reason for the Department to conduct a benefit analysis of the deficit as Petitioner suggests. If the Department learns in a later review that the deficit has been forgiven by the Government of Saskatchewan, it will at that time determine whether the loan forgiveness constitutes a countervailable benefit and apply the appropriate methodology to measure it.

However, we have information on the record indicating that effective October 31, 1989, interest stopped accruing on this deficit. We determine that interest not accrued constitutes a benefit to live swine producers. To measure that benefit, we are treating the deficit as a short-term loan. See *Memorandum on SHARP Calculation Methodology*, from Swine Team to Barbara Tillman, on file in Room B–099, Department of Commerce.

To determine the benefit, we first calculated the average amount of the deficit during the review period by taking a simple average of the balance of the deficit at the beginning and the end of the review period. We then multiplied the benchmark interest rate by half of the average deficit. We used as our benchmark interest rate the simple average of the monthly rates (for the review period) reported as "Typical Short-Term Interest Rates" in the *Financial Statistics Monthly, Section 2, Domestic Markets—Interest Rates*, published by the Organization for Economic Cooperation and Development, February, 1991, and January 1992. We then added this interest-related benefit to the payout-related benefit (one-half of the SHARP payments to live swine producers during the review period, consistent with our methodology in previous reviews). We divided this amount by the total weight of live swine produced in Saskatchewan. We then weight-averaged the benefit by Saskatchewan's share of total Canadian exports of live swine to the United States. On this basis, we preliminarily determine the benefit from SHARP to be Can$0.0022 per kilogram for all live swine during the review period.

Comment 26: The GOQ and the CPC allege that the Department incorrectly allocated the benefits attributable to the Feed Freight Assistance (FFA) program. According to Respondents, the Department recognized, in the first part of its calculations, that not all swine production in the provinces covered by FFA is eligible to receive benefits under this program. However, when the Department weight-averaged the per-kilogram benefit by the respective provinces' share of total Canadian exports of live swine, the Department erroneously assumed that all exports of swine from the FFA-eligible provinces were eligible for assistance. To correct this error, Respondents urge the Department to apply the same ratio it uses to determine FFA-eligible production for the purpose of determining FFA-eligible exports. The Department should then weight-average the per kilogram benefit by the share of total Canadian exports accounted for by this adjusted export figure.

Petitioner argues that the Department's calculation methodology correctly translated the FFA benefits provided on a per-kilo basis of hog production to the applicable proportion of exports of live swine to the United States. Petitioner argues that following the Respondents' methodology, which requires adjusting provincial exports downward, results in the "double-subtraction" of the exports used to weight-average the benefit.

Department's Position: We agree with Respondents that the methodology used to calculate FFA benefits was flawed. However, we are correcting the flaw using a different approach. Although we recognize that FFA availability is limited to certain areas within the participating provinces, we determine it is not appropriate to adjust provincial production downward, as we did in the past. This adjustment is not required because the appropriate denominator for this federal program available in only some provinces is the total production in the provinces in which FFA operates. We determine that adjusting the denominator as we did in the past results in overstating the FFA benefit.

To determine the FFA-benefit per kilo of live swine we first divided the amount of feed transportation assistance to all live swine producers by the weight of all live swine produced in all FFA-eligible provinces. We then used the ratio of the total amount of exports from the provinces in which the FFA is available to total Canadian exports of live swine in order to calculate the weighted benefit. The result is accurate because in doing the calculations we weight-averaged all the benefits for each province by the total amount of exports from that province. We then summed the resulting weighted benefits to determine the country-wide rate. Having discontinued the adjustment in production, there is no need to adjust the exports in the manner Respondents suggest. Using this methodology, we have calculated the FFA benefit to be Can$0.00018 per kilogram for all live swine.

Comment 27: The CPC argues that two provincial programs, the New Brunswick Hog Price Stabilization Program, and the Prince Edward Island Hog Price Stabilization Program should be added to the Department's list of terminated programs. Proper documentation of these programs' terminations was provided in the questionnaire response.

Department's Position: We agree with the CPC regarding the Prince Edward Island Hog Price Stabilization Program. The GOC provided documentation that this program was terminated, and that documentation indicates that no residual benefits will accrue to hog producers. Therefore, we will include this program in our list of terminated programs and will no longer examine it.

However, we disagree with the CPC regarding the New Brunswick Price Stabilization Program. While the New Brunswick provincial government stated that the program was terminated, the GOC has provided neither adequate documentation of the program's termination, nor information regarding residual benefits. Therefore, we will continue to list this program as "not used" until such evidence is provided in a future review.

Comment 28: The CPC argues that the Department should issue a final determination which, as in past reviews, directs Customs to use the exchange rate in effect on the date of entry of the subject merchandise for both deposit rates and final assessments. In the preliminary results, the Department proposed using two different exchange rate methodologies: for the cash deposit rate, Customs will convert the assessment amount in Canadian dollars using the exchange rate in effect on the date of entry; for the final assessment of entries made during the period of review, Customs will convert using a simple annual average exchange rate. To institute two different methodologies for these calculations which have always shared the same methodology would constitute a retroactive change in prior agency practice.

Petitioner argues that the use of a simple average exchange rate by the Department is not contrary to its regulations. Petitioner claims that pursuant to 19 CFR 353.60 there was no "sustained change" in the prevailing exchange rate during the review period that would materially distort the value of the Customs assessment. Consequently, the Department's method is acceptable under the regulations and should be retained in its final determination.

Department's Position: After consideration of the CPC's argument, we will instruct Customs to assess duties on live swine during the review using the appropriate exchange rate in accordance with Customs' regulations. Petitioner has misapplied section 353.60(b) of the Department's regulations, which guides the Department's use of exchange rates in antidumping proceedings.

Final Results of Review

As a result of our review, we determine the net subsidy to be Can$0.0295 per kilogram for the period April 1, 1990 through March 31, 1991. The net subsidy determined for each program is as follows:

Program	Rate per kilo
(1) Feed Freight Assistance Program	$0.00018
(2) National Tripartite Stabilization Scheme for Hogs	0.01910
(3) Québec Farm Income Stabilization Insurance Program	0.00420
(4) Saskatchewan Hog Assured Returns Program	0.00221
(5) Alberta Crow Benefit Offset Program	0.00268
(6) Alberta Livestock and Beefyard Compensation Program (Livestock Predator Sub-Program)	0.00000
(7) Ontario Farm Tax Rebate Program	0.00000
(8) Livestock Improvement Program for Northern Ontario	0.00000
(9) Ontario Pork Industry Improvement Plan	0.00043
(10) Ontario Rabies Indemnification Program	0.00000
(11) Saskatchewan Livestock Investment Tax Credit	0.00045
(12) Saskatchewan Livestock Facilities Tax Credit	0.00028
Total	0.0295

Therefore, the Department will instruct the Customs Service to assess countervailing duties of $Can0.0295 per kilogram on all shipments from Canada of the subject merchandise exported on or after April 1, 1990 and on or before March 31, 1991.

Further, as provided for by section 751(a)(1) of the Act, the Department will collect cash deposits of estimated countervailing duties of $Can0.0295 per

kilogram on all shipments of the subject merchandise from Canada, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: March 9, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–6001 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. 931090–4048]

RIN 0625–AA06

Allocation of Duty-Exemptions for Calendar Year 1994 Among Watch Producers Located in the Virgin Islands

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates 1994 duty-exemptions for watch producers located in the Virgin Islands pursuant to Public Law 97–446.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–1660.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 97–446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with § 303.3(a) of the regulations (15 CFR part 303), this action establishes the total quantity of duty-free insular watches and watch movements for 1994 at 5,100,000 units and divides this amount among the three insular possessions of the United States and the Northern Mariana Islands. Of this amount, 3,600,000 units may be allocated to Virgin Islands producers, 500,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (59 FR 8847).

The criteria for the calculation of the 1994 duty-exemption allocations among insular producers are set forth in Section 303.14 of the regulations.

The Departments have verified the data submitted on application form ITA–334P by producers in the territories and inspected the current operations of all producers in accordance with § 303.5 of the regulations.

The verification established that in calendar year 1993 the Virgin Islands watch assembly firms shipped 2,105,139 watches and watch movements into the customs territory of the United States under Public Law 97–446. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1993 plus the creditable wages paid by the industry during calendar year 1993 to residents of the territory totalled $4,837,811.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 1994 Virgin Islands annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA–334P) as a result of the Departments' verification; and reallocation of the duty-exemptions which have been voluntarily relinquished by some producers pursuant to § 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1994 in the Virgin Islands are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc	500,000
Hampden Watch Co., Inc	250,000
Progress Watch Co., Inc	600,000
Unitime Industries, Inc	500,000
Tropex, Inc	400,000
Timex V.I., Inc	780,000

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Leslie M. Turner,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 94–6124 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–DS–P and 4310–93–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 931112–3312]

Physics Laboratory 1994 Summer Undergraduate Research Fellowships—Partnerships in Atomic, Molecular and Optical (AMO) Physics

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE NAME AND NUMBER: 11.609—Measurement and Engineering Research and Standards.

SUMMARY: Through Summer Undergraduate Research Fellowships, "SURFing the Physics Lab: A Partnership for AMO Physics" will provide an opportunity for the Physics Laboratory of the National Institute of Standard and Technology and the National Science Foundation to join in partnership with American colleges and universities, stimulating outstanding physics students to pursue scientific careers by exposing them to the world class atomic, molecular, optical and radiation physicists and facilities in the NIST Physics Laboratory, and strengthening undergraduate AMO physics curricula by forming the basis for ongoing collaborations. The NIST program director will work with physics department chairs and directors of multi-disciplinary centers of excellence to identify two outstanding undergraduates (plus one alternate) from each institution who would benefit from off-campus summer research in an honors academy environment. The selected group of twenty (20) sophomores/juniors will spend twelve (12) weeks at the Physics Laboratory's Gaithersburg, MD campus, working one-on-one with NIST staff physicists; actively engaged in projects that combine the quest for fundamental knowledge and direct applications to problems of national importance; learning about non-academic alternatives for research careers; living science and seeing how they can make a difference. Students and NIST research advisors will be paired based on the student's background and interests in the early spring, to allow for adequate dialogue between the student, the student's physics professors and NIST advisor about the intended project, to ensure that the student arrives at NIST ready to contribute, and to prepare the student's physics professor for follow-up in the fall. Good overlap of research interest will

facilitate collaborations between NIST and the participating academic partners. The students will collectively live in a nearby furnished apartment complex and participate in the many NIST seminars and in a weekly SURFing the Physics Lab Summer Seminar Series. The students will all present a research seminar at NIST and be encouraged to participate in a local or national scientific conference during the following academic year. Given the significant lack of diversity in the present physics work force, we will aggressively seek out competitive students from underrepresented groups or persons with disabilities. Costs for this program (stipend, travel and housing) will be shared by NIST, NSF and the participating schools.

DATES: Proposals must be received no later than the close of business April 20, 1994.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 (Rev. 4/88) to: Physics Laboratory, Attn: Dr. David S. King, National Institute of Standards and Technology, Building 221, room B268, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: Dr. David S. King, (301) 975–2369.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology is authorized to fund, as the Director deems appropriate and within funds available, research fellowships and other forms of financial assistance to students at institutions of higher learning within the United States. These students must show promise as present or future contributors to the missions of NIST. Fellowships are awarded to assure continued growth and progress of science and engineering in the United States, including the encouragement of women and minority students to continue their professional development.

This new partnership will build upon a 1993 summer pilot program funded by NIST as a proof of concept. Twenty students from 10 undergraduate institutions spent the summer pursuing research projects sponsored by the Physics Laboratory. Of these 20 students; 8 were Hispanic Americans, 7 were African Americans, and 1 was legally blind. Between 20 to 50% of the associated student stipends, travel and housing was provided in cost sharing by the participating institutions.

NIST is the nation's premiere institute for the physical sciences and, as the lead agency for technology transfer, is providing a strong interface between government, industry, and academia; on-site researchers at NIST come from a broad range of colleges and industries. Owing to its unique mission to support the U.S. economy by working with industry, NIST embodies a special science culture, developed from a large and well equipped research staff that enthusiastically blends programs that address the immediate needs of industry with longer-term research that anticipates future needs. This occurs in few other places and enables the Physics Laboratory to offer unique research and training opportunities for undergraduates, providing them a research-rich environment and exposure to state of the art equipment, to scientists at work and to professional contacts that represent future employment possibilities.

Attending to the long term needs of many U.S. high-technology industries, NIST's Physics Lab conducts basic research in the areas of quantum, electron, optical, atomic, molecular, and radiation physics. This is complemented by applied research devoted to overcoming barriers to the next technological revolution, in which individual atoms and molecules will serve as the fundamental building blocks of electronic and optical devices. To achieve these goals, staff develop and utilize highly specialized equipment, such as polarized electron microscopes, scanning tunneling microscopes, lasers, and x-ray and synchrotron radiation sources. Research projects can be theoretical or experimental, and will range in focus from quantum electrodynamics, through trapping atoms and choreographing molecular collisions, to ionizing radiation. SURFers will work one-on-one with our nation's top physical scientists both from NIST and from some of our nation's leading, high tech industries. It is anticipated that successful SURFers will move from a position of reliance on guidance from their research advisors to one of research independence during the twelve week period. One goal of this partnership is to provide opportunities for our nation's next generation of scientists and engineers to engage in world class scientific research at NIST, especially in ground breaking areas of emerging technologies. This carries with it the hope of motivating these individuals to pursue a Ph.D. in physics, and to consider alternative research careers. SURFing the Physics Lab will attempt to forge partnerships with NSF and with post-secondary institutions that demonstrate strong, hands-on undergraduate science curricula, especially those with a demonstrated commitment to the education of women, minorities and students with disabilities. This program will be open to all U.S. citizens interested in AMO physics.

Eligibility

Colleges and universities with degree granting programs in areas of AMO physics.

Funding Availability

Funds in the range of $100,000 to $155,000 are anticipated to be available for this partnership program. In addition, the Applicant Institution is expected to cost share (see Section entitled, "Evaluation of Applicant Institution's Cost Sharing"). The actual number of awards will depend on available funding.

Proposal Review Process

All proposals will be reviewed by a panel of three NIST scientists appointed by the Program Director. Proposals should include the following:

(A) Student Information: (1) official transcript for each student nominated with a minimum 3.0 G.P.A.; (2) a letter of commitment to attend SURF, including a description of the student's prioritized research interests; (3) a resume for each student; and (4) two letters of recommendation for each student. All references to student include the proposed alternate.

(B) Information About the Applicant Institution: (1) Description of the applicant's education and research philosophy, faculty interests, on-campus research program(s) and opportunities, and overlapping research interests of NIST and the institution; and (2) a statement addressing issues of academic credit and commitment to cost sharing.

Selection Criteria

Evaluation of Student's Academic Ability and Commitment to Program Goals (35%): Includes, but is not limited to, evaluation of the following: completed course work; expressed research interest; prior research experience; grade point average in courses relevant to program; career plans; honors and activities.

Evaluation of Applicant Institution's Commitment to Program Goals (35%): Includes, but is not limited to, evaluation of the following: institution's focus on AMO physics; overlap between research interests of the institution and NIST; emphasis on undergraduate hands-on research; undergraduate participation in research conferences/programs; on-campus research facilities;

involvement in systemic reform at the undergraduate level; past participation by students/institution in such programs; and commitment to educate women/minorities, and persons with disabilities.

Evaluation of Applicant Institution's Cost Sharing (30%)

In the spirit of a true partnership, successful applicants will be required to contribute matching funds. An appropriate minimum participation would be to directly cover student travel (one round trip by common carrier) and housing costs (approximately $1200); a higher level of participation, such as partial payment of the student's stipend, stated intent to support the participating students at a research conference, and/or awarding of academic credit, will be given extra merit in the evaluation process.

Award decisions shall be based upon total evaluation score.

Project Period

The 1994 Physics Laboratory SURFing Partnership is anticipated to run between May 30 through August 19, 1994; adjustments may be made to accommodate specific academic schedules.

Paperwork Reduction Act

The Standard Form 424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

Additional Requirements

All primary applicants must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations must be provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

4. Anti-Lobbying Disclosure

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

5. Lower-Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document. Applicants who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover pre-award costs.

If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

All for-profit and nonprofit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,
2. A negotiated repayment schedule is established and at least one payment is received, or
3. Other arrangements satisfactory to DoC are made.

Awards under the Physics Laboratory Program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Dated: March 10, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–6121 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Environmental Assessment on Reducing California Sea Lion Predation on Wild Winter-Run Steelhead in the Lake Washington Ship Canal

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

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of an Environmental Assessment (EA) that was prepared jointly by NMFS and the Washington State Department of Wildlife (WDW). The EA examines the environmental consequences of using non-lethal measures to reduce predation by sea lions on a depressed winter-run of wild steelhead in the Lake Washington drainage system in Washington State. California sea lions have consumed over 50 percent of the entire wild steelhead run in Lake Washington in recent years reducing the spawning escapement by as much as 60 to 70 percent. The proposed action is to implement several

complementary non-lethal measures to deter and remove California sea lions from the area adjacent to the fish ladder below the Ballard Locks where migrating wild steelhead are vulnerable to excessive sea lion predation. Based on the information in the EA, NOAA has made a finding of no significant impact and determined that an environmental impact statement need not be prepared in accordance with the National Environmental Policy Act (NEPA) and implementing regulations.

DATES: Comments on the EA must be submitted by March 22, 1994.

ADDRESSES: Send comments to J. Gary Smith, Acting Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115. Copies of the EA are available at this address or can be requested by mail.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NEPA requires that federal agencies conduct an environmental analysis of their actions to determine if the actions may affect the environment. Accordingly, NMFS jointly prepared with WDW an EA that explores the environmental consequences of deterring California sea lions (*Zalophus californianus*) from the entrance to the Lake Washington Ship Canal fish ladder to protect a winter-run of wild steelhead (*Oncorhynchus mykiss*).

The proposed action is to implement several complementary non-lethal measures to deter and remove California sea lions from the area adjacent to the fish ladder below the Ballard Locks where migrating wild steelhead are vulnerable to excessive sea lion predation. The non-lethal measures will be implemented on a phased approach starting with use of an acoustical "barrier" downstream of the fish ladder to prevent sea lion access to the area where steelhead are most vulnerable to predation. The acoustic barrier will be implemented downstream of the fish ladder in the Lake Washington Ship Canal by deploying an array of underwater sound transducer equipment. These acoustic devices operate sequentially at a sound pressure level intended to be sufficiently high enough to elicit and maintain an avoidance response by California sea lions attempting to enter the spillway/fish ladder area to forage on steelhead. Additional non-lethal measures will be applied to sea lions that penetrate the barrier or continue to prey on steelhead in the Ship Canal beyond the effective range of the devices. The additional measures include harassment and potential capture and relocation to distant areas within their normal range such as their breeding area in the Channel Islands off Southern California. The no action alternative is not preferred because of the negative impacts it will have on the wild steelhead run over the long term. Capture and captive holding was considered but found to be not feasible due to lack of holding facilities and the logistics/costs of constructing such facilities. Lethal removal is not an option because of the lack of clear legal authority under Section 109(h) of the Marine Protection Act.

NOAA has evaluated the environmental consequences of the proposed action and has concluded that it is unlikely to result in any significant impacts on the human environment and therefore has made a finding of no significant impact (FONSI). The EA and FONSI have been prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA guidelines concerning implementation of NEPA found in the NOAA Directives Manual; Chapter 2, Section 10, "Environmental Review Procedures" (49 FR 29644–29657; July 23, 1984). In addition, in accordance with Washington State Environmental Policy Act, WDW has made a final determination of non-significance pursuant to Chapter 232–19 of the Washington Administrative Code.

Further details or a copy of the EA and FONSI may be obtained from the address above.

Dated: March 4, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–6047 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 030494A]

New England Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council will hold a public meeting on Thursday, March 17, 1994, to consider actions affecting the New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Thursday, March 17, 1994, at 9 a.m. and will not adjourn until business for the day is completed.

ADDRESSES: The meeting will take place at the Holiday Inn, Rt. 1 and Rt. I–95, Peabody, MA 01906; telephone: 508–535–4600.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: 617–231–0422.

SUPPLEMENTARY INFORMATION: The Council meeting will begin with a report from the Groundfish Committee. Recommendations scheduled for consideration include adjustments to the Northeast Multispecies (Groundfish) Fishery Management Plan (FMP) under the framework for abbreviated rulemaking contained in Amendment 5 to the FMP (50 CFR 651.40). The Marine Mammal Committee will discuss and ask for Council approval of time/area closures to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery. The meeting will conclude with consideration of final action on adjustments to the Sea Scallop FMP under the framework for abbreviated rulemaking contained in Amendment 4 to the FMP (59 FR 2757, January 19, 1994).

Abbreviated Rulemaking Actions—Northeast Multispecies

The Council will discuss and listen to public comments on two measures. One measure is a proposed adjustment that would result in a 10-day time-out from groundfishing in May, 1994, for vessels in the effort-reduction program. Under the current implementation of the FMP, a vessel participating in either the individual days-at-sea program or the fleet days-at-sea program must declare a 20-day time-out in May, 1994, when it will be out of the groundfish fishery. The Council's original proposal required a 20-day time-out from groundfishing during March, April or May, but since the effort-reduction program will not be implemented until May, this first-year requirement falls within a single month instead of within a 3-month span.

Another measure is a proposed adjustment to limit groundfish allowed on board vessels fishing with mesh smaller than the regulated size to 100 pounds (45.4 kg) per day. In other words, if a vessel is on a 4-day small-mesh trip, it may have on board a maximum of 400 pounds (181.4 kg) of groundfish. Under Amendment 5, vessels not in the days-at-sea program and vessels fishing with mesh smaller than the regulated minimum size may possess up to 500 pounds (226.8 kg) combined weight of the large-mesh groundfish species. This provision was intended to allow vessels in the small-

mesh fisheries to retain some groundfish bycatch; however, the Council has since learned that a number of vessels intend to use small-mesh gear to direct their fishing on groundfish stocks to land up to 500 pounds (226.8 kg) per day.

Abbreviated Rulemaking Actions—Atlantic Sea Scallops

The Council will consider public comments and final action on several measures. A framework measure is proposed that would reduce the maximum crew limit aboard scallop vessels from nine to seven persons and is intended to protect small scallops. If approved, this measure would be implemented as soon as possible and last through December, 1994. Also, a framework measure is proposed to implement the reductions in days-at-sea on an annual basis, starting with the period March 1, 1994, through February 28, 1995. For example, this measure would allow full-time scallop vessels to fish for scallops 204 days during this period. Under the current regulation, they are allowed to fish 204 days from March 1, 1994, to December 31, 1994, and may be able to increase their fishing effort. Also, a framework measure to adjust gear restrictions, including triple linking in the dredge bottom, rules for allowing vessels to carry a spare dredge onboard, and clarification of rules governing the configuration of rings in the dredge, is proposed.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall at 617–213–0422 at least 5 days prior to the meeting date.

Dated: March 11, 1994.

David S. Crestin,

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

[FR Doc. 94–6183 Filed 3–14–94; 2:54 pm]

BILLING CODE 3510–22–P

[I.D. 030794D]

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; notice of public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 1994 ocean salmon fisheries. This notice announces the availability of Council documents and the dates and locations of Council meetings and public hearings. These actions comprise the complete schedule of events followed by the Council for determining the annual proposed and final modifications to ocean salmon management measures.

DATES: Written comments for the public hearings must be received by March 30, 1994. Hearings and meetings will be held from March to May 1994. (See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of public meetings and hearings). All public hearings begin at 7 p.m. on the dates and at the locations specified below.

ADDRESSES: Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, OR 97201; telephone: (503) 326–6352. Hearings will take place in Washington, Oregon and California. (See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of hearings).

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator, Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, OR; telephone: 503–326–6352.

SUPPLEMENTARY INFORMATION: As part of the annual Council process of developing seasons and other management measures for the upcoming fishery, beginning on or about May 1 of each year, the Council makes scientific documents available to the public and conducts field hearings to receive public testimony. A listing of those documents and hearings follows.

March 1, 1994: Council reports that summarize the 1993 salmon season and project the expected salmon stock abundance for 1994 are available to the public from the Council office.

March 7–11, 1994: Council and advisory entities meet at the Red Lion Hotel Columbia River, 1401 North Hayden Island Drive, Portland, OR, to adopt 1994 regulatory options for public review.

March 18, 1994: Newsletter with proposed management options and public hearing schedule is mailed to the public (includes options, rationale, and condensed summary of biological and economic impacts).

March 28–30, 1994: Public hearings are held to receive comments on the proposed 1994 ocean salmon fishery regulatory options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified below.

March 28, 1994: PreMarq Centre, 2065 Highway 101, Warrenton, OR.

March 29, 1994: Westport High School Commons, 2850 S. Montesano Street, Westport, WA.

March 29, 1994: Red Lion Inn, Umpqua Room, 1313 North Bayshore Drive, Coos Bay, OR.

March 30, 1994: Humboldt State University, Goodwin Forum, Arcata, CA.

April 4–8, 1994: Council and its advisory entities meet at the Holiday Inn Crowne Plaza, Burlingame, CA, to adopt final 1994 regulatory measures. "Preseason Report II Analysis of Proposed Regulatory Options for 1994 Ocean Salmon Fisheries" will be available to the public at the meeting.

April 14, 1994: Newsletter describing adopted ocean salmon fishing management measures is mailed to the public.

April 8–22, 1994: Salmon Technical Team completes "Preseason Report III Analysis of Council Adopted Regulatory Measures for 1994 Ocean Salmon Fisheries."

May 1, 1994: Federal regulations expected to be implemented and preseason report III made available for distribution to the public. These public meetings and hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

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

Dated: March 10, 1994.

David S. Crestin,

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

[FR Doc. 94–6039 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D.021894B]

Marine Mammals

AGENCIES: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 887 (P79H).

SUMMARY: Notice is hereby given that the Institute of Marine Sciences, University of California, Santa Cruz, California 95064 (Principal Investigator: Dr. Ronald J. Schusterman) has been issued a permit to take northern elephant seals (*Mirounga angustirostris*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West

Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

SUPPLEMENTARY INFORMATION: On December 28, 1993, notice was published in the **Federal Register** (58 FR 68633) that the above-named organization had submitted a request for a scientific research permit to conduct auditory experiments on one elephant seal obtained from beached/stranded stock or collected from the wild. It was noted that if collection is from the wild, up to three animals may be collected in order to determine trainability; two subsequently being released back into the wild within one to two weeks after capture. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended 16 U.S.C. 1361 *et seq.*) and, the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: March 9, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–6063 Filed 03–15–94; 8:45 am]

BILLING CODE 3510–22–P

National Oceanic and Atmospheric Administration (NOAA)

[I.D. 022394B]

Marine Mammals

AGENCIES: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of scientific research permit No. 889 (P772#64).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, California 92038–0271, has been issued a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of enhancing the survival of the species.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

SUPPLEMENTARY INFORMATION: On December 22, 1993, notice was published in the **Federal Register** (58 FR 67776) that a request for an enhancement permit to take Hawaiian monk seals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act.

Dated: March 9, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–6064 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 30–31 March 1994.

Time of Meeting: 0800–1730 (30 March 94) 0800–1200 (31 March 94)

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's 1994 Summer Study Panel on "Capabilities Needed to Counter Current and Evolving Threats" will meet to hear briefings on and discuss advanced and novel technology forecasts, operational, analytical models and methodologies, strategic mobility/deployment, operational enhancements of digitization, and future force structure concepts. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting.

The ASB Administrative Officer Sally Warner, may contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–6202 Filed 3–15–94; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 23, 1994. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 10 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *North Penn Water Authority D–92–44 CP.* An application for approval of a ground water withdrawal project to supply up to 0.864 million gallons (mg)/30 days of water to the applicant's distribution system in East Rockhill Township from new Well No. ER–74, and to retain the existing withdrawal limit from all wells of 280 mg/30 days. The project is located in East Rockhill Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Limerick Township Municipal Authority D–93–42 CP.* A sewage treatment plant (STP) expansion project that entails increasing the rating of an existing 1.0 million gallons per day (mgd) STP to 1.6 mgd, after minor modifications. The STP will continue to provide secondary biological treatment via extended aeration package plants and discharge to the Schuylkill River. The STP will continue to serve only Limerick Township and is located just off King Road in Limerick Township, Montgomery County, Pennsylvania.

3. *Blue Ridge Real Estate Company D–93–57.* A proposal to increase the applicant's withdrawal from Tobyhanna Creek from 1.67 mgd 3.33 mgd for use in snowmaking at the applicant's Jack Frost Ski Area. The project intake is located in Tobyhanna Creek near its confluence with the Lehigh River in Kidder Township, Carbon County, Pennsylvania.

4. *Lower Bucks County Joint Municipal Authority D–93–68 CP.* A project to modify and improve the efficiency and reliability of the applicant's existing 10 mgd STP. The STP will continue to serve the communities of Levittown in portions of Bristol, Falls and Middletown Townships, and the Borough of Tullytown, all in Bucks County, Pennsylvania. The STP is located between the Penn-Central Railroad and Route 13 just east of Haines Road in Bristol Township and will continue to discharge to Water Quality Zone 2 of the Delaware River at the same permitted flow.

5. *Jersey Central Power & Light Company D–93–71.* An electric power generation project that will entail expansion of the applicant's existing 533 megawatt (MW) Gilbert Station power generator capability to 621 MW. The project entails construction of a new simple cycle Combustion Turbine (CT Unit No. 9) with a 133 MW capacity along with decommissioning of existing steam boiler generator Unit Nos. 1 and 2 which have a combined generating capacity of 45 MW. The new CT Unit No. 9 will entail a new maximum month consumptive use of approximately 0.12 mgd, while decommissioning Unit Nos. 1 and 2 will reduce once-through cooling water withdrawal and thermal loading to the Delaware River. The project is located at Gilbert Generating Station which is situated on the east bank of the Delaware River in Holland Township, Hunterdon County, New Jersey at River Mile 171.3, Water Quality Zone 1E.

6. *Shoemakersville Municipal Authority D–93–74 CP.* A project to modify and expand the applicant's existing STP from a 0.35 mgd average capacity to 0.60 mgd. The STP will continue to serve the Borough of Shoemakersville and portions of Perry Township. It is located at the end of Second Street in the Borough of Shoemakersville, Berks County, Pennsylvania and will continue to discharge to the Schuylkill River.

7. *Pennsgrove Water Supply Company D–93–77 CP.* An application for approval of a ground water withdrawal project to supply water to the applicant's distribution system from Well Nos. RF1A, RF2B and RF3A, and to retain the existing withdrawal limit from all wells of 58.9 mg/30 days. The project is located in Carneys Point Township, Salem County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: March 8, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–6096 Filed 3–15–94; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Applications for a New Award Under the Rehabilitation Research and Training Centers (RRTC) for Fiscal Year (FY) 1994

Purpose: On October 19, 1993, the National Institute on Disability and Rehabilitation Research published a notice in the **Federal Register** at 58 FR 54006 inviting applications for a new award under the RRTC program for fiscal year 1994 on Rehabilitation in the Pacific Basin. Satisfactory applications were not received for the RRTC, but there is a continuing need for the research. The purpose of this notice is to reinvite applications for an RRTC on Rehabilitation in the Pacific Basin for fiscal year 1994. This notice announces a new deadline date for applications. Any applicant wishing to apply or reapply should request a new application package.

The Rehabilitation Act Amendments of 1992 require that each applicant for a grant demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. For purposes of this competition, applications proposing to address the needs of Pacific Islanders with disabilities will be judged to have satisfied this requirement.

Eligible Applicants: Institutions of higher education and public or private agencies and organizations collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Deadline for Transmittal of Applications: May 18, 1994.

Applications Available: March 18, 1994.

Available Funds: $650,000.

Estimated Number of Awards: 1.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Up to 60 months.

Priority: The priority published in the **Federal Register** on October 19, 1993 at 58 FR 54004 on Rehabilitation in the Pacific Basin applies to this competition.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86; (b) The regulations for this program in 34 CFR parts 350 and 352; and (c) the notice of final priority published in the **Federal Register** on October 19, 1993 at 58 FR 54004.

FOR FURTHER INFORMATION CONTACT: In order to obtain further information and an application package, contact Dianne Villines, U.S. Department of Education, room 3417 Switzer Building, 400 Maryland Avenue SW., Washington, DC 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Program Authority: 29 U.S.C. 760–762.

Dated: March 10, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–6005 Filed 3–15–94; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Bid-Process Innovation, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–94CE15594 to Bio-Process Innovation, Inc. The proposed grant will provide funding in the amount of $92,022 by the Department of Energy for purposes of saving energy through development of a low-energy continuous reactor for the production of ethanol.

The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the application submitted by Bio-Process Innovation, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent,

or planned solicitation. Dr. M. Clark Dale, the inventor and president of Bio-Process Innovation, Inc., was awarded a patent for the design of the type of bio-reactor which will be developed with the grant, and has recently applied for a patent for this specific system which is expected to reduce cost per unit of product by about 80 percent. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

Issued in Washington, DC on March 8, 1994.

Scott Sheffield,

Director, Headquarters Operations Division "B", Office of Placement and Administration.

[FR Doc. 94–6118 Filed 3–15–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Magnetic Seal Corporation

AGENCY: Department of Energy (DOE).

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–94CE15585 to Magnetic Seal Corporation, Inc. The proposed grant will provide funding in the amount of $90,050 by the Department of Energy for purposes of saving energy through development of an interior insulating window using double magnet sealing design.

The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the application submitted by Magnetic Seal Corporation is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The principal investigator, Mr. Boomershine, has received U.S. and Canadian patents on his invention and has experience in developing the new energy saving technology. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

Issued in Washington, DC, on March 4, 1994.

Scott Scheffield,

Director, Headquarters Operations Division "B", Office of Placement and Administration.

[FR Doc. 94–6119 Filed 3–15–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration; Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by April 15, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Department of Commerce/Bureau of Economic Analysis (BOC/BEA); Department of Energy/Fossil Energy (DOE/FE); Department of Energy/Domestic and International Energy Policy (DOE/PO); and the Environmental Protection Agency (EPA)
2. EIA–767
3. 0608–0054 (DOC/BEA), 1901–0298 (DOE/FE), 1901–0267 (DOE/PO), and 2080–0018 (EPA)
4. Steam-Electric Plant Operation and Design Report
5. Revision—The proposed changes are (1) page 4, restructure operation/maintenance questions and add new elements; (2) page 6, add carbon content question; (3) page 7, expand air emission strategy with new data element; (4) page 8, add boiler retirement date question.
6. Annually
7. Mandatory

8. State or local governments, Businesses or other for-profit, and Federal agencies or employees
9. 893 respondents
10. 1 response
11. 67.69 hours per response
12. 60,452 hours
13. The EIA–767 collects data on steam-electric generating plants and related environmental data. Data are used by the BEA, EPA, DOE/PO, DOE/FE in models and to evaluate compliance with the Clean Air Act. Steam-electric plants of 100 MW or more complete the entire form. Power plants between 10 MW and 100 MW report on page 1, Plant Information; page 6, Boiler Information; and pages 13 and 14, Flue Gas Desulfurization Unit Information.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, March 9, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–6100 Filed 3–15–94;8:45am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP88–105–000]

Yukon Pacific Company L.P.; Meeting on Environmental Issues

March 10, 1994.

On March 15, 1994, Office of Pipeline and Producer Regulation environmental staff will attend a meeting with other agencies sponsored by the U.S. Environmental Protection Agency (EPA), Region 10, to discuss with representatives of Yukon Pacific Company L.P. its proposed activities under the Clean Air Act and the Clean Water Act. The meeting will be at the offices of EPA, Region 10 in Seattle, Washington. For further information contact Chris Zerby at (202) 208–0111.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6026 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed With the Commission

March 10, 1994.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Applications:* Requests for Extension of Time to Commence and Complete Construction.

b. *Project Nos:* 4586–018 and 4587–032.

c. *Date Filed:* February 14, 1994.

d. *Applicant:* City of Tacoma.

e. *Name of Project:* 4586–018—Swamp Creek; 4587–032—Ruth Creek.

f. *Location:* 4586–018—Swamp Creek Project, located on Swamp Creek in Whatcom County, Washington; 4587–032—Ruth Creek Project, located on Ruth Creek in Whatcom County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and Public law No. 101–155, 103 Stat. 935 (1989).

h. *Applicant Contact:* Tacoma Public Utilities Light Division, Attn: George Whitener, 3628 South 35th Street, P.O. Box 11007, Tacoma, WA 98411–0007, (206) 502–8294.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* April 8, 1994.

k. *Description of Request:* The licensee for the subject projects has requested that the deadlines for commencement of construction at FERC Project Nos. 4586 and 4587 be extended for an additional two-year period pursuant to Public Law No. 101–155, 103 Stat. 935 (1989). The licensee shall develop the subject projects in conjunction with two other projects (Project Nos. 4738 and 4628) and shall coordinate the planning, design, and construction schedules for all four projects.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST" OR "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. *Agency Comments*—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6027 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST94–2029–000, et al.]

Pacific Gas Transmission Co.; Notice of Self-Implementing Transactions

March 10, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–2029	Pacific Gas Transmission Co.	Northwest Natural Gas Co.	12–01–93	G–S	3,616	N	F	11–01–93	Indef.
ST94–2030	Pacific Gas Transmission Co.	North Canadian Oils Limited.	12–01–93	G–S	39,185	N	F	11–01–93	Indef.
ST94–2031	Pacific Gas Transmission Co.	Inverness Petroleum Ltd.	12–01–93	G–S	4,034	N	F	11–01–93	Indef.
ST94–2032	Pacific Gas Transmission Co.	North Canadian Marketing Corp.	12–01–93	G–S	19,593	N	F	11–01–93	Indef.
ST94–2033	Pacific Gas Transmission Co.	Dekalb Energy Co.	12–01–93	G–S	11,755	N	F	11–01–93	Indef.
ST94–2034	Pacific Gas Transmission Co.	City of Glendale	12–01–93	G–S	4,034	N	F	11–01–93	Indef.
ST94–2035	Pacific Gas Transmission Co.	Pan-Alberta Gas (U.S.) Inc.	12–01–93	G–S	58,777	N	F	11–01–93	Indef.
ST94–2036	Pacific Gas Transmission Co.	Suncor Inc	12–01–93	G–S	40,361	N	F	11–01–93	Indef.
ST94–2037	Pacific Gas Transmission Co.	WP Natural Gas Co.	12–01–93	G–S	7,140	N	F	11–01–93	Indef.
ST94–2038	Pacific Gas Transmission Co.	WP Natural Gas Co.	12–01–93	G–S	6,620	N	F	11–08–93	Indef.
ST94–2039	Pacific Gas Transmission Co.	Washington Energy Marketing, Inc.	12–01–93	G–S	65,278	N	F	11–01–93	Indef.
ST94–2040	Pacific Gas Transmission Co.	Northwest Natural Gas Co.	12–01–93	G–S	46,549	N	F	11–01–93	Indef.
ST94–2041	Pacific Gas Transmission Co.	IGI Resources, Inc.	12–01–93	G–S	7,158	N	F	11–01–93	Indef.
ST94–2042	Pacific Gas Transmission Co.	City of Pasadena	12–01–93	G–S	4,034	N	F	11–01–93	Indef.
ST94–2043	Pacific Gas Transmission Co.	Salmon Resources Ltd.	12–01–93	G–S	27,434	N	F	11–01–93	Indef.
ST94–2044	Pacific Gas Transmission Co.	Canwest Gas Supply U.S.A., Inc.	12–01–93	G–S	62,429	N	F	11–01–93	Indef.
ST94–2045	Equitrans, Inc	Latrobe Steel Co	12–01–93	G–S	273,000	N	I	10–01–93	03–31–94.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–2046	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	12–01–93	G–S	1,218	N	F	11–01–93	Indef.
ST94–2047	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	12–01–93	G–S	1,218	N	F	11–01–93	Indef.
ST94–2048	Texas Gas Transmission Corp.	Louisville Gas & Electric Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2049	Texas Gas Transmission Corp.	Union Light, Heat & Power Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2050	Texas Gas Transmission Corp.	City of Drakesboro.	12–01–93	G–S	1,058	N	F	11–01–93	Indef.
ST94–2051	Texas Gas Transmission Corp.	Ohio Valley Gas Corp.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2052	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	12–01–93	G–S	1,218	N	F	11–01–93	Indef.
ST94–2053	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2054	Texas Gas Transmission Corp.	Dayton Power & Light Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2055	Texas Gas Transmission Corp.	Cincinnati Gas & Electric Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2056	Texas Gas Transmission Corp.	Louisville Gas & Electric Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2057	Texas Gas Transmission Corp.	Louisville Gas & Electric Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2058	Williston Basin Inter. P/L Co.	Farmers Union Central Exchange, Inc.	12–01–93	G–S	3,180	N	F	11–01–93	03–31–94.
ST94–2059	Williston Basin Inter. P/L Co.	Montana-Dakota Utilities Co.	12–01–93	G–S	228,000	N	F	11–01–93	06–30–97.
ST94–2060	Williston Basin Inter. P/L Co.	Frannie Deaver Utilities.	12–01–93	G–S	200	N	I	11–01–93	Indef.
ST94–2061	Williston Basin Inter. P/L Co.	Wyoming Gas Co.	12–01–93	G–S	10,000	N	I	11–01–93	06–30–97.
ST94–2062	Williston Basin Inter. P/L Co.	Montana-Dakota Utilities Co.	12–01–93	G–S	115,665	N	F	11–01–93	06–30–97.
ST94–2063	Panhandle Easter Pipe Line Co.	Direct Gas Supply Corp.	12–01–93	G–S	10,000	N	I	11–03–93	04–30–98.
ST94–2064	Panhandle Easter Pipe Line Co.	Margasco Partnership.	12–01–93	G–S	5,000	N	F	11–01–93	03–31–94.
ST94–2065	Transwestern Pipeline Co.	Lone Star Gas Co.	12–01–93	B	20,000	N	I	11–01–93	Indef.
ST94–2066	Transwestern Pipeline Co.	Hadson Gas Systems, Inc.	12–01–93	G–S	25,000	N	I	11–01–93	Indef.
ST94–2067	Transwestern Pipeline Co.	Clayton Williams Energy, Inc.	12–01–93	G–S	3,280	N	F	11–01–93	11–30–93
ST94–2068	Black Marlin Pipeline Co.	MG Natural Gas Corp.	12–01–93	G–S	6,292	N	F	11–03–93	11–30–93.
ST94–2069	Black Marlin Pipeline Co.	Enron Industrial Natural Gas Co.	12–01–93	G–S	68,708	A	F	11–03–93	11–30–93.
ST94–2070	Columbia Gas Transmission Corp.	Columbus Southern Power Co.	12–01–93	G–S	147,000	N	I	11–01–93	Indef.
ST94–2071	Columbia Gas Transmission Corp.	Stand Energy	12–01–93	G–S	4,000	N	I	11–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–2072	Columbia Gas Transmission Corp.	M&B Industrial Gas Development Co.	12–01–93	G–S	10,200	N	I	11–01–93	Indef.
ST94–2073	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12–01–93	G–S	25,000	Y	I	11–01–93	Indef.
ST94–2074	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12–01–93	B	10,000	Y	I	11–01–93	Indef.
ST94–2075	Columbia Gas Transmission Corp.	Endevco Oil & Gas Co.	12–01–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–2076	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–01–93	G–S	800	N	I	11–01–93	Indef.
ST94–2077	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	12–01–93	G–S	205,019	N	F	11–01–93	Indef.
ST94–2078	Columbia Gas Transmission Corp.	Delmarva Power & Light Co.	12–01–93	G–S	10,110	N	F	11–01–93	Indef.
ST94–2079	Columbia Gas Transmission Corp.	Energy Marketing Services, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2080	Columbia Gas Transmission Corp.	Pedrickcity Cogeneration, Ltd.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2081	Columbia Gas Transmission Corp.	Domino Sugar Corp.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2082	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2083	Columbia Gas Transmission Corp.	Interstate Gas Supply, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2084	Columbia Gas Transmission Corp.	O&R Energy, Inc	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2085	Columbia Gas Transmission Corp.	AGF Direct Gas Sales.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2086	Columbia Gas Transmission Corp.	Narragansett Electric Co.	12–01–93	G–S	90,000	N	I	11–01–93	Indef.
ST94–2087	Columbia Gas Transmission Corp.	Howard Energy Co., Inc.	12–01–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–2088	Columbia Gas Transmission Corp.	Vesta Energy Corp.	12–01–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–2089	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–01–93	G–S	69,000	Y	I	11–01–93	Indef.
ST94–2090	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–01–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2091	Columbia Gas Transmission Corp.	Peoples Natural Gas Co.	12–01–93	G–S	100	N	F	11–01–93	Indef.
ST94–2092	Columbia Gas Transmission Corp.	CNG Transmission Corp.	12–01–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–2093	Columbia Gas Transmission Corp.	U.S. Energy Development.	12–01–93	G–S	50	N	I	11–01–93	Indef.
ST94–2094	Columbia Gas Transmission Corp.	Midland Marketing Corp.	12–01–93	G–S	40,000	N	I	11–01–93	Indef.
ST94–2095	Columbia Gas Transmission Corp.	Texaco Gas Marketing, Inc.	12–01–93	G–S	200,000	N	I	11–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–2096	Columbia Gas Transmission Corp.	South Jersey Gas Co.	12–01–93	B	1,000	N	I	11–01–93	Indef.
ST94–2097	Columbia Gas Transmission Corp.	Pennsylvania Gas & Water Co.	12–01–93	G–S	16,517	N	F	11–01–93	Indef.
ST94–2098	Columbia Gas Transmission Corp.	North Carolina Natural Gas Corp.	12–01–93	G–S	5,199	N	F	11–01–93	Indef.
ST94–2099	Columbia Gas Transmission Corp.	O&R Energy, Inc	12–01–93	G–S	500	N	I	11–01–93	Indef.
ST94–2100	Columbia Gas Transmission Corp.	Vineland Cogeneration L.P.	12–01–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2101	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–01–93	G–S	1,000	Y	I	11–01–93	Indef.
ST94–2102	Columbia Gas Transmission Corp.	City of Richmond	12–01–93	G–S	15,000	N	I	11–01–93	Indef.
ST94–2103	Columbia Gas Transmission Corp.	Baltimore Gas & Electric Co.	12–01–93	G–S	63,000	N	I	11–01–93	Indef.
ST94–2104	Columbia Gas Transmission Corp.	City of Augusta .	12–01–93	G–S	1,300	N	I	11–01–93	Indef.
ST94–2105	Columbia Gas Transmission Corp.	Cameron Gas Co.	12–01–93	G–S	1,140	N	I	11–01–93	Indef.
ST94–2106	Columbia Gas Transmission Corp.	Delta NaturaL Gas Co., Inc.	12–01–93	G–S	5,400	N	I	11–01–93	Indef.
ST94–2107	Columbia Gas Transmission Corp.	Delta Natural Gas Co., Inc.	12–01–93	G–S	2,530	N	I	11–01–93	Indef.
ST94–2108	Columbia Gas Transmission Corp.	Delta Natural Gas Co., Inc.	12–01–93	G–S	4,140	N	I	11–01–93	Indef.
ST94–2109	Columbia Gas Transmission Corp.	Zebulon Gas Association, Inc.	12–01–93	G–S	200	N	I	11–01–93	Indef.
ST94–2110	Columbia Gas Transmission Corp.	Mt. Olivet Natural Gas Co.	12–01–93	G–S	500	N	I	11–01–93	Indef.
ST94–2111	Columbia Gas Transmission Corp.	Murphy Gas, Inc	12–01–93	G–S	180	N	I	11–01–93	Indef.
ST94–2112	Columbia Gas Transmission Corp.	Power Gas Marketing & Transmission.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2113	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	12–01–93	G–S	190,880	Y	F	11–01–93	Indef.
ST94–2114	Columbia Gas Transmission Corp.	New York State Electric & Gas Corp.	12–01–93	G–S	68,514	N	F	11–01–93	Indef.
ST94–2115	Columbia Gas Transmission Corp.	Shipper Entity Type.	12–01–93	G–S	456,776	N	F	11–01–93	Indef.
ST94–2116	Columbia Gas Transmission Corp.	Providence Gas Co.	12–01–93	G–S	2,545	N	F	11–01–93	Indef.
ST94–2117	Columbia Gas Transmission Corp.	Penn Fuel Gas, Inc.	12–01–93	G–S	10,715	N	F	11–01–93	Indef.
ST94–2118	Columbia Gas Transmission Corp.	Gas Transport, Inc.	12–01–93	G–S	500	N	F	11–01–93	Indef.
ST94–2119	Columbia Gas Transmission Corp.	Elizabethtown Gas Co.	12–01–93	G–S	3,644	N	F	11–01–93	Indef.

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ST94–2120	Columbia Gas Transmission Corp.	Eastern Shore Natural Gas Co.	12–01–93	G–S	10,893	N	F	11–01–93	Indef.
ST94–2121	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–01–93	G–S	103,059	N	F	11–01–93	Indef.
ST94–2122	Columbia Gas Transmission Corp.	Bluefield Gas Co	12–01–93	G–S	8,682	N	F	11–01–93	Indef.
ST94–2123	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	12–01–93	G–S	20,000	N	F	11–01–93	Indef.
ST94–2124	Columbia Gas Transmission Corp.	Central Hudson Gas & Electric Corp.	12–01–93	G–S	8,985	N	F	11–01–93	Indef.
ST94–2125	Columbia Gas Transmission Corp.	Waterville Gas & Oil Co.	12–01–93	G–S	3,100	N	I	11–01–93	Indef.
ST94–2126	Columbia Gas Transmission Corp.	Verona Natural Gas Co.	12–01–93	G–S	800	N	I	11–01–93	Indef.
ST94–2127	Columbia Gas Transmission Corp.	Vanceburg Electric Light Heat & Pwr.	12–01–93	G–S	1,230	N	I	11–01–93	Indef.
ST94–2128	Columbia Gas Transmission Corp.	Claysville Natural Gas Co..	12–01–93	G–S	2,270	N	I	11–01–93	Indef.
ST94–2129	Columbia Gas Transmission Corp.	City of North Middletown.	12–01–93	G–S	310	N	I	11–01–93	Indef.
ST94–2130	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc..	12–01–93	G–S	32,521	Y	F	11–01–93	Indef.
ST94–2131	Columbia Gas Transmission Corp.	West Ohio Gas Co.	12–01–93	G–S	60,944	N	F	11–01–93	Indef.
ST94–2132	Columbia Gas Transmission Corp.	Virginia Natural Gas, Inc.	12–01–93	G–S	49,030	N	F	11–01–93	Indef.
ST94–2133	Columbia Gas Transmission Corp.	Corning Natural Gas Corp.	12–01–93	G–S	222	N	F	11–01–93	Indef.
ST94–2134	Columbia Gas Transmission Corp.	UGI Utilities, Inc	12–01–93	G–S	65,359	N	F	11–01–93	Indef.
ST94–2135	Columbia Gas Transmission Corp.	Piedmont Natural Gas Co.	12–01–93	G–S	37,000	N	F	11–01–93	Indef.
ST94–2136	Columbia Gas Transmission Corp.	Elam Utility Co ..	12–01–93	G–S	960	N	I	11–01–93	Indef.
ST94–2137	Columbia Gas Transmission Corp.	Gasco Distribution Systems, Inc.	12–01–93	G–S	300	N	I	11–01–93	Indef.
ST94–2138	Columbia Gas Transmission Corp.	Enron Access Corp..	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2139	Columbia Gas Transmission Corp.	Equitable Resources Marketing Co.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2140	Columbia Gas Transmission Corp.	USS Kobe Steel Co.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2141	Columbia Gas Transmission Corp.	Volunteer Energy Corp.	12–01–93	G–ST	N	I	F	11–01–93	Indef.
ST94–2142	Columbia Gas Transmission Corp.	Vesta Energy Co	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2143	Columbia Gas Transmission Corp.	NGC Transportation, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.

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ST94–2144	Columbia Gas Transmission Corp.	Southern Tier Transmission Corp.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2145	Columbia Gas Transmission Corp.	Stand Energy	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2146	Columbia Gas Transmission Corp.	Bethlehem Steel	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2147	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	12–01–93	G–S	1,407,930	Y	I	11–01–93	Indef.
ST94–2148	Columbia Gas Transmission Corp.	Pike Natural Gas Co.	12–01–93	G–S	4,910	N	I	11–01–93	Indef.
ST94–2149	Columbia Gas Transmission Corp.	Richmond Utilities Board.	12–01–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2150	Columbia Gas Transmission Corp.	Sheldon Gas Co	12–01–93	G–S	1,910	N	I	11–01–93	Indef.
ST94–2151	Columbia Gas Transmission Corp.	Swickard Gas Co.	12–01–93	G–S	1,050	N	I	11–01–93	Indef.
ST94–2152	Columbia Gas Transmission Corp.	Paramount Natural Gas Co.	12–01–93	G–S	310	N	I	11–01–93	Indef.
ST94–2153	Columbia Gas Transmission Corp.	Beltry Gas Co ...	12–01–93	G–S	420	N	I	11–01–93	Indef.
ST94–2154	Columbia Gas Transmission Corp.	Blacksville Oil and Gas.	12–01–93	G–S	320	N	I	11–01–93	Indef.
ST94–2155	Columbia Gas Transmission Corp.	Lakeside Gas Co.	12–01–93	G–S	210	N	I	11–01–93	Indef.
ST94–2156	Columbia Gas Transmission Corp.	City of Flemingsburg.	12–01–93	G–S	1,900	N	I	11–01–93	Indef.
ST94–2157	Columbia Gas Transmission Corp.	City of Carlisle ...	12–01–93	G–S	2,300	N	I	11–01–93	Indef.
ST94–2158	Columbia Gas Transmission Corp.	City of Brooksville.	12–01–93	G–S	530	N	I	11–01–93	Indef.
ST94–2159	Columbia Gas Transmission Corp.	Nashville Gas Co.	12–01–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2160	Columbia Gas Transmission Corp.	Nashville Gas Co.	12–01–93	G–S	141,937	N	I	11–01–93	Indef.
ST94–2161	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12–01–93	G–S	231,893	N	I	11–01–93	Indef.
ST94–2162	Columbia Gas Transmission Corp.	Washington Gas Light Co.	12–01–93	G–S	354,000	N	I	11–01–93	Indef.
ST94–2163	Columbia Gas Transmission Corp.	South Jersey Gas Co.	12–01–93	G–S	20,500	N	F	11–01–93	Indef.
ST94–2164	Columbia Gas Transmission Corp.	Union Light Heat & Power Co.	12–01–93	G–S	51,186	N	F	11–01–93	Indef.
ST94–2165	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	12–01–93	G–S	242,984	N	F	11–01–93	Indef.
ST94–2166	Columbia Gas Transmission Corp.	West Millgrove Gas Co.	12–01–93	G–S	80	N	I	11–01–93	Indef.
ST94–2167	Columbia Gas Transmission Corp.	Waterville Gas Co.	12–01–93	G–S	5,000	N	I	11–01–93	Indef.

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ST94–2168	Columbia Gas Transmission Corp.	City of Richmond	12–01–93	G–S	41,913	N	F	11–01–93	Indef.
ST94–2169	Columbia Gas Transmission Corp.	City of Lancaster	12–01–93	G–S	19,353	N	F	11–01–93	Indef.
ST94–2170	Columbia Gas Transmission Corp.	City of Charlottesville.	12–01–93	G–S	17,049	N	F	11–01–93	Indef.
ST94–2171	Columbia Gas Transmission Corp.	Suburban Natural Gas Co.	12–01–93	G–S	3,366	N	F	11–01–93	Indef.
ST94–2172	Columbia Gas Transmission Corp.	Roanoke Gas Co.	12–01–93	G–S	19,475	N	F	11–01–93	Indef.
ST94–2173	Columbia Gas Transmission Corp.	Meridian Marketing & Transportation.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2174	Columbia Gas Transmission Corp.	New Jersey Natural Gas Co.	12–01–93	G–S	2,545	N	I	11–01–93	Indef.
ST94–2175	Columbia Gas Transmission Corp.	North Carolina Natural Gas Corp.	12–01–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2176	Columbia Gas Transmission Corp.	South Jersey Gas Co.	12–01–93	G–S	22,511	N	I	11–01–93	Indef.
ST94–2177	Columbia Gas Transmission Corp.	UGI Utilities, Inc	12–01–93	G–S	19,520	N	I	11–01–93	Indef.
ST94–2178	Columbia Gas Transmission Corp.	National Fuel Gas Distribution Corp..	12–01–93	G–S	18,417	N	F	11–01–93	Indef.
ST94–2179	Columbia Gas Transmission Corp.	T.W. Phillips Gas and Oil Co.	12–01–93	G–S	4,918	N	F	11–01–93	Indef.
ST94–2180	Columbia Gas Transmission Corp.	Interstate Utilities Co.	12–01–93	G–S	840	N	I	11–01–93	Indef.
ST94–2181	Columbia Gas Transmission Corp.	Kane Gas Light & Heating Co.	12–01–93	G–S	1,000	N	I	11–01–93	Indef.
ST94–2182	Columbia Gas Transmission Corp.	Arlington Natural Gas Co.	12–01–93	G–S	2,770	N	I	11–01–93	Indef.
ST94–2183	Columbia Gas Transmission Corp.	Equitable Resources Marketing Co.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2184	Columbia Gas Transmission Corp.	Volunteer Energy Corp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2185	Columbia Gas Transmission Corp.	National Gas & Oil Corp.	12–01–93	G–S	3,830	N	I	11–01–93	Indef.
ST94–2186	Columbia Gas Transmission Corp.	Northeast Ohio Natural Gas.	12–01–93	G–S	600	N	I	11–01–93	Indef.
ST94–2187	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12–01–93	G–S	40,000	N	I	11–01–93	Indef.
ST94–2188	Columbia Gas Transmission Corp.	Corning Natural Gas Corp.	12–01–93	G–S	250	N	I	11–01–93	Indef.
ST94–2189	Columbia Gas Transmission Corp.	Elizabethcity Gas Co.	12–01–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–2190	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	12–01–93	G–ST	N/A	N	I	11–01–93	03–31–94.
ST94–2191	Columbia Gas Transmission Corp.	Coastal Gas Marketing Co.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.

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ST94–2192	Columbia Gas Transmission Corp.	Ashland Exploration, Inc.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2193	Columbia Gas Transmission Corp.	NGO Development Corp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2194	Columbia Gas Transmission Corp.	Southern Gas Co., Inc.	12–01–93	G–S	200	N	I	11–01–93	Indef.
ST94–2195	Columbia Gas Transmission Corp.	Columbia Natural Resources, Inc.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2196	Columbia Gas Transmission Corp.	Dome Energyicorp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2197	Columbia Gas Transmission Corp.	Enron Access Corp..	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2198	Columbia Gas Transmission Corp.	Atlas Gas Marketing.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2199	Columbia Gas Transmission Corp.	O&R Energy, Inc	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2200	Columbia Gas Transmission Corp.	Midcon Gas Services Corp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2201	Columbia Gas Transmission Corp.	Polaris Pipeline Corp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2202	Columbia Gas Transmission Corp.	Consolidated Fuel Corp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2203	Columbia Gas Transmission Corp.	Elizabethcity Gas Co.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2204	Columbia Gas Transmission Corp.	Energy Marketing Services, Inc.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2205	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12–01–93	G–ST	N/A	Y	I	11–01–93	Indef.
ST94–2206	Columbia Gas Transmission Corp.	Eastern Marketing Corp.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2207	Columbia Gas Transmission Corp.	KCS Energy Marketing, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2208	Columbia Gas Transmission Corp.	Binghamton Cogeneration L.P.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2209	Columbia Gas Transmission Corp.	CMS Gas Marketing.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2210	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2211	Columbia Gas Transmission Corp.	Gaslantic Corp ..	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2212	Columbia Gas Transmission Corp.	Timken Co	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2213	Columbia Gas Transmission Corp.	National Fuel Gas Distribution Corp.	12–01–93	G–S	2,000	N	I	11–01–93	Indef.
ST94–2214	Columbia Gas Transmission Corp.	Tenneco Gas Marketing Co.	12–01–93	G–S	700,000	N	I	11–01–93	Indef.
ST94–2215	Columbia Gas Transmission Corp.	Stand Energy	12–01–93	G–S	1,420	N	I	11–01–93	Indef.

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ST94–2216	Columbia Gas Transmission Corp.	Ohio Cumberland Gas Co.	12–01–93	G–S	2,000	N	I	11–01–93	Indef.
ST94–2217	Columbia Gas Transmission Corp.	Orwell Natural Gas Co.	12–01–93	G–S	2,000	N	I	11–01–93	Indef.
ST94–2218	Columbia Gas Transmission Corp.	Kentucky Ohio Gas Co.	12–01–93	G–S	200	N	I	11–01–93	Indef.
ST94–2219	Columbia Gas Transmission Corp.	NGC Transportation, Inc.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2220	Columbia Gas Transmission Corp.	Western Lewis - Rectorville.	12–01–93	G–S	700	N	I	11–01–93	Indef.
ST94–2221	Columbia Gas Transmission Corp.	Village of Williamsport.	12–01–93	G–S	620	N	I	11–01–93	Indef.
ST94–2222	Tennessee Gas Pipeline Co.	United Cities Gas Co.	12–01–93	G–S	50,000	N	I	11–03–93	Indef.
ST94–2223	Tennessee Gas Pipeline Co.	Aquila Energy Marketing Corp.	12–01–93	G–S	375	N	F	11–09–93	Indef.
ST94–2224	Tennessee Gas Pipeline Co.	Brooklyn Union Gas Co.	12–01–93	G–S	10,260	N	F	11–09–93	Indef.
ST94–2225	Tennessee Gas Pipeline Co.	Clinton Gas Marketing Inc.	12–01–93	G–S	50	N	F	11–23–93	Indef.
ST94–2226	Tennessee Gas Pipeline Co.	Meridian Marketing & Trans. Corp.	12–01–93	G–S	500	N	I	09–14–93	Indef.
ST94–2227	Tennessee Gas Pipeline Co.	Energy North Natural Gas Inc.	12–01–93	G–S	4,799	N	F	11–10–93	Indef.
ST94–2228	Midwestern Gas Transmission Co.	Eastex Hydrocarbons Inc.	12–01–93	G–S	60,000	N	I	11–01–93	Indef.
ST94–2229	Natural Gas P/L Co. of America.	Tauber Oil Co ...	12–01–93	G–S	50,000	N	I	11–04–93	Indef.
ST94–2230	Ozark Gas Transmission System.	Helmerich & Payne Energy Service.	12–01–93	G–S	10,000	N	F/I	11–01–93	Indef.
ST94–2231	Sabine Pipe Line Co.	Texaco Gas Marketing Inc.	12–01–93	G–S	50,000	A	F	11–01–93	Indef.
ST94–2232	Sabine Pipe Line Co.	NGC Transportation Inc.	12–01–93	G–S	60,000	N	F	11–01–93	Indef.
ST94–2234	Sabine Pipe Line Co.	Cypress Gas Pipeline Co.	12–01–93	G–S	40,000	N	I	11–02–93	Indef.
ST94–2235	Delhi Gas Pipeline Corp.	Koch Gas Pipeline Co.	12–01–93	C	250,000	N	I	11–01–93	Indef.
ST94–2236	Delhi Gas Pipeline Corp.	Nat. Gas P/L Co. of America, et al.	12–01–93	C	4,000	N	I	11–01–93	Indef.
ST94–2237	Seagull Shoreline System.	Texas Eastern Transmission Corp.	12–01–93	C	20,000	N	I	11–01–93	Indef.
ST94–2238	Granite State Gas Trans., Inc.	Northern Utilities, Inc.	12–01–93	B	28,768	Y	F	11–01–93	10–31–00.
ST94–2239	Granite State Gas Trans., Inc.	Bay State Gas Co.	12–01–93	B	34,092	Y	F	11–01–93	10–31–00.
ST94–2240	Granite State Gas Trans., Inc.	Northern Utilities, Inc.	12–01–93	B	3,603	Y	F	11–01–93	10–31–00.
ST94–2241	Granite State Gas Trans., Inc.	Bay State Gas Co.	12–01–93	B	126,279	Y	F	11–01–93	10–31–00.
ST94–2242	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	12–02–93	C	5,000	N	I	11–01–93	Indef.

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ST94–2243	Arkansas Western Pipeline Co.	Viskase Corp	12–02–93	G–S	1,600	N	I	10–01–93	12–31–94.
ST94–2244	Columbia Gas Transmission Corp.	Entity Type	12–02–93	G–S	19,353	N	I	11–01–93	Indef.
ST94–2245	Columbia Gas Transmission Corp.	City of Charlottesville.	12–02–93	G–S	17,049	N	I	11–01–93	Indef.
ST94–2246	Columbia Gas Transmission Corp.	T.W. Phillips Gas & Oil Co.	12–02–93	G–S	4,918	N	I	11–01–93	Indef.
ST94–2247	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc.	12–02–93	G–S	32,521	Y	I	11–01–93	Indef.
ST94–2248	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	12–02–93	G–S	190,880	Y	I	11–01–93	Indef.
ST94–2249	Columbia Gas Transmission Corp.	Gas Transport, Inc.	12–02–93	G–S	500	N	I	11–01–93	Indef.
ST94–2250	Columbia Gas Transmission Corp.	Nashville Gas Co.	12–02–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2251	Columbia Gas Transmission Corp.	Providence Gas Co.	12–02–93	G–S	2,545	N	I	11–01–93	Indef.
ST94–2252	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	12–02–93	G–S	3,000,000	Y	I	11–01–93	Indef.
ST94–2253	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc.	12–02–93	G–S	N/A	Y	I	11–01–93	Indef.
ST94–2254	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	12–02–93	G–S	N/A	Y	I	11–01–93	Indef.
ST94–2255	Columbia Gas Transmission Corp.	Clinton Gas Marketing, Inc.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2256	Columbia Gas Transmission Corp.	Miami Valley Resources, Inc.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2257	Columbia Gas Transmission Corp.	Equitable Gas Co.	12–02–93	G–S	72,056	N	F	11–01–93	11–30–93.
ST94–2258	Columbia Gas Transmission Corp.	Cabot Corp	12–02–93	B	15,000	N	I	11–01–93	Indef.
ST94–2259	Columbia Gas Transmission Corp.	Washington Gas Light Co.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2260	Columbia Gas Transmission Corp.	United States Gypsum Co.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2261	Columbia Gas Transmission Corp.	Elizabethcity Gas Co.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2262	Columbia Gas Transmission Corp.	East Tennessee Natural Gas.	12–02–93	G–S	5,000	N	F	11–01–93	Indef.
ST94–2263	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	120	N	F	11–01–93	03–31–94.
ST94–2264	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	205	N	F	11–01–93	03–31–94.
ST94–2265	Columbia Gas Transmission Corp.	Interstate Gas Supply, Inc.	12–02–93	G–S	615	N	F	11–01–93	Indef.
ST94–2266	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	266	N	F	11–01–93	03–31–94.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–2267	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	1,465	N	F	11–01–93	05–31–94.
ST94–2268	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	10	N	F	11–01–93	03–31–94.
ST94–2269	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	166	N	F	11–01–93	03–31–94.
ST94–2270	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	67	N	F	11–01–93	09–30–94.
ST94–2271	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	2,572	N	F	11–01–93	03–31–94.
ST94–2272	Columbia Gas Transmission Corp.	PPG Industries ..	12–02–93	G–S	240	N	F	11–01–93	03–31–94.
ST94–2273	Columbia Gas Transmission Corp.	Piedmont Natural Gas Co.	12–02–93	G–S	37,000	N	I	11–01–93	Indef.
ST94–2274	Columbia Gas Transmission Corp.	Corning Natural Gas Corp.	12–02–93	G–S	222	N	I	11–01–93	Indef.
ST94–2275	Columbia Gas Transmission Corp.	Roanoke Gas Co.	12–02–93	G–S	19,475	N	I	11–01–93	Indef.
ST94–2276	Columbia Gas Transmission Corp.	South Jersey Gas Co.	12–02–93	G–S	20,500	N	I	11–01–93	Indef.
ST94–2277	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12–02–93	G–S	231,893	N	I	11–01–93	Indef.
ST94–2278	Columbia Gas Transmission Corp.	Virginia Natural Gas, Inc.	12–02–93	G–S	49,030	N	I	11–01–93	Indef.
ST94–2279	Columbia Gas Transmission Corp.	Washington Gas Light Co.	12–02–93	G–S	354,000	N	I	11–01–93	Indef.
ST94–2280	Columbia Gas Transmission Corp.	Eastern Natural Gas Co.	12–02–93	G–S	1,465	N	F	11–01–93	Indef.
ST94–2281	Columbia Gas Transmission Corp.	Eastern Shore Natural Gas Co.	12–02–93	G–S	1,533	N	F	11–01–93	Indef.
ST94–2282	Columbia Gas Transmission Corp.	South Jersey Gas Co.	12–02–93	B	10,222	N	F	11–01–93	Indef.
ST94–2283	Columbia Gas Transmission Corp.	Lancaster Glass	12–02–93	G–S	500	N	F	11–01–93	ndef.
ST94–2284	Columbia Gas Transmission Corp.	Toyota Motor Manufacturing USA, Inc.	12–02–93	G–S	6,064	N	F	11–01–93	Indef.
ST94–2285	Columbia Gas Transmission Corp.	PPG Industries ..	12–02–93	G–S	210	N	F	11–01–93	03–31–94.
ST94–2286	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	68	N	F	11–01–93	03–31–94.
ST94–2287	Columbia Gas Transmission Corp.	North Carolina Natural Gas Corp.	12–02–93	G–S	9,801	N	F	11–01–93	Indef.
ST94–2288	Columbia Gas Transmission Corp.	Columbia Gas of Pennsylvania, Inc.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2289	Columbia Gas Transmission Corp.	Richmond Power Enterprise, L.P..	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2290	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–02–93	G–S	N/A	Y	I	11–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–2291	Columbia Gas Transmission Corp.	Equitable Resources Marketing Co.	12–02–93	G–S	10,600	N	F	11–01–93	03–31–94.
ST94–2292	Columbia Gas Transmission Corp.	Piedmont Natural Gas Co.	12–02–93	G–S	10,000	N	F	11–01–93	03–31–94.
ST94–2293	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	50	N	F	11–01–93	03–31–94.
ST94–2294	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	122	N	F	11–01–93	03–31–94.
ST94–2295	Columbia Gas Transmission Corp.	Elizabethcity Gas Co.	12–02–93	G–S	3,644	N	I	11–01–93	Indef.
ST94–2296	Columbia Gas Transmission Corp.	Bluefield Gas Co	12–02–93	G–S	8,682	N	I	11–01–93	Indef.
ST94–2297	Columbia Gas Transmission Corp.	National Fuel Gas Distribution Corp.	12–02–93	G–S	18,417	N	I	11–01–93	Indef.
ST94–2298	Columbia Gas Transmission Corp.	North Carolina Natural Gas Corp.	12–02–93	G–S	5,199	N	I	11–01–93	Indef.
ST94–2299	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	12–02–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–2300	Columbia Gas Transmission Corp.	Eastern Shore Natural Gas Co.	12–02–93	G–S	10,893	N	I	11–01–93	Indef.
ST94–2301	Columbia Gas Transmission Corp.	Peoples Natural Gas Co.	12–02–93	G–S	100	N	I	11–01–93	Indef.
ST94–2302	Columbia Gas Transmission Corp.	West Ohio Gas Co.	12–02–93	B	32,651	N	F	11–01–93	Indef.
ST94–2303	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–02–93	G–S	200	N	F	11–01–93	Indef.
ST94–2304	Columbia Gas Transmission Corp.	Energy Marketing Services, Inc.	12–02–93	G–S	186	N	F	11–01–93	03–31–94.
ST94–2305	Columbia Gas Transmission Corp.	Southern Gas Co., Inc.	12–02–93	G–S	2,650	N	F	11–01–93	Indef.
ST94–2306	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–02–93	G–S	215	N	F	11–01–93	03–31–94.
ST94–2307	Columbia Gas Transmission Corp.	Piedmont Natural Gas Co.	12–02–93	G–S	23,000	N	F	11–01–93	Indef.
ST94–2308	Columbia Gas Transmission Corp.	Peoples Natural Gas Co.	12–02–93	G–S	3,050	N	F	11–01–93	Indef.
ST94–2309	Columbia Gas Transmission Corp.	Gas Transport, Inc.	12–02–93	G–S	6,350	N	F	11–01–93	Indef.
ST94–2310	Columbia Gas Transmission Corp.	Empire Detroit Steel.	12–02–93	G–S	2,942	N	F	11–01–93	03–31–94.
ST94–2311	Columbia Gas Transmission Corp.	New England Power.	12–02–93	G–S	60,790	N	F	11–01–93	10–31–14.
ST94–2312	Columbia Gas Transmission Corp.	Georgecity Cogeneration, L.P..	12–02–93	G–S	6,700	N	F	11–01–93	Indef.
ST94–2313	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	150	N	F	11–01–93	03–31–94.
ST94–2314	Columbia Gas Transmission Corp.	PPG Industries ..	12–02–93	G–S	104	N	F	11–01–93	03–31–94.

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ST94–2315	Columbia Gas Transmission Corp.	West Ohio Gas Co.	12–02–93	G–S	60,944	N	I	11–01–93	Indef.
ST94–2316	Columbia Gas Transmission Corp.	Pennsylvania Gas & Water Co.	12–02–93	G–S	16,517	N	I	11–01–93	Indef.
ST94–2317	Columbia Gas Transmission Corp.	Penn Fuel Gas, Inc.	12–02–93	G–S	10,715	N	I	11–01–93	Indef.
ST94–2318	Columbia Gas Transmission Corp.	Central Hudson Gas & Electric Corp.	12–02–93	G–S	8,985	N	I	11–01–93	Indef.
ST94–2319	Columbia Gas Transmission Corp.	Suburban Natural Gas Co.	12–02–93	G–S	3,366	N	I	11–01–93	Indef.
ST94–2320	Columbia Gas Transmission Corp.	Baltimore Gas & Electric Co.	12–02–93	G–S	141,937	N	I	11–01–93	Indef.
ST94–2321	Columbia Gas Transmission Corp.	New Jersey Natural Gas Co.	12–02–93	G–S	7,455	N	F	11–01–93	Indef.
ST94–2322	Columbia Gas Transmission Corp.	Columbia Gas of Ohio.	12–02–93	G–S	1,407,930	A	I	11–01–93	Indef.
ST94–2323	Columbia Gas Transmission Corp.	Columbia Gas of Pennsylvania, Inc.	12–02–93	G–S	456,776	A	I	11–01–93	Indef.
ST94–2324	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	12–02–93	G–S	242,984	N	I	11–01–93	Indef.
ST94–2325	Columbia Gas Transmission Corp.	New York State Electric & Gas Corp.	12–02–93	G–S	68,514	N	I	11–01–93	Indef.
ST94–2326	Columbia Gas Transmission Corp.	Union Light Heat & Power Co.	12–02–93	G–S	51,186	N	I	11–01–93	Indef.
ST94–2327	Columbia Gas Transmission Corp.	Delmarva Power & Light Co.	12–02–93	G–S	10,110	N	I	11–01–93	Indef.
ST94–2328	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	12–02–93	G–S	205,019	N	I	11–01–93	Indef.
ST94–2329	Columbia Gas Transmission Corp.	UGI Utilities, Inc	12–02–93	G–S	65,359	N	I	11–01–93	Indef.
ST94–2330	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–02–93	G–S	103,059	A	I	11–01–93	Indef.
ST94–2331	Columbia Gas Transmission Corp.	Ashland Petroleum Co.	12–02–93	G–S	3,500	N	F	11–01–93	Indef.
ST94–2332	Columbia Gas Transmission Corp.	Westvaco Corp .	12–02–93	G–S	4,186	N	F	11–01–93	10–31–08.
ST94–2333	Columbia Gas Transmission Corp.	Mark Resources Corp.	12–02–93	G–S	900	N	F	11–01–93	Indef.
ST94–2334	Columbia Gas Transmission Corp.	West Ohio Gas Co.	12–02–93	G–S	3,000	N	F	11–01–93	Indef.
ST94–2335	Columbia Gas Transmission Corp.	T.W. Phillips Gas & Oil Co.	12–02–93	G–S	4,000	N	F	11–01–93	Indef.
ST94–2336	Columbia Gas Transmission Corp.	T.W. Phillips Gas & Oil Co.	12–02–93	G–S	3,257	N	F	11–01–93	Indef.
ST94–2337	Columbia Gas Transmission Corp.	Union Light Heat & Power Co.	12–02–93	G–S	22,340	N	F	11–01–93	Indef.
ST94–2338	Columbia Gas Transmission Corp.	Equitable Resources Marketing Co.	12–02–93	G–S	9,400	N	F	11–01–93	03–31–94.

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ST94–2339	Columbia Gas Transmission Corp.	Stand Energy	12–02–93	G–S	325	N	F	11–01–93	Indef.
ST94–2340	Columbia Gas Transmission Corp.	Krupp Energy Engineering, Inc.	12–02–93	G–S	750	N	F	11–01–93	Indef.
ST94–2341	Columbia Gas Transmission Corp.	City of Richmond	12–02–93	G–S	41,913	N	I	11–01–93	Indef.
ST94–2342	Columbia Gas Transmission Corp.	Panhandle Trading Co.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2343	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–02–93	G–S	61,252	A	F	11–01–93	Indef.
ST94–2344	Columbia Gas Transmission Corp.	Gas Transport, Inc.	12–02–93	G–S	1,650	N	F	11–01–93	Indef.
ST94–2345	Columbia Gas Transmission Corp.	Eastern Marketing Corp.	12–02–93	G–S	5,500	N	F	11–01–93	Indef.
ST94–2346	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12–02–93	G–S	95	A	F	11–01–93	03–31–94.
ST94–2347	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	7,166	N	F	11–01–93	03–31–94.
ST94–2348	Columbia Gas Transmission Corp.	Latrobe Steel Co	12–02–93	G–S	2,500	N	F	11–01–93	Indef.
ST94–2349	Columbia Gas Transmission CORP..	Interstate Gas Supply, Inc.	12–02–93	G–S	1,000	N	F	11–01–93	03–31–94.
ST94–2350	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	165	N	F	11–01–93	03–31–94.
ST94–2351	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	12–02–93	G–S	117,680	N	F	11–01–93	Indef.
ST94–2352	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	12–02–93	B	67,100	N	F	11–01–93	Indef.
ST94–2353	Columbia Gas Transmission Corp.	Columbia Gas of Ohio.	12–02–93	B	2,500	A	F	11–01–93	Indef.
ST94–2354	Columbia Gas Transmission Corp.	National Fuel Gas Supply.	12–02–93	G–S	10	N	F	11–01–93	Indef.
ST94–2355	Columbia Gas Transmission Corp.	National Fuel Gas Distribution Corp.	12–02–93	G–S	7,748	N	F	11–01–93	Indef.
ST94–2356	Columbia Gas Transmission Corp.	Honda of America Manufacturing, Inc.	12–02–93	G–S	4,000	N	F	11–01–93	03–31–94.
ST94–2357	Columbia Gas Transmission Corp.	UGI Utilities, Inc	12–02–93	B	50,412	N	F	11–01–93	Indef.
ST94–2358	Columbia Gas Transmission Corp.	Public Service Electric & Gas.	12–02–93	B	55,000	N	F	11–01–93	Indef.
ST94–2359	Columbia Gas Transmission Corp.	Baltimore Gas & Electric Co.	12–02–93	B	123,396	N	F	11–01–93	Indef.
ST94–2360	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12–02–93	B	3,500	N	F	11–01–93	Indef.
ST94–2361	Transcontinental Gas P/L Corp.	Pennsylvania Fuel Gas Co.	12–02–93	G–S	4,412	A	F	11–06–93	10–31–12.
ST94–2362	Transcontinental Gas P/L Corp.	City of Richmond	12–02–93	G–S	366	N	F	11–06–93	03–31–17.
ST94–2363	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co.	12–02–93	G–S	10,327	N	F	11–06–93	10–31–12.

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ST94–2364	Williston Basin Inter. P/L Co.	Prairielands Energy Marketing, Inc.	12–02–93	G–S	251,719	A	I	11–02–93	09–30–94.
ST94–2365	Natural Gas P/L Co. of America.	U.S. Gas Transportation, Inc.	12–02–93	G–S	30,000	N	I	11–10–93	Indef.
ST94–2366	Kern River Gas Transmission Co.	Southwest Gas Corp.	12–02–93	B	14,000	N	F	11–03–93	Indef.
ST94–2367	Algonquin Gas Transmission Co.	Orange & Rockland Utilities, Inc.	12–02–93	B	5,089	N	F	11–01–93	Indef.
ST94–2368	Pacific Gas Transmission Co.	Chevron U.S.A., Inc.	12–02–93	G–S	31,348	N	F	11–01–93	Indef.
ST94–2369	Pacific Gas Transmission Co.	Petro-Canada Hydrocarbons, Inc.	12–02–93	G–S	27,658	N	F	11–01–93	Indef.
ST94–2370	Pacific Gas Transmission Co.	Cascade Natural Gas Corp.	12–02–93	G–S	31,335	N	F	11–01–93	Indef.
ST94–2371	Pacific Gas Transmission Co.	Washington Water Power Co.	12–02–93	G–S	54,841	N	F	11–01–93	Indef.
ST94–2372	Pacific Gas Transmission Co.	Washington Water Power Co.	12–02–93	G–S	20,782	N	F	11–01–93	Indef.
ST94–2373	Texas Gas Transmission Corp.	Elizabeth Natural Gas, Inc.	12–03–93	G–S	50	N	F	11–01–93	Indef.
ST94–2374	Texas Gas Transmission Corp.	City of Basile	12–03–93	G–S	900	N	F	11–01–93	Indef.
ST94–2375	Texas Gas Transmission Corp.	Evangeline Gas Co., Inc.	12–03–93	G–S	2,600	N	F	11–01–93	Indef.
ST94–2376	Texas Gas Transmission Corp.	Entex	12–03–93	G–S	250	N	F	11–01–93	Indef.
ST94–2377	Texas Gas Transmission Corp.	Lafourche Gas Corp.	12–03–93	G–S	1,300	N	F	11–01–93	Indef.
ST94–2378	Texas Gas Transmission Corp.	Jennings Gas, Inc.	12–03–93	G–S	35	N	F	11–01–93	Indef.
ST94–2379	Texas Gas Transmission Corp.	Farmers Gas Service, Inc.	12–03–93	G–S	200	N	F	11–01–93	Indef.
ST94–2380	Texas Gas Transmission Corp.	City of Mamou ...	12–03–93	G–S	2,100	N	F	11–01–93	Indef.
ST94–2381	Texas Gas Transmission Corp.	Mowata Gas Co	12–03–93	G–S	200	N	F	11–01–93	Indef.
ST94–2382	Texas Gas Transmission Corp.	City of Morgan ..	12–03–93	G–S	6,284	N	F	11–01–93	Indef.
ST94–2383	Texas Gas Transmission Corp.	Nezpique Gas System, Inc.	12–03–93	G–S	250	N	F	11–01–93	Indef.
ST94–2384	Texas Gas Transmission Corp.	Richie Gas System, Inc.	12–03–93	G–S	50	N	F	11–01–93	Indef.
ST94–2385	Transok, Inc	ANR Pipeline Co., et al.	12–03–93	C	5,000	N	I	11–06–93	Indef.
ST94–2386	Sabine Pipe Line Co.	LL&E Gas Marketing, Inc.	12–03–93	G–S	250,000	N	I	11–01–93	Indef.
ST94–2387	Algonquin Gas Transmission Co.	Bay State Gas Co.	12–03–93	B	5,690	N	F	11–10–93	Indef.
ST94–2388	Algonquin Gas Transmission Co.	Boston Edison Co.	12–03–93	G–S	250,000	N	I	11–12–93	Indef.

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ST94–2389	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	12–03–93	B	4,207	N	F	11–07–93	Indef.
ST94–2391	Gulf Energy Pipeline Co.	Natural Gas Pipeline Co. of America.	12–03–93	C	10,000	N	I	11–02–93	Indef.
ST94–2392	Gulf Energy Pipeline Co.	Trunkline Gas Co.	12–03–93	C	25,000	N	I	11–01–93	11–01–98.
ST94–2393	Southern Natural Gas Co.	City of Havana ..	12–03–93	G–S	201	N	F	11–05–93	09–30–06.
ST94–2394	Natural Gas P/L Co. of America.	O&R Energy, Inc	12–03–93	G–S	10,000	N	F	11–09–93	11–30–93.
ST94–2395	El Paso Natural Gas Co.	ONG Western, Inc.	12–03–93	B	51,500	N	I	11–08–93	Indef.
ST94–2396	Williams Natural Gas Co.	Marathon Oil Co	12–03–93	G–S	300	N	I	10–22–93	10–01–94.
ST94–2397	Williams Natural Gas Co.	Consolidated Fuel Corp.	12–03–93	G–S	10,000	N	I	10–30–93	09–30–94.
ST94–2398	Williams Natural Gas Co.	Consolidated Fuel Corp.	12–03–93	G–S	10,000	N	I	10–01–93	09–30–94.
ST94–2399	Williams Natural Gas Co.	Consolidated Fuel Corp.	12–03–93	G–S	10,000	N	I	10–22–93	09–30–94.
ST94–2400	Williams Natural Gas Co.	Mountain Iron & Supply Co.	12–03–93	G–S	2,000	N	I	10–12–93	09–30–98.
ST94–2401	Williams Natural Gas Co.	Mountain Iron & Supply Co.	12–03–93	G–S	2,000	N	I	10–01–93	09–30–95.
ST94–2402	Williams Natural Gas Co.	Mountain Iron & Supply Co.	12–03–93	G–S	5,000	N	I	10–22–93	09–30–95.
ST94–2403	Williams Natural Gas Co.	Continental Natural Gas, Inc.	12–03–93	G–S	5,000	N	I	10–22–93	09–30–98.
ST94–2404	Williams Natural Gas Co.	Vesta Energy Co	12–03–93	G–S	20,000	N	I	10–23–93	09–30–98.
ST94–2405	Williams Natural Gas Co.	Vesta Energy Co	12–03–93	G–S	20,000	N	I	10–23–93	09–30–98.
ST94–2406	Williams Natural Gas Co.	Vesta Energy Co	12–03–93	G–S	20,000	N	I	10–28–93	09–30–98.
ST94–2407	Williams Natural Gas Co.	Cabot Oil & Gas Marketing Corp.	12–03–93	G–S	20,000	N	I	10–23–93	09–30–98.
ST94–2408	Williams Natural Gas Co.	PG&E Resources Co.	12–03–93	G–S	20,000	N	I	10–01–93	11–01–95.
ST94–2409	Williams Natural Gas Co.	Associated Natural Gas, Inc.	12–03–93	G–S	50,000	N	I	10–01–93	09–30–98.
ST94–2410	Williams Natural Gas Co.	Amoco Energy Trading Corp.	12–03–93	G–S	2,000,000	N	I	10–22–93	09–30–03.
ST94–2411	Williams Natural Gas Co.	Marathon Oil Co	12–03–93	G–S	200	N	I	10–30–93	10–01–94.
ST94–2412	Williams Natural Gas Co.	Industrial Gas Services, Inc.	12–03–93	G–S	1,500	N	I	10–22–93	09–30–94.
ST94–2413	Williams Natural Gas Co.	Cibola Corp	12–03–93	G–S	5,000	N	I	10–01–93	09–30–98.
ST94–2414	Williams Natural Gas Co.	Cibola Corp	12–03–93	G–S	5,000	N	I	10–22–93	09–30–98.
ST94–2415	Williams Natural Gas Co.	Cibola Corp	12–03–93	G–S	5,000	N	I	10–22–93	09–30–98.
ST94–2416	Williams Natural Gas Co.	Mobil Natural Gas, Inc.	12–03–93	G–S	20,000	N	I	10–07–93	09–30–94.
ST94–2417	Natural Gas P/L Co. of America.	City of Salem	12–06–93	G–S	5,000	N	I	11–12–93	Indef.
ST94–2418	Natural Gas P/L Co. of America.	Valero Gas Marketing, L.P.	12–06–93	G–S	30,000	N	F	11–30–93	11–30–98.
ST94–2419	Natural Gas P/L Co. of America.	Valero Gas Marketing, L.P.	12–06–93	G–S	25,000	N	F	11–19–93	11–30–98.
ST94–2420	K N Interstate Gas Trans. Co.	NGC Transportation, Inc.	12–06–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–2421	K N Interstate Gas Trans. Co.	Utilicorp United, Inc.	12–06–93	G–S	43,500	N	I	10–01–93	Indef.
ST94–2422	K N Interstate Gas Trans. Co.	NGC Transportation, Inc.	12–06–93	G–S	100,000	N	I	10–01–93	Indef.
ST94–2423	K N Interstate Gas Trans. Co.	Amoco Energy Trading Corp.	12–06–93	G–S	35,000	N	I	10–01–93	Indef.

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ST94–2424	K N Interstate Gas Trans. Co.	Quivira Gas Co .	12–06–93	G–S	35,000	N	I	10–01–93	Indef.
ST94–2425	K N Interstate Gas Trans. Co.	Williston Basin Interstate P/L Co.	12–06–93	G	10,500	N	I	10–01–93	Indef.
ST94–2426	K N Interstate Gas Trans. Co.	Western Resources, Inc.	12–06–93	G–S	10,403	N	F	10–01–93	04–30–95.
ST94–2427	K N Interstate Gas Trans. Co.	Tristar Gas Co ..	12–06–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–2428	ANR Pipeline Co	Natural Gas Pipeline Co. of America.	12–06–93	G	N/A	N	I	11–01–93	Indef.
ST94–2429	ANR Pipeline Co	Texaco Exploration & Production Inc.	12–06–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2430	Colorado Interstate Gas Co.	Continental Natural Gas Inc.	12–06–93	G–S	10,400	N	I	11–15–93	Indef.
ST94–2431	Colorado Interstate Gas Co.	City of Colorado Springs.	12–06–93	G–S	9,398	N	I	11–25–93	Indef.
ST94–2432	Colorado Interstate Gas Co.	Montana Power Co.	12–06–93	B	5,471	N	I	11–23–93	Indef.
ST94–2433	Koch Gateway Pipeline Co.	Entex	12–07–93	G–S	91,000	N	F	11–22–93	03–22–94.
ST94–2434	Koch Gateway Pipeline Co.	Prior Intrastate Corp.	12–07–93	G–S	126	N	F	11–15–93	03–15–94.
ST94–2435	Koch Gateway Pipeline Co.	Boston Gas Co .	12–07–93	G–S	57,220	N	F	11–15–93	03–15–94.
ST94–2436	Koch Gateway Pipeline Co.	Exxon Corp	12–07–93	G–S	14,406	N	F	11–15–93	03–15–94.
ST94–2437	Koch Gateway Pipeline Co.	Koch Gas Services Co.	12–07–93	G–S	11,677	A	F	11–15–93	03–15–94.
ST94–2438	Koch Gateway Pipeline Co.	Koch Gas Services Co.	12–07–93	G–S	1,750	A	F	11–15–93	03–15–94.
ST94–2439	Koch Gateway Pipeline Co.	Williamsville Water Co., Inc.	12–07–93	G–S	321	N	I	11–10–93	04–01–97.
ST94–2440	Koch Gateway Pipeline Co.	Arco Natural Gas Marketing, Inc.	12–07–93	G–S	20,000	N	F	11–15–93	03–15–94.
ST94–2441	Tennessee Gas Pipeline Co.	Samedan Oil Corp.	12–07–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–2442	Tennessee Gas Pipeline Co.	Phibro Energy, Inc.	12–07–93	G–S	6,800	N	F	12–01–93	Indef.
ST94–2443	Tennessee Gas Pipeline Co.	Bay State Gas Co.	12–07–93	G–S	768	N	F	12–01–93	Indef.
ST94–2444	Tennessee Gas Pipeline Co.	Western Gas Resources, Inc.	12–07–93	G–S	10,000	N	F	12–01–93	Indef.
ST94–2445	Tennessee Gas Pipeline Co.	Virginia Natural Gas, Inc.	12–07–93	G–S	2,914	N	F	12–01–93	Indef.
ST94–2446	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	12–07–93	C	75,000	N	I	11–09–93	Indef.
ST94–2447	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	12–07–93	C	75,000	N	I	11–11–93	Indef.
ST94–2448	Texas Gas Transmission Corp.	Mayor & Alderman of Halls.	12–07–93	G–S	2,100	N	F	11–01–93	Indef.
ST94–2449	Texas Gas Transmission Corp.	Poplar Grove Utility District.	12–07–93	G–S	1,463	N	F	11–01–93	Indef.
ST94–2450	Texas Gas Transmission Corp.	City of Clarendon.	12–07–93	G–S	1,958	N	F	11–01–93	Indef.
ST94–2451	Texas Gas Transmission Corp.	City of Brownsville Utility Board.	12–07–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2452	Texas Gas Transmission Corp.	City of Humboldt	12–07–93	G–S	7,000	N	F	11–01–93	Indef.
ST94–2453	Texas Gas Transmission Corp.	First Utility District of Tipton.	12–07–93	G–S	1,500	N	F	11–01–93	Indef.

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ST94–2454	Texas Gas Transmission Corp.	City of Faiars Point.	12–07–93	G–S	850	N	F	11–01–93	Indef.
ST94–2455	Texas Gas Transmission Corp.	Board & Aldermen of Covington.	12–07–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2456	Texas Gas Transmission Corp.	Crockett Public Utility District.	12–07–93	G–S	1,700	N	F	11–01–93	Indef.
ST94–2457	Texas Gas Transmission Corp.	City of Gallaway	12–07–93	G–S	204	N	F	11–01–93	Indef.
ST94–2458	Texas Gas Transmission Corp.	Gas Utility Dist. #3 of Grant Parish.	12–07–93	G–S	558	N	F	11–01–93	Indef.
ST94–2459	Texas Gas Transmission Corp.	Colvin Gas Co ...	12–07–93	G–S	20	N	F	11–01–93	Indef.
ST94–2460	Texas Gas Transmission Corp.	Evangeline Gas Co., Inc.	12–07–93	G–S	27	N	F	11–01–93	Indef.
ST94–2461	Texas Gas Transmission Corp.	Mayor & Aldermen of Bells.	12–07–93	G–S	1,221	N	F	11–01–93	Indef.
ST94–2462	Texas Gas Transmission Corp.	Ranoke Farm Gas Co., Inc.	12–07–93	G–S	125	N	F	11–01–93	Indef.
ST94–2463	Texas Gas Transmission Corp.	City of Holly Grove.	12–07–93	G–S	651	N	F	11–01–93	Indef.
ST94–2464	Texas Gas Transmission Corp.	City of Jenea	12–07–93	G–S	1,700	N	F	11–01–93	Indef.
ST94–2465	Texas Gas Transmission Corp.	City of Henning .	12–07–93	G–S	457	N	F	11–01–93	Indef.
ST94–2466	Texas Gas Transmission Corp.	City of Olive Branch.	12–07–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2467	Texas Gas Transmission Corp.	City of Munford .	12–07–93	G–S	2,500	N	F	11–01–93	Indef.
ST94–2468	Texas Gas Transmission Corp.	City of Metcalfe .	12–07–93	G–S	352	N	F	11–01–93	Indef.
ST94–2469	Texas Gas Transmission Corp.	Jones Gas Co ...	12–07–93	G–S	150	N	F	11–01–93	Indef.
ST94–2470	Texas Gas Transmission Corp.	City of Maury City.	12–07–93	G–S	700	N	F	11–01–93	Indef.
ST94–2471	Texas Gas Transmission Corp.	City of Marvell ...	12–07–93	G–S	1,812	N	F	11–01–93	Indef.
ST94–2472	Texas Gas Transmission Corp.	Louisians Gas Service Co.	12–07–93	G–S	1,259	N	F	11–01–93	Indef.
ST94–2473	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	12–07–93	G–S	206,123	N	F	11–01–93	Indef.
ST94–2474	Northwest Pipeline Corp.	Washington Energy Marketing, Inc.	12–07–93	G–S	616	N	F	11–01–93	Indef.
ST94–2475	Northwest Pipeline Corp.	Washington Natural Gas Co.	12–07–93	G–S	306,733	N	F	11–01–93	Indef.
ST94–2476	Northwest Pipeline Corp.	Washington Water Power Co.	12–07–93	G–S	164,141	N	F	11–01–93	Indef.
ST94–2477	Northwest Pipeline Corp.	James River Corp. of Nevada.	12–07–93	G–S	7,000	N	F	10–08–93	Indef.
ST94–2478	Northwest Pipeline Corp.	James River Corp.	12–07–93	G–S	2,341	N	F	10–07–93	Indef.

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ST94–2479	Northwest Pipeline Corp.	James River Corp.	12–07–93	G–S	8,000	N	F	10–08–93	Indef.
ST94–2480	Northwest Pipeline Corp.	Grand Valley Gas Co.	12–07–93	G–S	7,250	N	F	06–01–93	Indef.
ST94–2481	Transcontinental Gas P/L Corp.	Conoco, Inc	12–07–93	G–S	1,449	A	F	02–01–93	03–21–98.
ST94–2482	Northwest Pipeline Corp.	Greeley Gas Co	12–07–93	G–S	3,816	N	F	11–01–93	Indef.
ST94–2483	Northwest Pipeline Corp.	City of Buckley ..	12–07–93	G–S	2,469	N	F	11–01–93	Indef.
ST94–2484	Northwest Pipeline Corp.	Northwest Natural Gas Co.	12–07–93	G–S	246,044	N	F	11–01–93	Indef.
ST94–2485	Northwest Pipeline Corp.	Boeing Co	12–07–93	G–S	10,000	N	F	11–02–93	Indef.
ST94–2486	Northwest Pipeline Corp.	Coastal Gas Marketing Co.	12–07–93	G–S	75,000	N	F	11–01–93	10–31–94.
ST94–2487	Transcontinental Gas P/L Corp.	Scana Hydrocarbons, Inc.	12–07–93	G–S	400,000	N	I	11–18–93	Indef.*
ST94–2488	Transcontinental Gas P/L Corp.	Conoco, Inc	12–07–93	G–S	1,811	A	F	02–01–93	03–21–98.
ST94–2489	Transcontinental Gas P/L Corp.	Enmark Gas Corp.	12–07–93	G–S	3,937	A	F	02–01–93	03–21–98.
ST94–2490	Transcontinental Gas P/L Corp.	Conoco, Inc	12–07–93	G–S	4,075	A	F	02–01–93	03–21–98.
ST94–2491	Transcontinental Gas P/L Corp.	Enmark Gas Corp.	12–07–93	G–S	3,865	N	F	02–01–93	03–21–98.
ST94–2492	Transcontinental Gas P/L Corp.	Conoco, Inc	12–07–93	G–S	1,449	N	F	02–01–93	03–21–98.
ST94–2493	Transcontinental Gas P/L Corp.	City of Elberton .	12–07–93	G–S	500	N	F	11–23–93	11–22–13.
ST94–2494	Transcontinental Gas P/L Corp.	City of Royston .	12–07–93	G–S	250	N	F	11–23–93	11–22–13.
ST94–2495	Transcontinental Gas P/L Corp.	Mapleville Water & Gas Board.	12–07–93	G–S	379	N	F	11–23–93	11–22–13.
ST94–2496	Transcontinental Gas P/L Corp.	City of Bowman .	12–07–93	G–S	55	N	F	11–23–93	11–22–13.
ST94–2497	Transcontinental Gas P/L Corp.	Corning Natural Gas Corp.	12–07–93	G–S	868	N	F	11–10–93	10–31–12.
ST94–2498	Transcontinental Gas P/L Corp.	Conoco, Inc	12–07–93	G–S	3,324	A	F	02–01–93	03–21–98.
ST94–2499	Williams Natural Gas Co.	Amoco Production Co.	12–07–93	G–S	2,000,000	N	I	10–31–93	Indef.
ST94–2500	Williams Natural Gas Co.	Plains Petroleum Operating Co.	12–07–93	G–S	2,500	N	I	10–05–93	10–01–94.
ST94–2501	Williams Natural Gas Co.	Vesta Energy Co	12–07–93	G–S	20,000	N	I	10–05–93	Indef.
ST94–2502	Williams Natural Gas Co.	Mountain Iron & Supply Co.	12–07–93	G–S	2,000	N	I	10–01–93	10–01–95.
ST94–2503	Williams Natural Gas Co.	Consolidated Fuel Corp.	12–07–93	G–S	40,000	N	I	10–02–93	10–01–94.
ST94–2504	Williams Natural Gas Co.	K N Energy, Inc	12–07–93	G–S	15,000	N	I	10–08–93	10–01–94.
ST94–2505	Williams Natural Gas Co.	Oxy USA, Inc	12–07–93	G–S	5,000	N	I	10–01–93	10–01–94.
ST94–2506	Williams Natural Gas Co.	Union Pacific Fuels, Inc.	12–07–93	G–S	25,000	N	I	10–14–93	Indef.
ST94–2507	Williams Natural Gas Co.	Mid Continental Energy Co.	12–07–93	G–S	250	N	I	10–21–93	10–01–94.
ST94–2508	Williams Natural Gas Co.	Premier Gas Co	12–07–93	G–S	250	N	I	10–01–93	09–30–98.
ST94–2509	Williams Natural Gas Co.	Oxy USA, Inc	12–07–93	G–S	5,000	N	I	10–22–93	09–30–94.
ST94–2510	Williams Natural Gas Co.	Mobil Natural Gas, Inc.	12–07–93	G–S	40,000	N	I	10–01–93	10–01–94.
ST94–2511	Williams Natural Gas Co.	Williams Gas Marketing Co.	12–07–93	G–S	450,000	A	I	10–05–93	10–01–94.
ST94–2512	Williams Natural Gas Co.	Rangeline Corp .	12–07–93	G–S	50,000	N	I	10–05–93	Indef.
ST94–2513	Williams Natural Gas Co.	Aquila Energy Marketing Corp.	12–07–93	G–S	50,000	N	I	10–22–93	Indef.

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ST94–2514	Williams Natural Gas Co.	Energy Dynamics, Inc.	12–07–93	G–S	10,000	N	I	10–22–93	Indef.
ST94–2515	Williams Natural Gas Co.	Post Rock Gas, Inc.	12–07–93	G–S	150	N	I	10–02–93	Indef.
ST94–2516	Williams Natural Gas Co.	Tenaska Marketing Venture.	12–07–93	G–S	100,000	N	I	10–20–93	Indef.
ST94–2517	Williams Natural Gas Co.	Mesa Operating L.P.	12–07–93	G–S	55,000	N	I	10–01–93	Indef.
ST94–2518	Williams Natural Gas Co.	Cibola Corp	12–07–93	G–S	5,000	N	I	10–01–93	Indef.
ST94–2519	Williams Natural Gas Co.	Associated Natural Gas, Inc.	12–07–93	G–S	50,000	N	I	10–07–93	10–01–94.
ST94–2520	Williams Natural Gas Co.	Osy USA, Inc	12–07–93	G–S	5,000	N	I	10–23–93	09–30–94.
ST94–2521	Williams Natural Gas Co.	Oxy USA, Inc	12–07–93	G–S	5,000	N	I	10–22–93	09–30–94.
ST94–2522	Williams Natural Gas Co.	Texaco Exploration & Production.	12–07–93	G–S	5,000	N	I	10–06–93	09–30–98.
ST94–2523	Williams Natural Gas Co.	Continental Natural Gas, Inc.	12–07–93	G–S	5,000	N	I	10–01–93	09–30–98.
ST94–2524	Williams Natural Gas Co.	Parker & Parsley Development Co.	12–07–93	G–S	5,000	N	I	10–01–93	10–01–94.
ST94–2525	Williams Natural Gas Co.	Natural Gas Pipeline Co. of America.	12–07–93	G–S	10,000	N	I	10–23–93	10–01–94.
ST94–2526	Williams Natural Gas Co.	Gedi, Inc	12–07–93	G–S	5,000	N	I	10–01–93	09–30–98.
ST94–2527	Williams Natural Gas Co.	Union Pacific Fuels, Inc.	12–07–93	G–S	25,000	N	I	10–22–93	09–30–13.
ST94–2528	Williams Natural Gas Co.	Amoco Production Co.	12–07–93	G–S	5,000	N	I	10–05–93	09–30–13.
ST94–2529	Williams Natural Gas Co.	Amoco Energy Trading Co.	12–07–93	G–S	5,000	N	I	10–05–93	09–30–03.
ST94–2530	Williams Natural Gas Co.	Hugton Energy Corp.	12–07–93	G–S	1,000	N	I	10–09–93	09–30–98.
ST94–2531	Williams Natural Gas Co.	Anadarko Trading Co.	12–07–93	G–S	10,000	N	I	10–01–93	10–01–94.
ST94–2532	Delhi Gas Pipeline Corp.	Natural Gas Pipeline Co. of America.	12–07–93	C	250,000	N	I	11–10–93	Indef.
ST94–2533	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co.	12–07–93	C	5,000	N	I	11–08–93	Indef.
ST94–2534	Columbia Gas Transmission Corp.	Tenneco Gas Marketing.	12–07–93	G–S	500	N	F	11–01–93	Indef.
ST94–2535	Columbia Gas Transmission Corp.	Constitution Gas Transport, Inc.	12–07–93	B	2,000	N	I	11–01–93	Indef.
ST94–2536	Columbia Gas Transmission Corp.	Bethlehem Steel Corp.	12–07–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–2537	Columbia Gas Transmission Corp.	AGF Direct Gas Sales.	12–07–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2538	Columbia Gas Transmission Corp.	Roanoke Gas Co.	12–07–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2539	Columbia Gas Transmission Corp.	Western Gas Resources, Inc.	12–07–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2540	Columbia Gas Transmission Corp.	T.W. Phillips Gas & Oil Co.	12–07–93	B	N/A	N	I	11–01–93	Indef.
ST94–2541	Algonquin Gas Transmission Co.	Bay State Gas Co.	12–08–93	B	1,254	N	F	11–10–93	Indef.
ST94–2542	Texas Gas Transmission Corp.	Mayor & Aldermen of Ripley.	12–08–93	G–S	7,495	N	F	11–01–93	Indef.

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ST94–2543	Texas Gas Transmission Corp.	City of Winstonville.	12–08–93	G–S	185	N	F	11–01–93	Indef.
ST94–2544	Texas Gas Transmission Corp.	City of Benton ...	12–08–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2545	Texas Gas Transmission Corp.	City of Friendship.	12–08–93	G–S	358	N	F	11–01–93	Indef.
ST94–2546	Texas Gas Transmission Corp.	City of Fulton	12–08–93	G–S	2,624	N	F	11–01–93	Indef.
ST94–2547	Texas Gas Transmission Corp.	Gibson County Utility District.	12–08–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2548	Texas Gas Transmission Corp.	City of Hardin	12–08–93	G–S	1,250	N	F	11–01–93	Indef.
ST94–2549	Texas Gas Transmission Corp.	City of Kuttawa ..	12–08–93	G–S	1,118	N	F	11–01–93	Indef.
ST94–2550	Texas Gas Transmission Corp.	City of Martin	12–08–93	G–S	5,000	N	F	11–01–93	Indef.
ST94–2551	Texas Gas Transmission Corp.	City of Murray ...	12–08–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2552	Texas Gas Transmission Corp.	City of South Fulton.	12–08–93	G–S	2,000	N	F	11–01–93	Indef.
ST94–2553	Texas Gas Transmission Corp.	United Cities Gas Co.	12–08–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2554	Texas Gas Transmission Corp.	Boonville Natural Gas Corp.	12–08–93	G–S	5,695	N	F	11–01–93	Indef.
ST94–2555	Williams Natural Gas Co.	Missouri Public Service.	12–08–93	G–S	20,000	N	I	10–31–93	10–01–96.
ST94–2556	Williams Natural Gas Co.	Phillips Petroleum Co.	12–08–93	G–S	20,000	N	I	10–31–93	10–01–94.
ST94–2557	Arkla Energy Resources Co.	City Utilities of Springfield.	12–08–93	G–S	20,000	N	F	12–01–93	03–31–94.
ST94–2558	Arkla Energy Resources Co.	Nucor-Yamoto Steel Co.	12–08–93	G–S	9,000	N	I	12–01–93	Indef.
ST94–2559	Arkla Energy Resources Co.	Wickford Energy	12–08–93	G–S	50,000	N	I	12–01–93	Indef.
ST94–2560	Arkla Energy Resources Co.	Associated Natural Gas, Inc.	12–08–93	G–S	7,500	N	F	12–01–93	11–30–94.
ST94–2561	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	12–08–93	C	141,000	Y	I	09–01–92	Indef.
ST94–2562	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	12–08–93	C	731,200	N	I	10–01–93	Indef.
ST94–2563	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	12–08–93	C	30,000	N	I	11–01–93	Indef.
ST94–2564	Northern Illinois Gas Co.	Brooklyn Union Interstate Nat. Gas.	12–08–93	C	20,000	N	I	11–15–93	11–30–93.
ST94–2565	Northern Illinois Gas Co.	Enron Gas	12–08–93	C	200	N	I	11–15–93	11–30–93.
ST94–2566	Northern Illinois Gas Co.	Texpar Energy, Inc.	12–08–93	C	1,200	N	I	11–15–93	11–30–93.
ST94–2567	Texas Gas Transmission Corp.	City of Jasonville	12–08–93	G–S	1,850	N	F	11–01–93	Indef.
ST94–2568	Texas Gas Transmission Corp.	Indiana Natural Gas Corp.	12–08–93	G–S	7,495	N	F	11–01–93	Indef.

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ST94–2569	Texas Gas Transmission Corp.	Village of Flat Rock.	12–08–93	G–S	500	N	F	11–01–93	Indef.
ST94–2570	Texas Gas Transmission Corp.	Dome Gas Co., Inc.	12–08–93	G–S	5,185	N	F	11–01–93	Indef.
ST94–2571	Texas Gas Transmission Corp.	Ohio Valley Gas Corp.	12–08–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2572	Texas Gas Transmission Corp.	City of Morganfield.	12–08–93	G–S	7,450	N	F	11–01–93	Indef.
ST94–2573	Texas Gas Transmission Corp.	City of Livermore	12–08–93	G–S	5,500	N	F	11–01–93	Indef.
ST94–2574	Texas Gas Transmission Corp.	City of Linton	12–08–93	G–S	5,100	N	F	11–01–93	Indef.
ST94–2575	Texas Gas Transmission Corp.	City of Lewisport	12–08–93	G–S	2,925	N	F	11–01–93	Indef.
ST94–2576	Texas Gas Transmission Corp.	City of Clay	12–08–93	G–S	1,250	N	F	11–01–93	Indef.
ST94–2577	Texas Gas Transmission Corp.	Community Natural Gas Co., Inc.	12–08–93	G–S	3,600	N	F	11–01–93	Indef.
ST94–2578	Texas Gas Transmission Corp.	Chandler Natural Gas Corp.	12–08–93	G–S	1,850	N	F	11–01–93	Indef.
ST94–2579	Pacific Gas Transmission Co.	Pancanadian Petroleum Co.	12–09–93	G–S	40,338	N	F	11–01–93	Indef.
ST94–2580	Pacific Gas Transmission Co.	Pacific Gas & Electric Co.	12–09–93	G–S	1,081,990	N	F	11–01–93	Indef.
ST94–2581	Northern Natural Gas Co.	Northwestern Public Service Co.	12–09–93	B	2,382	N	F/I	11–03–93	Indef.
ST94–2582	Equitrans, Inc	Equitable Gas Co.	12–09–93	G–S	183,399	N	I	11–06–93	Indef.
ST94–2583	Equitrans, Inc	Equitable Gas Co.	12–09–93	G–S	4,333	N	I	09–01–93	Indef.
ST94–2584	Equitrans, Inc	Equitable Gas Co.	12–09–93	G–S	25,654	N	I	09–01–93	Indef.
ST94–2585	Trunkline Gas Co.	Illinois Power Co	12–09–93	G–S	60,000	N	F	12–01–93	Indef.
ST94–2585	Trunkline Gas Co.	Memphis Light, Gas & Electric.	12–10–93	C–S	10,000	N	F	12–01–93	Indef.
ST94–2587	Southern Natural Gas Co.	City of Lafayette	12–09–93	G–S	2,000	N	F	11–01–93	10–31–95.
ST94–2588	Southern Natural Gas Co.	City of Lafayette	12–09–93	G–S	194	N	F	11–01–93	12–31–05.
ST94–2589	Southern Natural Gas Co.	City of Cordova .	12–09–93	G–S	397	N	F	11–01–93	10–31–03.
ST94–2590	Southern Natural Gas Co.	City of Quitman .	12–09–93	G–S	778	N	F	11–01–93	10–31–96.
ST94–2591	Southern Natural Gas Co.	City of Quincy ...	12–09–93	G–S	1,507	N	F	11–01–93	10–31–96.
ST94–2592	Southern Natural Gas Co.	City of Tallassee	12–09–93	G–S	1,587	N	F	11–01–93	10–31–03.
ST94–2593	Southern Natural Gas Co.	City of Gordo	12–09–93	G–S	605	N	F	11–01–93	10–31–03.
ST94–2594	Southern Natural Gas Co.	City of Tallapossa.	12–09–93	G–S	935	N	F	11–01–93	10–31–94.
ST94–2595	Southern Natural Gas Co.	City of Grantville	12–09–93	G–S	284	N	F	11–01–93	10–31–96.
ST94–2596	Southern Natural Gas Co.	City of Summerville.	12–09–93	G–S	2,000	N	F	11–01–93	10–31–95.
ST94–2597	Southern Natural Gas Co	Northwest Alabama Gas District.	12–09–93	G–S	2,125	N	F	11–01–93	04–30–96.

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ST94–2598	Southern Natural Gas Co.	Pickens County Gas District.	12–09–93	G–S	1,069	N	F	11–01–93	10–31–03.
ST94–2599	Southern Natural Gas Co.	Polaris Corp	12–09–93	G–S	160	N	F	11–01–93	10–31–96.
ST94–2600	Southern Natural Gas Co.	City of Eatonton	12–09–93	G–S	1,936	N	F	11–01–93	10–31–96.
ST94–2601	Southern Natural Gas Co.	City of Pelham ..	12–09–93	G–S	13	N	F	11–01–93	10–31–97.
ST94–2602	Southern Natural Gas Co.	City of Pelham ..	12–09–93	G–S	452	N	F	11–01–93	10–31–97.
ST94–2603	Southern Natural Gas Co.	Mississippi Valley Gas Co.	12–09–93	G–S	20,000	N	F	11–01–93	09–30–96.
ST94–2604	Southern Natural Gas Co.	City of Statesboro.	12–09–93	G–S	797	N	F	11–01–93	12–31–05.
ST94–2605	Southern Natural Gas Co.	City of Brookside	12–09–93	G–S	353	N	F	11–01–93	10–31–03.
ST94–2606	Southern Natural Gas Co.	City of Lanett	12–09–93	G–S	1,700	N	F	11–01–93	03–31–95.
ST94–2607	Southern Natural Gas Co.	City of Havana ..	12–09–93	G–S	450	N	F	11–01–93	10–31–95.
ST94–2608	Southern Natural Gas Co.	City of Calera	12–09–93	G–S	850	N	F	11–01–93	10–31–03.
ST94–2609	Southern Natural Gas Co.	City of Waynesboro.	12–09–93	G–S	1,226	N	F	11–01–93	10–31–95.
ST94–2610	Southern Natural Gas Co.	City of Fort Valley.	12–09–93	G–S	2,273	N	F	11–01–93	10–31–94.
ST94–2611	Southern Natural Gas Co.	City of Jasper	12–09–93	G–S	266	N	F	11–01–93	10–31–95.
ST94–2612	Southern Natural Gas Co.	City of Jasper	12–09–93	G–S	74	N	F	11–01–93	09–30–06.
ST94–2613	Southern Natural Gas Co.	City of West Jefferson.	12–09–93	G–S	373	N	F	11–01–93	10–31–03.
ST94–2614	Southern Natural Gas Co.	City of Andersonville.	12–09–93	G–S	35	N	F	11–01–93	10–31–95.
ST94–2615	Southern Natural Gas Co.	City of Mulga	12–09–93	G–S	958	N	F	11–01–93	10–31–03.
ST94–2616	Southern Natural Gas Co.	City of Edison	12–09–93	G–S	160	N	F	11–01–93	10–31–96.
ST94–2617	Iroquois Gas Trans. System, L.P.	Consolidated Edison Co. of NY, Inc.	12–09–93	G–S	20,000	N	F	09–01–93	01–01–12.
ST94–2618	Iroquois Gas Trans. System, L.P.	Colonial Gas Co	12–09–93	G–S	2,000	N	F	09–01–93	12–01–11.
ST94–2619	Iroquois Gas Trans. System, L.P.	Selkirk Cogen Partners, L.P.	12–09–93	G–S	21,000	N	F	09–01–93	12–01–11.
ST94–2620	Iroquois Gas Trans. System, L.P.	Energynorth Natural Gas, Inc.	12–09–93	G–S	4,000	N	F	09–01–93	12–01–11.
ST94–2621	Iroquois Gas Trans. System, L.P.	Masspower and Granite State Gas Tr.	12–09–93	G–S	25,000	N	F	09–01–93	11–01–12.
ST94–2622	Iroquois Gas Trans. System, L.P.	Valley Gas Co ...	12–09–93	G–S	1,000	N	F	09–01–93	12–01–11.
ST94–2623	Iroquois Gas Trans. System, L.P.	Southern Connecticut Gas Co.	12–09–93	G–S	35,000	N	F	09–01–93	01–01–12.
ST94–2624	Iroquois Gas Trans. System, L.P.	Yankee Gas Services Co.	12–09–93	G–S	9,000	N	F	09–01–93	12–01–11.
ST94–2625	Iroquois Gas Trans. System, L.P.	Pawtucket Power Associates.	12–09–93	G–S	12,000	N	F	09–01–93	11–01–12.
ST94–2626	Iroquois Gas Trans. System, L.P.	Brooklyn Union Gas Co.	12–09–93	G–S	70,000	N	F	09–01–93	01–01–12.
ST94–2627	Iroquois Gas Trans. System, L.P.	Long Island Lighting Co.	12–09–93	G–S	65,000	N	F	09–01–93	01–01–12.

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ST94–2628	Iroquois Gas Trans. System, L.P.	New York State Electric & Gas Corp.	12–09–93	G–S	11,000	N	F	09–01–93	12–01–11.
ST94–2629	Iroquois Gas Trans. System, L.P.	Granite State Gas Transmission, Inc.	12–09–93	G	35,000	N	F	09–01–93	12–01–12.
ST94–2630	Iroquois Gas Trans. System, L.P.	Central Hudson Gas & Electric Corp.	12–09–93	G–S	20,000	N	F	09–01–93	01–01–12.
ST94–2631	Iroquois Gas Trans. System, L.P.	Essex County Gas Co.	12–09–93	G–S	2,000	N	F	09–01–93	12–01–11.
ST94–2632	Iroquois Gas Trans. System, L.P.	Connecticut Natural Gas Corp.	12–09–93	G–S	25,000	N	F	09–01–93	01–01–12.
ST94–2633	Iroquois Gas Trans. System, L.P.	Boston Gas Co .	12–09–93	G–S	43,600	N	F	09–01–93	12–01–11.
ST94–2634	Iroquois Gas Trans. System, L.P.	New Jersey Natural Gas Co.	12–09–93	G–S	40,000	N	F	09–01–93	01–01–12.
ST94–2635	Iroquois Gas Trans. System, L.P.	Public Service Electric & Gas Co.	12–09–93	G–S	10,000	N	F	09–01–93	01–01–12.
ST94–2636	Southern Natural Gas Co.	City of Lafayette	12–09–93	G–S	878	N	F	11–01–93	03–31–95.
ST94–2637	Southern Natural Gas Co.	Alabaster Water & Gas Board.	12–09–93	G–S	1,397	N	F	11–01–93	03–31–95.
ST94–2638	Southern Natural Gas Co.	Alabaster Water & Gas Board.	12–09–93	G–S	2,054	N	F	11–01–93	03–31–95.
ST94–2639	Southern Natural Gas Co.	City of Dora	12–09–93	G–S	300	N	F	11–01–93	10–31–98.
ST94–2640	Southern Natural Gas Co.	City of Sparta	12–09–93	G–S	525	N	F	11–01–93	10–31–95.
ST94–2641	Southern Natural Gas Co.	City of Woodland	12–09–93	G–S	102	N	F	11–01–93	10–31–96.
ST94–2642	Southern Natural Gas Co.	City of Talbotton	12–09–93	G–S	156	N	F	11–01–93	10–31–95.
ST94–2643	Southern Natural Gas Co.	City of Fayette ...	12–09–93	G–S	1,133	N	F	11–01–93	10–31–96.
ST94–2644	Southern Natural Gas Co.	City of Artesia ...	12–09–93	G–S	120	N	F	11–01–93	10–31–94.
ST94–2645	Southern Natural Gas Co.	City of Cuthbert .	12–09–93	G–S	503	N	F	11–01–93	10–31–94.
ST94–2646	Southern Natural Gas Co.	City of Roxie	12–09–93	G–S	238	N	F	11–01–93	10–31–96.
ST94–2647	Southern Natural Gas Co.	City of West Point.	12–09–93	G–S	1,277	N	F	11–01–93	10–31–96.
ST94–2648	Southern Natural Gas Co.	West Lincoln Natural Gas District.	12–09–93	G–S	267	N	F	11–01–93	10–31–94.
ST94–2649	Southern Natural Gas Co.	City of Tchula	12–09–93	G–S	517	N	F	11–01–93	10–31–96.
ST94–2650	Southern Natural Gas Co.	City of Fultondale.	12–09–93	G–S	939	N	F	11–01–93	03–31–95.
ST94–2651	Southern Natural Gas Co.	City of Ragland .	12–09–93	G–S	318	N	F	11–01–93	03–31–95.
ST94–2652	Southern Natural Gas Co.	City of Sumiton .	12–09–93	G–S	500	N	F	11–01–93	03–31–98.
ST94–2653	Southern Natural Gas Co.	City of Dadeville	12–09–93	G–S	691	N	F	11–01–93	03–31–95.
ST94–2654	Southern Natural Gas Co.	City of Camp Hill	12–09–93	G–S	265	N	F	11–01–93	03–31–95.
ST94–2655	Southern Natural Gas Co.	Atlanta Gas Light Co.	12–09–93	G–S	6,764	N	F	11–01–93	02–28–94.
ST94–2656	Southern Natural Gas Co.	City of Jacksonville.	12–09–93	G–S	1,616	N	F	11–01–93	03–31–95.
ST94–2657	Southern Natural Gas Co.	City of Colquitt ..	12–09–93	G–S	114	N	F	11–01–93	10–31–95.
ST94–2658	Southern Natural Gas Co.	City of Fort Gaines.	12–09–93	G–S	142	N	F	11–01–93	10–31–95.

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ST94–2659	Southern Natural Gas Co.	City of Shellman	12–09–93	G–S	105	N	F	11–01–93	10–31–95.
ST94–2660	Southern Natural Gas Co.	City of Richland .	12–09–93	G–S	142	N	F	11–01–93	10–31–95.
ST94–2661	Southern Natural Gas Co.	City of Lumpkin .	12–09–93	G–S	202	N	F	11–01–93	10–31–96.
ST94–2662	Southern Natural Gas Co.	City of Wilton	12–09–93	G–S	117	N	F	11–01–93	10–31–95.
ST94–2663	Southern Natural Gas Co.	Chilton County Gas District.	12–09–93	G–S	755	N	F	11–01–93	10–31–98.
ST94–2664	Southern Natural Gas Co.	City of York	12–09–93	G–S	544	N	F	11–01–93	10–31–03.
ST94–2665	Southern Natural Gas Co.	United Cities Gas Co.	12–09–93	G–S	21,556	N	F	11–01–93	10–31–98.
ST94–2666	Southern Natural Gas Co.	City of Livingston	12–09–93	G–S	850	N	F	11–01–93	10–31–03.
ST94–2667	Southern Natural Gas Co.	Wilcox County Gas District.	12–09–93	G–S	572	N	F	11–01–93	10–31–96.
ST94–2668	Southern Natural Gas Co.	City of Manchester.	12–09–93	G–S	878	N	F	11–01–93	10–31–94.
ST94–2669	Southern Natural Gas Co.	Washington Parish.	12–09–93	G–S	510	N	F	11–01–93	10–31–95.
ST94–2670	Southern Natural Gas Co.	City of Millen	12–09–93	G–S	766	N	F	11–01–93	10–31–95.
ST94–2671	Southern Natural Gas Co.	City of Hogansville.	12–09–93	G–S	1,022	N	F	11–01–93	10–31–95.
ST94–2672	Columbia Gas Transmission Corp.	Stand Energy	12–09–93	G–S	190	N	F	11–01–93	10–31–94.
ST94–2673	Natural Gas P/L Co. of America.	Illinois Power Co	12–09–93	G–S	89,454	N	F	11–13–93	11–13–96.
ST94–2674	Texas Gas Transmission Corp.	Valley Gas, Inc ..	12–10–93	G–S	789	N	F	11–01–93	Indef.
ST94–2675	Texas Gas Transmission Corp.	Peoples Gas & Power Co., Inc.	12–10–93	G–S	3,100	N	F	11–01–93	Indef.
ST94–2676	Texas Gas Transmission Corp.	Ohio Valley Gas, Inc.	12–10–93	G–S	4,399	N	F	11–01–93	Indef.
ST94–2677	Texas Gas Transmission Corp.	City of Elizabethcity.	12–10–93	G–S	6,495	N	F	11–01–93	Indef.
ST94–2678	Texas Gas Transmission Corp.	City of Carrollton	12–10–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2679	Texas Gas Transmission Corp.	City of Providence.	12–10–93	G–S	4,950	N	F	11–01–93	Indef.
ST94–2680	Texas Gas Transmission Corp.	City of Sturgis ...	12–10–93	G–S	1,958	N	F	11–01–93	Indef.
ST94–2681	Texas Gas Transmission Corp.	City of Leitchfield	12–10–93	G–S	3,000	N	F	11–01–93	Indef.
ST94–2682	Texas Gas Transmission Corp.	Lawrenceburg Gas Co.	12–10–93	G–S	7,490	N	F	11–01–93	Indef.
ST94–2683	Texas Gas Transmission Corp.	Indiana Utilities Corp.	12–10–93	G–S	3,200	N	F	11–01–93	Indef.
ST94–2684	Texas Gas Transmission Corp.	South Eastern Indiana Nat. Gas Co.	12–10–93	G–S	2,469	N	F	11–01–93	Indef.
ST94–2685	Texas Gas Transmission Corp.	Switzerland County Nat. Gas Co.	12–10–93	G–S	1,158	N	F	11–01–93	Indef.
ST94–2686	Tejas Gas Pipeline Co.	Mobil Natural Gas Inc.	12–10–93	C	30,000	N	I	11–01–93	Indef.
ST94–2687	Tejas Gas Pipeline Co.	Seagull Marketing Services, Inc.	12–09–93	C	5,000	N	I	10–01–93	Indef.

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ST94–2688	Channel Industries Gas Co.	Trunkline Gas Co., et al.	12–10–93	C	100,000	N	I	11–10–93	Indef.
ST94–2689	Texas Gas Transmission Corp.	Ford Motor Co ...	12–10–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2690	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et at.	12–10–93	G–HT	1,585	N	I	04–28–93	Indef.
ST94–2691	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	12–10–93	G–HT	1,250	N	I	04–28–93	Indef.
ST94–2692	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	12–10–93	G–HT	3,670	N	I	04–28–93	Indef.
ST94–2693	K N Interstate Gas Trans. Co.	Post Rock Gas, Inc.	12–10–93	G–S	80	N	F	12–01–93	03–31–94.
ST94–2694	K N Interstate Gas Trans. Co.	Maxus Gas Marketing Co.	12–10–93	G–S	50,000	N	I	11–09–93	Indef.
ST94–2695	Koch Gateway Pipeline Co.	Public Service Electric & Gas Co.	12–10–93	G–S	74,000	N	F	11–01–93	11–14–03.
ST94–2696	Koch Gateway Pipeline.	New York State Electric & Gas.	12–10–93	G–S	1,076	N	F	11–01–93	Indef.
ST94–2697	Koch Gateway Pipeline Co.	Koch Gas Services Co.	12–10–93	G–S	21,000	A	F	11–01–93	Indef.
ST94–2698	Koch Gateway Pipeline Co.	Penn Fuel Gas ..	12–10–93	G–S	508	N	F	11–01–93	Indef.
ST94–2699	Koch Gateway Pipeline Co.	Midcon Gas Services Corp.	12–10–93	G–S	10,000	N	F	11–01–93	Indef.
ST94–2700	Koch Gateway Pipeline Co.	Associated Natural Gas, Inc.	12–10–93	G–S	12,000	N	F	11–01–93	Indef.
ST94–2701	Koch Gateway Pipeline Co.	Equitrans, Inc	12–10–93	G–S	15,500	N	F	11–01–93	Indef.
ST94–2702	Koch Gateway Pipeline Co.	Koch Gas Services Co.	12–10–93	G–S	2,085	A	F	11–01–93	04–15–94.
ST94–2703	Koch Gateway Pipeline Co.	Columbia Gas of Pennsylvania.	12–10–93	G–S	8,683	N	F	11–01–93	Indef.
ST94–2704	Koch Gateway Pipeline Co.	National Fuel	12–10–93	G–S	303	N	F	11–01–93	Indef.
ST94–2705	Koch Gateway Pipeline Co.	Entex	12–10–93	G–S	150,000	N	F	11–01–93	Indef.
ST94–2706	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	12–10–93	G–S	30,000	N	F	12–01–93	12–01–95.
ST94–2707	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	12–10–93	G–S	15,000	N	F	12–01–93	12–01–95.
ST94–2708	Southern Natural Gas Co.	City of Cartersville.	12–10–93	G–S	10,000	N	I	12–01–93	Indef.
ST94–2709	Southern Natural Gas Co.	Oryx Gas Marketing, L.P.	12–10–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–2710	Southern Natural Gas Co.	Gulf States Paper Corp.	12–10–93	G–S	2,404	N	I	12–01–93	Indef.
ST94–2711	Southern Natural Gas Co.	City of Lagrange	12–10–93	G–S	1,892	N	I	12–01–93	Indef.
ST94–2712	Southern Natural Gas Co.	Trans Louisiana Gas Co.	12–10–93	G–S	96	N	F	11–01–93	10–31–98.
ST94–2713	Southern Natural Gas Co.	Texican Natural Gas.	12–10–93	G–S	330	N	F	12–01–93	03–31–94.
ST94–2714	Southern Natural Gas Co.	Decatur County .	12–10–93	G–S	382	N	I	11–05–93	Indef.
ST94–2715	Southern Natural Gas Co.	Trans Louisiana Gas Co.	12–10–93	G–S	104	N	F	12–02–93	10–31–98.
ST94–2716	Southern Natural Gas Co.	Southeast Paper Manufacturing Co.	12–10–93	G–S	15,000	N	I	11–24–93	Indef.
ST94–2717	Southern Natural Gas Co.	United Cities Gas Co.	12–10–93	G–S	7,185	N	I	11–28–93	Indef.
ST94–2718	Southern Natural Gas Co.	City of Scottsboro.	12–10–93	G–S	1,101	N	I	11–28–93	Indef.
ST94–2719	Southern Natural Gas Co.	Washington Parish.	12–10–93	G–S	390	N	F	11–09–93	10–31–95.

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ST94–2720	Southern Natural Gas Co.	National Gas Resources, L.P.	12–10–93	G–S	185,000	N	I	11–11–93	Indef.
ST94–2721	Southern Natural Gas Co.	City of Havana ..	12–10–93	G–S	53	N	F	12–01–93	10–31–95.
ST94–2722	Southern Natural Gas Co.	South Carolina Pipeline Co.	12–10–93	G–S	50,321	N	I	11–26–93	Indef.
ST94–2723	Southern Natural Gas Co.	City of Calera	12–10–93	G–S	709	N	I	11–28–93	Indef.
ST94–2724	Southern Natural Gas Co.	City of Fort Valley.	12–10–93	G–S	51	N	F	12–01–93	10–31–98
ST94–2725	Trunkline Gas Co.	Tylex, Inc	12–13–93	G–S	1,000	N	F	12–01–93	Indef.
ST94–2726	Trunkline Gas Co.	Inland Steel Co .	12–13–93	G–S	20,000	N	F	12–01–93	Indef
ST94–2727	Trunkline Gas Co.	Stolle Corp	12–13–93	G–S	2,527	N	F	12–01–93	Indef.
ST94–2728	Trunkline Gas Co.	Peoples Gas Light and Coke Co.	12–13–93	G–S	60,000	N	F	12–01–93	Indef.
ST94–2729	Lone Star Gas Co.	El Paso Natural Gas Co., et al.	12–13–93	C	30,000	N	I	11–18–93	Indef.
ST94–2730	ONG Transmission Co.	Panhandle Eastern Pipeline Co.	12–13–93	C	50,000	N	I	11–19–93	Indef.
ST94–2731	ONG Transmission Co.	ANR Pipeline Co	12–13–93	C	10,000	N	I	11–25–93	Indef.
ST94–2732	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–13–93	B	1,450	Y	I	12–01–93	Indef.
ST94–2733	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–13–93	B	1,400	Y	I	12–01–93	Indef.
ST94–2734	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	12–13–93	G–S	30,000	N	F	12–01–93	12–01–95.
ST94–2735	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	12–13–93	G–S	20,000	N	F	12–01–93	12–01–95.
ST94–2736	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	12–13–93	G–S	30,000	N	F	12–01–93	12–01–95.
ST94–2737	Natural Gas P/L Co. of America.	Texaco Gas Marketing, Inc.	12–14–93	G–S	1,000	N	F	12–01–93	11–30–00.
ST94–2738	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	12–14–93	G–S	1,000	N	F	12–01–93	11–30–94.
ST94–2739	Natural Gas P/L Co. of America.	Wisconsin Southern Gas Co., Inc.	12–14–93	G–S	4,000	N	F	12–01–93	11–30–95.
ST94–2740	K N Interstate Gas Trans. Co.	Farmers Union Central Exchange.	12–14–93	G–S	2,500	N	I	12–05–93	Indef.
ST94–2741	Texas Gas Transmission Corp.	Westvaco Corp .	12–14–93	G–S	6,300	N	F	11–01–93	Indef.
ST94–2742	Texas Gas Transmission Corp.	City of Murray ...	12–14–93	G–S	2,500	N	F	11–01–93	Indef.
ST94–2743	Texas Gas Transmission Corp.	Peoples Gas & Power Co., Inc.	12–14–93	G–S	400	N	F	11–04–93	Indef.
ST94–2744	Texas Gas Transmission Corp.	Midwest Natural Gas Corp.	12–14–93	G–S	1,500	N	F	11–01–93	Indef.
ST94–2745	Texas Gas Transmission Corp.	Logan Aluminum, Inc.	12–14–93	G–S	2,035	N	F	11–01–93	Indef.
ST94–2746	Texas Gas Transmission Corp.	City of Linton	12–14–93	G–S	400	N	F	11–01–93	Indef.
ST94–2747	Texas Gas Transmission Corp.	Illinois Gas Co ...	12–14–93	G–S	2,200	N	F	11–04–93	Indef.

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ST94–2748	Texas Gas Transmission Corp.	City of Henderson.	12–14–93	G–S	3,150	N	F	11–01–93	Indef.
ST94–2749	Texas Gas Transmission Corp.	Community Natural Gas Co., Inc.	12–14–93	G–S	400	N	F	11–04–93	Indef.
ST94–2750	Texas Gas Transmission Corp.	Boonville Natural Gas Corp.	12–14–93	G–S	1,800	N	F	11–01–93	Indef.
ST94–2751	Texas Gas Transmission Corp.	Chandler Natural Gas Corp.	12–14–93	G–S	450	N	F	11–01–93	Indef.
ST94–2752	Texas Gas Transmission Corp.	South Eastern Indiana Nat. Gas Co.	12–14–93	G–S	75	N	F	11–01–93	Indef.
ST94–2753	Texas Gas Transmission Corp.	City of Hamilton	12–14–93	G–S	20,000	N	F	11–01–93	Indef.
ST94–2754	Texas Gas Transmission Corp.	Public Service Co. of North Carolina.	12–14–93	G–S	2,650	N	F	11–01–93	Indef.
ST94–2755	Texas Gas Transmission Corp.	Indiana Utilities Corp.	12–14–93	G–S	1,800	N	F	11–01–93	Indef.
ST94–2756	Texas Gas Transmission Corp.	Gibson County Utility District.	12–14–93	G–S	2,500	N	F	11–01–93	Indef.
ST94–2757	Texas Gas Transmission Corp.	Northern Utilities, Inc.	12–14–93	G–S	987	N	F	11–19–93	Indef.
ST94–2758	Texas Gas Transmission Corp.	Bay State Gas Co.	12–14–93	G–S	4,336	N	F	11–19–93	Indef.
ST94–2759	Texas Eastern Transmission Corp.	Stolle Corp	12–14–93	G–S	2,500	N	F	12–01–93	10–31–95.
ST94–2760	Texas Eastern Transmission Corp.	Stolle Corp	12–14–93	G–S	4,000	N	I	12–01–93	10–31–95.
ST94–2761	Texas Eastern Transmission Corp.	Connecticut Natural Gas Corp.	12–14–93	G–S	16,970	N	F	12–01–93	10–31–00.
ST94–2762	Texas Eastern Transmission Corp.	Connecticut Natural Gas Corp.	12–14–93	G–S	30,000	N	I	12–01–93	10–31–00.
ST94–2763	Texas Eastern Transmission Corp.	Woodward Marketing, Inc.	12–14–93	G–S	30,000	N	I	11–17–93	03–30–94.
ST94–2764	Texas Eastern Transmission Corp.	Chesapeake Energy Corp.	12–14–93	G–S	50,000	N	I	12–01–93	11–30–94.
ST94–2765	Texas Eastern Transmission Corp.	City of Smyrna ..	12–14–93	G–S	58,000	N	I	11–16–93	07–31–94.
ST94–2766	Texas Eastern Transmission Corp.	City of Smyma ..	12–14–93	G–S	58,000	N	I	11–16–93	07–31–94.
ST94–2767	Texas Eastern Transmission Corp.	Samedan Oil Corp.	12–14–93	G–S	300,000	N	I	12–01–93	03–31–94.
ST94–2768	Texas Eastern Transmission Corp.	North Canadian Marketing Corp.	12–14–93	G–S	100,000	N	I	11–17–93	03–31–94.
ST94–2769	Texas Eastern Transmission Corp.	Amerada Hess Corp.	12–14–93	G–S	100,000	N	I	11–17–93	03–31–94.
ST94–2770	Texas Eastern Transmission Corp.	Yuma Gas Corp	12–14–93	G–S	25,000	N	I	12–01–93	03–31–94.
ST94–2771	Texas Eastern Transmission Corp.	Central Hudson Gas & Electric Corp.	12–14–93	G–S	14	N	I	12–05–93	03–31–06.

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ST94–2772	Sea Robin Pipeline Co.	Yuma Gas Corp	12–14–93	G–S	10,000	N	F	12–04–93	03–31–94.
ST94–2773	Sea Robin Pipeline Co.	Sonat Marketing Co.	12–14–93	G–S	9,804	N	F	12–01–93	12–31–93.
ST94–2774	Southern Natural Gas Co.	U.S.S., Div. USX Corp.	12–14–93	G–S	24,501	N	I	11–03–93	Indef.
ST94–2775	Southern Natural Gas Co.	Cullman-Jefferson Counties Gas Dist.	12–14–93	G–S	1,816	N	I	11–01–93	Indef.
ST94–2776	Southern Natural Gas Co.	Engelhard Corp .	12–14–93	G–S	5,034	N	I	11–04–93	Indef.
ST94–2777	Southern Natural Gas Co.	Graysville Municipal Gas System.	12–14–93	G–S	3,750	N	F	11–01–93	03–23–01.
ST94–2778	K N Interstate Gas Trans. Co.	Kanco Gathering Co.	12–15–93	G–S	70,000	N	I	10–01–93	Indef.
ST94–2779	Texas Gas Transmission Corp.	Eagle Natural Gas Co.	12–15–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2780	Texas Gas Transmission Corp.	UCG Energy Corp.	12–15–93	G–S	10,000	N	I	11–15–93	Indef.
ST94–2781	Texas Gas Transmission Corp.	TXG Gas Marketing Co.	12–15–93	G–S	20,000	A	I	12–01–93	Indef.
ST94–2782	Texas Gas Transmission Corp.	Westvaco Corp .	12–15–93	G–S	3,700	N	F	11–01–93	Indef.
ST94–2783	Texas Gas Transmission Corp.	Lawrenceburg Gas Co.	12–15–93	G–S	2,500	N	F	11–01–93	Indef.
ST94–2784	Texas Gas Transmission Corp.	DOW Corning Corp.	12–15–93	G–S	2,000	N	F	11–01–93	Indef.
ST94–2785	Panhandle Eastern Pipe Line Co.	Trident NGL, Inc	12–15–93	G–S	25,000	N	I	11–01–93	04–30–98.
ST94–2786	Panhandle Eastern Pipe Line Co.	United Cities Gas Co.	12–15–93	G–S	1,500	N	I	11–01–93	03–31–96.
ST94–2787	Panhandle Eastern Pipe Line Co.	Polaris Pipeline Corp.	12–15–93	G–S	71,000	N	I	09–30–93	03–31–98.
ST94–2788	Panhandle Eastern Pipe Line Co.	Interstate Gas Supply, Inc.	12–15–93	G–S	2,074	N	F	10–29–93	04–30–94
ST94–2789	Bridgeline Gas Distribution Co.	Texas Eastern Transmission Corp.	12–15–93	C	2,074	N	I	11–20–93	Indef.
ST94–2790	Northern Natural Gas Co.	Brooklyn Interstate Nat. Gas Corp.	12–15–93	G–S	100,000	N	F/I	06–21–93	Indef.
ST94–2791	Northern Natural Gas Co.	Chevron U.S.A., Inc.	12–15–93	G–S	20,000	N	F/I	06–25–93	Indef.
ST94–2792	Northern Natural Gas Co.	Gas Energy Development Co.	12–15–93	G–S	50,000	N	F/I	06–27–93	Indef.
ST94–2793	Northern Natural Gas Co.	Archer Daniels Midland Co.	12–15–93	G–S	10,000	N	F/I	12–01–93	04–30–94.
ST94–2794	Northern Natural Gas Co.	Midwest Gas, Midwest Power Systems.	12–15–93	G–S	21,200	N	F/I	11–16–93	11–16–98.
ST94–2795	Northern Natural Gas Co.	Iowa-Illinois Gas & Elect. Co.	12–15–93	G–S	30,000	N	F	12–01–93	11–30–95.
ST94–2796	Northern Natural Gas Co.	Northern States Power Co.	12–15–93	G–S	8,400	N	F	11–15–93	10–31–97.
ST94–2797	Northern Natural Gas Co.	Phillips Natural Gas Co.	12–15–93	G–S	120,000	N	F	11–15–93	10–31–97.
ST94–2798	Transwestern Pipeline Co.	Richardson Products Co.	12–15–93	G–S	42,220	N	F	12–01–93	12–31–93.
ST94–2799	Transwestern Pipeline Co.	Tristar Gas Marketing Co.	12–15–93	G–S	5,625	N	F	12–01–93	12–31–93.

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ST94–2800	Transwestern Pipeline Co.	Arco Natural Gas Marketing, Inc.	12–15–93	G–S	10,000	N	I	11–16–93	Indef.
ST94–2801	Transwestern Pipeline Co.	Westar Transmission Co.	12–15–93	B	10,000	N	I	11–24–93	Indef.
ST94–2802	Transwestern Pipeline Co.	US Gas Transportation, Inc.	12–15–93	G–S	4,000	N	F	11–06–93	11–30–93.
ST94–2803	Transwestern Pipeline Co.	Clayton Williams Energy Inc.	12–15–93	G–S	2,350	N	F	12–01–93	12–31–93.
ST94–2804	Transwestern Pipeline Co.	Coastal Gas Marketing Co.	12–15–93	G–S	1,000	N	I	12–01–93	12–01–96.
ST94–2805	Northwest Pipeline Corp.	Washington Water Power Co.	12–15–93	G–S	14,860	N	I	11–11–93	Indef.
ST94–2806	Transcontinental Gas P/L Corp.	City of Madison	12–15–93	G–S	105	N	F	11–23–93	11–22–13.
ST94–2807	Transcontinental Gas P/L Corp.	City of Rockford	12–15–93	G–S	101	N	F	11–27–93	11–26–13
ST94–2808	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12–15–93	G–S	N/A	Y	I	12–01–93	Indef.
ST94–2809	Columbia Gas Transmission Corp.	Vesta Energy Co	12–15–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2810	Columbia Gas Transmission Corp.	KCS Energy Marketing, Inc.	12–15–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2811	Columbia Gas Transmission Corp.	Panhandle Trading Co.	12–15–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2812	Columbia Gas Transmission Corp.	Clinton Gas Marketing, Inc.	12–15–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2813	Columbia Gas Transmission Corp.	Interstate Gas Supply, Inc.	12–15–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2814	Columbia Gas Transmission Corp.	Penn Virginia Res. Marketing Co.	12–15–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2815	Columbia Gas Transmission Corp.	Koch Gas Services.	12–15–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2816	Columbia Gas Transmission Corp.	Brooklyn Interstate Natural Gas.	12–15–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2817	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	12–15–93	G–S	N/A	N	I	12–04–93	Indef.
ST94–2818	Columbia Gas Transmission Corp.	Volunteer Energy Corp.	12–15–93	G–S	N/A	N	I	12–01–93	02–28–94.
ST94–2819	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–15–93	G–S	31	N	F	12–01–93	Indef.
ST94–2820	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–15–93	B	1,000	Y	F	12–01–93	Indef.
ST94–2821	Algonquin Gas Transmission Co.	Bay State Gas Co.	12–16–93	B	18,198	N	F	11–21–93	Indef.
ST94–2822	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	12–16–93	B	23,712	N	F	11–25–93	Indef.
ST94–2823	Algonquin Gas Transmission Co.	Colonial Gas Co	12–16–93	B	4,886	N	F	11–25–93	Indef.
ST94–2824	Algonquin Gas Transmission Co.	Fall River Gas Co.	12–16–93	G–S	130	N	I	11–18–93	Indef.
ST94–2825	Algonquin Gas Transmission Co	Fall River Gas Co.	12–16–93	G–S	950	N	I	11–18–93	Indef.

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ST94–2826	Algonquin Gas Transmission Co.	Darthmouth Power Associates, L.P.	12–16–93	G–S	4,400,000	N	I	11–21–93	Indef.
ST94–2827	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	12–16–93	G–S	433	N	I	11–30–93	Indef.
ST94–2828	Algonquin Gas Transmission Co.	Fall River Gas Co.	12–16–93	B	7,124	N	F	11–25–93	Indef.
ST94–2829	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	12–16–93	B	15,700	N	F	11–18–93	Indef.
ST94–2830	Algonquin Gas Transmission Co.	Southern Connecticut Gas Co.	12–16–93	B	4,922	N	F	11–30–93	Indef.
ST94–2831	Algonquin Gas Transmission Co.	Boston Gas Co .	12–16–93	B	6,335	N	F	11–30–93	Indef.
ST94–2832	Algonquin Gas Transmission Co.	Boston Gas Co .	12–16–93	B	29,750	N	F	11–30–93	Indef.
ST94–2833	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	12–16–93	B	3,073	N	F	11–30–93	Indef.
ST94–2834	Stingray Pipeline Co.	Union Oil Co. of California.	12–16–93	K-S	34,000	N	F	11–24–93	11–23–03.
ST94–2835	Stingray Pipeline Co.	Chevron U.S.A. Production Co.	12–16–93	K-S	34,000	N	F	11–30–93	11–30–03.
ST94–2836	Natural Gas P/L Co. of American.	Midwest Gas	12–16–93	G–S	10,385	N	F	12–01–93	12–01–95.
ST94–2837	Acadian Gas Pipeline System.	Columbia Gulf Transmission, et al.	12–16–93	C	35,385	N	I	10–01–93	Indef.
ST94–2838	Tennessee Gas Pipeline Co.	Northern Utilities, Inc.	12–17–93	G–S	25,385	N	I	12–01–93	Indef.
ST94–2839	Tennessee Gas Pipeline Co.	City of Cookeville Gas Department.	12–17–93	G–S	6,059	N	F	12–01–93	Indef.
ST94–2840	Tennessee Gas Pipeline Co.	Meridian Marketing & Trans. Co.	12–17–93	G–S	1,200	N	F	12–09–93	Indef.
ST94–2841	Tennessee Gas Pipeline Co.	Monteagle Public Utility Board.	12–17–93	G–S	492	N	F	11–18–93	Indef.
ST94–2842	Williston Basin Inter. P/O Co.	Koch Hydrocarbon Co.	12–17–93	G–S	387,362	Y	I	11–19–93	04–30–95.
ST94–2843	Florida Gas Transmission Co.	United Technologies Corp.	12–17–93	G–S	1,364	N	F	11–01–93	Indef.
ST94–2844	Florida Gas Transmission Co.	City of Jay	12–17–93	G–S	558	N	F	11–01–93	Indef.
ST94–2845	Florida Gas Transmission Co.	St. of Florida, Dept. of Corrections.	12–17–93	G–S	822	N	F	11–01–93	Indef.
ST94–2846	Florida Gas Transmission Co.	Florida Global Citrus Limited.	12–17–93	G–S	1,874	N	I	12–01–93	Indef.
ST94–2847	Florida Gas Transmission Co.	City of Marianna	12–17–93	G–S	3,550	N	F	11–01–93	Indef.
ST94–2848	Florida Gas Transmission Co.	City of Lake City	12–17–93	G–S	4,790	N	F	11–01–93	Indef.
ST94–2849	Florida Gas Transmission Co.	Gulfside Industries, Ltd.	12–17–93	G–S	1,000	N	F	11–01–93	Indef.
ST94–2850	Florida Gas Transmission Co.	Georgia Pacific Corp.	12–17–93	G–S	2,000	N	F	11–01–93	Indef.

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ST94–2851	Florida Gas Transmission Co.	Fort Pierce Utilities Authority.	12–17–93	G–S	2,110	N	I	11–05–93	Indef.
ST94–2852	Florida Gas Transmission Co.	City of Fort Meade.	12–17–93	G–S	650	N	F	11–01–93	Indef.
ST94–2853	Florida Gas Transmission Co.	ENTEX	12–17–93	G–S	1,500	N	F	11–01–93	Indef.
ST94–2854	Florida Gas Transmission Co.	Consolidated Minerals, Inc.	12–17–93	G–S	2,192	N	F	11–01–93	Indef.
ST94–2855	Florida Gas Transmission Co.	City of Chipley ...	12–17–93	G–S	1,281	N	F	11–01–93	Indef.
ST94–2856	Florida Gas Transmission Co.	City of Blounts City.	12–17–93	G–S	1,000	N	F	11–01–93	Indef.
ST94–2857	Florida Gas Transmission Co.	Aluminum Co. of America.	12–17–93	G–S	578	N	F	11–01–93	Indef.
ST94–2858	Koch Gateway Pipeline Co.	Cytec Industries	12–17–93	G–S	N/A	N	I	11–20–93	Indef.
ST94–2859	Panhandle Eastern Pipe Line Co.	Arcadian Partners, L.P.	12–17–93	G–S	4,500	N	F	11–01–93	03–31–94.
ST94–2860	Natural Gas P/L Co. of America.	Union Electric Co.	12–17–93	G–S	5,000	N	F	11–01–93	10–31–98.
ST94–2861	Stingray Pipeline Co.	O & R Energy, Inc.	12–17–93	K–S	20,000	N	I	12–01–93	Indef.
ST94–2862	Texas Eastern Transmission Corp.	Colonial Gas Co	12–20–93	G–S	2,222	N	F	06–01–93	10–31–12.
ST94–2863	Trunkline Gas Co.	Stolle Corp	12–20–93	G–S	4,100	N	I	12–01–93	Indef.
ST94–2864	Trunkline Gas Co.	Murphy Exploration & Production Co.	12–20–93	G–S	50,000	N	I	12–01–93	Indef.
ST94–2865	Trunkline Gas Co.	Anadarko Trading Co.	12–20–93	G–S	20,000	N	I	12–03–93	Indef.
ST94–2866	Trunkline Gas Co.	National Steel Corp.	12–20–93	G–S	4,000	N	I	12–01–93	Indef.
ST94–2867	Florida Gas Transmission Co.	City of Williston .	12–20–93	G–S	943	N	F	11–01–93	Indef.
ST94–2868	Florida Gas Transmission Co.	Muncipal Gas Authority of Florida.	12–20–93	G–S	69,309	N	F	11–01–93	Indef.
ST94–2869	Tejas Gas Pipeline Co.	Valero Industrial Gas, L.P.	12–20–93	C	30,000	N	I	11–20–93	11–30–93.
ST94–2870	Delhi Gas Pipeline Corp.	Koch Gas Pipeline Co., et al.	12–20–93	C	11,000	N	I	12–01–93	Indef.
ST94–2871	Delhi Gas Pipeline Corp.	Koch Gas Pipeline Co., et al.	12–20–93	C	30,000	N	I	12–04–93	Indef.
ST94–2872	Valero Transmission, L.P.	Transcontinental Gas P/L Corp.	12–20–93	C	13,800	N	I	12–01–93	Indef.
ST94–2873	Enron Storage Co.	Natural Gas P/L Co. of Amer., et al.	12–20–93	C/G–ST	20,000	N	I	11–18–93	03–31–94.
ST94–2874	Enron Storage Co.	Koch Gateway Pipeline Co.	12–20–93	C/G–ST	100,000	N	I	11–18–93	03–31–94.
ST94–2875	Enogex Inc	Arkla Energy Resources Co.	12–20–93	C	10,000	N	I	12–01–93	Indef.
ST94–2876	Iroquois Gas Trans. System, L.P.	Continental Energy Marketing, Inc.	12–20–93	G–S	4,921	N	I	12–01–93	01–01–94.
ST94–2877	Iroquois Gas Trans. System, L.P.	Continental Energy Marketing, Inc.	12–20–93	G–S	6,971	N	I	12–01–93	01–01–94.
ST94–2878	Iroquois Gas Trans. System, L.P.	Continental Energy Marketing, Inc.	12–20–93	G–S	9,449	N	I	12–01–93	01–01–94.

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ST94–2879	Iroquois Gas Trans. System, L.P.	Continental Energy Marketing, Inc.	12–20–93	G–S	6,372	N	I	12–02–93	01–01–94
ST94–2880	Iroquois Gas Trans. System, L.P.	Direct Gas Supply/IESCO, Inc.	12–20–93	G–S	5,000	N	I	12–01–93	01–01–94.
ST94–2881	Iroquois Gas Trans. System, L.P.	Enron Gas Marketing, Inc.	12–20–93	G–S	10,000	N	I	12–02–93	01–01–94.
ST94–2882	Columbia Gas Transmission Corp.	United States Gypsum Co.	12–20–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2883	Columbia Gas Transmission Corp.	Enron Access Corp.	12–20–93	G–S	126	N	F	12–01–93	03–31–93
ST94–2884	Columbia Gas Transmission Corp.	Conoco, Inc	12–20–93	G–S	N/A	N	I	12–13–93	Indef.
ST94–2885	Columbia Gas Transmission Corp.	Atlas Gas Marketing.	12–20–93	G–S	N/A	N	I	12–13–93	Indef.
ST94–2886	Columbia Gas Transmission Corp.	General Motors Corp.	12–20–93	G–S	N/A	N	I	12–07–93	Indef.
ST94–2887	Columbia Gas Transmission Corp.	Coastal Gas Marketing.	12–20–93	G–S	N/A	N	I	12–14–93	Indef.
ST94–2888	Transcontinental Gas P/L Corp.	Bay State Gas Co.	12–20–93	G–S	1,212	N	F	12–01–93	06–01–08.
ST94–2889	Transcontinental Gas P/L Corp.	Commonwealth Gas Co.	12–20–93	G–S	2,969	N	F	12–01–93	06–01–08.
ST94–2890	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	12–20–93	G–S	48,240	N	I	12–01–93	10–31–06.
ST94–2891	Transcontinental Gas P/L Corp.	Northern Utilities, Inc.	12–20–93	G–S	276	N	F	12–01–93	06–01–08.
ST94–2892	Texas Gas Transmission Corp.	Brooklyn Union Gas Co.	12–21–93	G–S	3,737	N	F	11–06–93	Indef.
ST94–2893	Texas Gas Transmission Corp.	Mississippi Valley Gas Co.	12–21–93	G–S	25,000	N	F	11–01–93	Indef.
ST94–2894	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	12–21–93	G–S	15,000	N	F	11–01–93	Indef.
ST94–2895	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	12–21–93	G–S	3,000	N	F	11–01–93	Indef.
ST94–2896	Texas Gas Transmission Corp.	Cincinnati Gas and Electric Co.	12–21–93	G–S	41,000	N	F	11–01–93	Indef.
ST94–2897	Texas Gas Transmission Corp.	Union Light, Heat and Power Co.	12–21–93	G–S	9,000	N	F	11–01–93	Indef.
ST94–2898	Texas Gas Transmission Corp.	Ohio Valley Gas Corp.	12–21–93	G–S	1,000	N	F	11–01–93	Indef.
ST94–2899	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	12–21–93	G–S	27,000	N	F	11–01–93	Indef.
ST94–2900	Texas Gas Transmission Corp.	Central Illinois Public Service Co.	12–21–93	G–S	12,500	N	F	11–01–93	Indef.
ST94–2901	Texas Gas Transmission Corp.	Dayton Power and Light Co.	12–21–93	G–S	25,000	N	F	11–01–93	Indef.
ST94–2902	Texas Gas Transmission Corp.	United Cities Gas Co.	12–21–93	G–S	2,000	N	F	11–01–93	Indef.
ST94–2903	Texas Gas Transmission Corp.	East Ohio Gas Co.	12–21–93	G–S	73,763	N	F	11–01–93	Indef.

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ST94–2904	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	12–21–93	G–S	3,500	N	F	11–01–93	Indef.
ST94–2905	Texas Gas Transmission Corp.	Ohio Valley Gas Corp.	12–21–93	G–S	500	N	F	11–01–93	Indef.
ST94–2906	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	12–21–93	G–S	2,500	N	F	11–01–93	Indef.
ST94–2907	Texas Gas Transmission Corp.	Southern Indiana Gas and Elect. Co.	12–21–93	G–S	22,600	N	F	11–01–93	Indef.
ST94–2908	Texas Gas Transmission Corp.	Southern Indiana Gas and Elect. Co.	12–21–93	G–S	5,700	N	F	11–01–93	Indef.
ST94–2909	Mobile Bay Pipeline Co.	Boston Gas Co .	12–21–93	G–S	27,439	N	F	12–01–93	Indef.
ST94–2910	Mobile Bay Pipeline Co.	Arco Natural Gas Marketing.	12–21–93	G–S	20,202	N	F	12–01–93	Indef.
ST94–2911	Koch Gateway Pipeline Co.	Lafayette Gas Intrastate.	12–21–93	G–S	N/A	N	I	11–26–93	Indef.
ST94–2912	Koch Gateway Pipeline Co.	Monsanto Co	12–21–93	G–S	N/A	N	I	11–26–93	Indef.
ST94–2913	Koch Gateway Pipeline Co.	Gulf Coast Energy, Inc.	12–21–93	G–S	N/A	N	I	11–26–93	Indef.
ST94–2914	Koch Gateway Pipeline Co.	Red River Gas Co.	12–21–93	G–S	N/A	N	I	11–26–93	Indef.
ST94–2915	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12–21–93	G–S	N/A	N	I	12–14–93	Indef.
ST94–2916	Columbia Gas Transmission Corp.	Gas Marketing, Inc.	12–21–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2917	Columbia Gas Transmission Corp.	Delmarva Power and Light Co.	12–21–93	G–S	20,000	N	F	12–01–93	Indef.
ST94–2918	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	12–21–93	G–S	41,532	N	F	12–01–93	Indef.
ST94–2919	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12–21–93	G–S	750,000	Y	I	12–01–93	Indef.
ST94–2920	Columbia Gas Transmission Corp.	Pennsylvania Gas & Water Co.	12–21–93	B	11,346	N	F	12–01–93	Indef.
ST94–2921	Columbia Gas Transmission Corp.	Penn Fuel Gas, Inc.	12–21–93	B	14,250	N	F	12–01–93	Indef.
ST94–2922	Columbia Gas Transmission Corp.	Providence Gas Co.	12–21–93	B	47,455	N	F	12–01–93	Indef.
ST94–2923	Columbia Gas Transmission Corp.	Suburban Natural Gas Co.	12–21–93	B	5,134	N	F	12–01–93	Indef.
ST94–2924	Columbia Gas Transmission Corp.	New York State Electric & Gas Corp.	12–21–93	B	36,794	N	F	12–01–93	Indef.
ST94–2925	Columbia Gas Transmission Corp.	Bluefield Gas Co	12–21–93	B	2,058	N	F	12–01–93	Indef.
ST94–2926	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	12–21–93	B	502,717	N	F	12–01–93	Indef.
ST94–2927	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12–21–93	B	71,107	N	F	12–01–93	Indef.
ST94–2928	Columbia Gas Transmission Corp.	Virginia Natural Gas, Inc.	12–21–93	B	57,970	N	F	12–01–93	Indef.
ST94–2929	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc.	12–21–93	B	15,012	Y	F	12–01–93	Indef.

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ST94–2930	Columbia Gas Transmission Corp.	City of Lancaster	12–21–93	B	5,285	N	F	12–01–93	Indef.
ST94–2931	Columbia Gas Transmission Corp.	City of Charlottesville.	12–21–93	B	7,500	N	F	12–01–93	Indef.
ST94–2932	Columbia Gas Transmission Corp.	Central Hudson Gas & Electric.	12–21–93	B	10,415	N	F	12–01–93	Indef.
ST94–2933	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	12–21–93	B	28,252	N	F	12–01–93	Indef.
ST94–2934	Tennessee Gas Pipeline Co.	City of Pulaski ...	12–21–93	G–S	405	N	F	12–01–93	Indef.
ST94–2935	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	12–21–93	G–S	4,699	N	F	12–01–93	Indef.
ST94–2936	Tennessee Gas Pipeline Co.	Long Island Lighting Co.	12–21–93	G–S	2,587	N	F	12–01–93	Indef.
ST94–2937	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	12–21–93	G–S	4,699	N	F	12–01–93	Indef.
ST94–2938	Tennessee Gas Pipeline Co.	Bay State Gas Co.	12–21–93	G–S	511	N	F	12–01–93	Indef.
ST94–2939	Tennessee Gas Pipeline Co.	NGC Transportation, Inc.	12–21–93	G–S	1,000	N	F	12–01–93	Indef.
ST94–2940	Tennessee Gas Pipeline Co.	KCS Energy Marketing, Inc.	12–21–93	G–S	3,000	N	F	12–01–93	Indef.
ST94–2941	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	12–21–93	G–S	5,400	N	F	12–01–93	Indef.
ST94–2942	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	12–21–93	G–S	1,882	N	F	12–01–93	Indef.
ST94–2943	Colorado Interstate Gas Co.	Aurora Natural Gas.	12–21–93	G–S	400	N	I	12–05–93	Indef.
ST94–2944	Colorado Interstate Gas Co.	Public Service of Colorado.	12–21–93	G–S	13,000	N	I	12–01–93	Indef.
ST94–2945	Colorado Interstate Gas Co.	Western Gas Resources, Inc.	12–21–93	G–S	2,000	N	F	12–01–93	03–31–94.
ST94–2946	Colorado Interstate Gas Co.	Greeley Gas Co	12–21–93	G–S	1,750	N	I	12–01–93	Indef.
ST94–2947	Colorado Interstate Gas Co.	Oryx Gas Marketing.	12–21–93	G–S	800	N	12–	12–93	Indef.
ST94–2948	Northern Natural Gas Co.	Winn Exploration Co., Inc.	12–21–93	G–S	2,000	N	I	11–03–93	Indef.
ST94–2949	Northern Natural Gas Co.	Westar Transmission Co.	12–21–93	G–S	1,000	N	I	11–03–93	Indef.
ST94–2950	Northern Natural Gas Co.	Seagull Marketing Services, Inc.	12–21–93	G–S	3,300	N	F	12–01–93	Indef.
ST94–2951	Northern Natural Gas Co.	Nebraska Public Gas Agency.	12–21–93	G–S	450	N	F	12–01–93	12–01–97.
ST94–2952	Northern Natural Gas Co.	Northern States Power Co.	12–21–93	G–S	20,000	N	I	11–11–93	Indef.
ST94–2953	Northern Natural Gas Co.	Peoples Natural Gas Co—Utilicorp.	12–21–93	G–S	71,222	N	I	12–01–93	02–28–94.
ST94–2954	Northern Natural Gas Co.	Excel Gas Marketing, Inc.	12–21–93	G–S	20,000	N	I	12–01–93	Indef.
ST94–2955	Northern Natural Gas Co.	National Gas Resources L.P.	12–21–93	G–S	50,000	N	I	12–02–93	Indef.
ST94–2956	Northern Natural Gas Co.	Anthem Energy Co, L.P.	12–21–93	G–S	30,000	N	I	11–06–93	Indef.
ST94–2957	Northern Natural Gas Co.	Panda Resources, Inc	12–21–93	G–S	15,000	N	I	11–04–93	Indef.
ST94–2958	Algonquin Gas Transmission Co.	Southern Connecticut Gas Co.	12–22–93	B	15,672	N	F	12–01–93	Indef.
ST94–2959	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	12–22–93	B	35,620	N	F	12–01–93	Indef.
ST94–2960	Algonquin Gas Transmission Co.	Providence Gas Co.	12–22–93	B	6,812	N	F	12–12–93	Indef.

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ST94–2961	Algonquin Gas Transmission Co.	Northern Utilities Inc.	12–22–93	B	965	N	F	12–01–93	Indef.
ST94–2962	Algonquin Gas Transmission Co.	Central Hudson Gas & Elect. Corp.	12–22–93	G–S	26	N	I	12–05–93	Indef.
ST94–2963	Algonquin Gas Transmission Co.	Connecticut Natural Gas Co.	12–22–93	G–S	7,053	N	I	12–10–93	Indef.
ST94–2964	Algonquin Gas Transmission Co.	Northern Utilities Inc.	12–22–93	B	286	N	F	12–01–93	Indef.
ST94–2965	Algonquin Gas Transmission Co.	Bay State Gas Co.	12–22–93	B	4,235	N	F	12–01–93	Indef.
ST94–2966	Florida Gas Transmission Co.	ARCO Natural Gas Marketing, Inc.	12–22–93	G–S	200,000	N	I	11–01–93	Indef.
ST94–2967	Florida Gas Transmission Co.	Citrus Trading Corp.	12–22–93	G–S	800,000	Y	I	11–01–93	Indef.
ST94–2968	Florida Gas Transmission Co.	Enron Gas Marketing Inc.	12–22–93	G–S	500,000	A	I	11–01–93	Indef.
ST94–2969	Florida Gas Transmission Co.	BP Gas, Inc	12–22–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–2970	Florida Gas Transmission Co.	Citrus Marketing, Inc.	12–22–93	G–S	100,000	A	I	12–01–93	Indef.
ST94–2971	Florida Gas Transmission Co.	Associated Natural Gas, Inc.	12–22–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–2972	Florida Gas Transmission Co.	Amco Energy Trading Corp.	12–22–93	G–S	250,000	N	I	11–01–93	Indef.
ST94–2973	Arkla Energy Resources Co.	Koch Gas Services Co.	12–22–93	G–S	10,000	N	I	12–01–93	Indef.
ST94–2974	Black Marlin Pipeline Co.	Enron Industrial Natural Gas Co.	12–22–93	G–S	75,000	Y	F	12–01–93	01–01–99
ST94–2975	Tennessee Gas Pipeline Co.	Transco Gas Marketing Co.	12–22–93	G–S	2,087	N	F	12–02–93	Indef.
ST94–2976	Tennessee Gas Pipeline Co.	Coastal Gas Marketing Co.	12–22–93	G–S	4,500	N	F	12–17–93	Indef.
ST94–2977	Tennessee Gas Pipeline Co.	Northern Utilities Inc.	12–22–93	G–S	117	N	F	12–01–93	Indef.
ST94–2978	Natural Gas P/L Co. of America.	Iowa Electric Light & Power Co.	12–22–93	G–S	10,000	N	F	12–01–93	11–30–95.
ST94–2979	Natural Gas P/L Co. of America.	Iowa Electric Light & Power Co.	12–22–93	G–S	28,605	N	F	12–01–93	11–30–00.
ST94–2980	Cypress Gas Pipeline Co.	Columbia Gulf Trans. Co, et al.	12–22–93	C	70,000	N	I	12–01–93	Indef.
ST94–2981	Cypress Gas Pipeline Co.	Columbia Gulf Trans. Co., et al.	12–22–93	C	50,000	N	I	12–08–93	Indef.
ST94–2982	Lone Star Gas Co.	Transwestern Pipeline Co, et al.	12–22–93	C	100,000	N	I	11–29–93	Indef.
ST94–2983	Gulf Coast Natural Gas Co.	Koch Gateway P/L Co., et al.	12–22–93	C	30,000	Y	I	12–01–93	Indef.
ST94–2984	Gulf Coast Natural Gas Co.	Trunkline Gas Co.	12–22–93	C	30,000	Y	I	12–01–93	Indef.
ST94–2985	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	12–23–93	G–HT	400	N	I	12–15–93	Indef.
ST94–2986	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	12–23–93	C	75,000	N	I	11–25–93	Indef.

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ST94–2987	Channel Industries Gas Co.	Seagull Marketing Services, Inc.	12–23–93	C	50,000	N	I	11–19–93	Indef.
ST94–2988	Tennessee Gas Pipeline Co.	Catex Energy Inc.	12–23–93	G–S	8,300	N	F	12–01–93	Indef.
ST94–2989	Tennessee Gas Pipeline Co.	Enron Gas Marketing Inc.	12–23–93	G–S	20,800	N	F	12–01–93	Indef
ST94–2990	Tennessee Gas Pipeline Co.	Yuma Gas Corp	12–23–93	G–S	16,200	N	F	12–01–93	Indef
ST94–2991	Columbia Gas Transmission Corp.	Entity Type	12–23–93	G–S	11,000	N	I	12–01–93	Indef.
ST94–2992	Sabine Pipe Line Co.	Koch Gas Services Co.	12–23–93	G–S	100,000	N	I	12–01–93	Indef
ST94–2993	Sabine Pipe Line Co.	Valero Gas Marketing, L.P	12–23–93	G–S	200,000	N	I	11–24–93	Indef
ST94–2994	Sabine Pipe Line Co.	Hardy Oil & Gas USA, Inc.	12–23–93	G–S	15,000	N	I	12–03–93	Indef
ST94–2995	Sabine Pipe Line Co.	Enron Gas Marketing, Inc.	12–23–93	G–S	200,000	N	I	12–01–93	Indef
ST94–2996	Sabine Pipe Line Co.	Koch Gas Services Co.	12–23–93	G–S	70,000	N	I	12–01–93	Indef
ST94–2997	Ozark Gas Transmission System.	Arkansas Oklahoma Gas Corp.	12–23–93	B	15,000	N	I	12–01–93	Indef
ST94–2998	Williams Natural Gas Co.	Continental Natural Gas, Inc.	12–23–93	G–S	10,000	N	I	12–01–93	10–01–94
94–2999	Williams Natural Gas Co.	Coastal Gas Marketing Co.	12–23–93	G–S	50,000	N	I	11–02–93	10–01–98.
ST94–3000	Williams Natural Gas Co.	Transok Gas Co	12–23–93	G–S	50,000	N	I	11–02–93	11–01–98.
ST94–3001	Williams Natural Gas Co.	City of Burlingame.	12–23–93	G–S	254	N	F	11–13–93	Indef.
ST94–3002	Williams Natural Gas Co.	City of Cassoday	12–23–93	G–S	120	N	F	11–18–93	Indef.
ST94–3003	Williams Natural Gas Co.	Eckert Gas Co ..	12–23–93	G–S	45	N	I	11–09–93	Indef
ST94–3004	Williams Natural Gas Co.	Flint Hills Gas Co., Inc.	12–23–93	G–S	48	N	I	12–01–93	Indef.
ST94–3005	Williams Natural Gas Co.	Greeley Gas Co	12–23–93	G–S	13,873	N	F	11–01–93	Indef.
ST94–3006	Williams Natural Gas Co.	City of Olivet	12–23–93	G–S	38	N	I	12–01–93	Indef.
ST94–3007	Williams Natural Gas Co.	City of Reading .	12–23–93	G–S	136	N	I	11–18–93	Indef.
ST94–3008	Williams Natural Gas Co.	Western Resources, Inc.	12–23–93	G–S	18,816	N	F	11–01–93	10–01–94.
ST94–3009	Williams Natural Gas Co.	Western Resources, Inc.	12–23–93	G–S	27,071	N	F	11–01–93	10–01–94.
ST94–3010	Williams Natural Gas Co.	Armco, Inc	12–23–93	G–S	15,000	N	I	11–01–93	10–01–94.
ST94–3011	Williams Natural Gas Co.	Ford Motor Co ...	12–23–93	G–S	14,000	N	I	11–01–93	Indef.
ST94–3012	Williams Natural Gas Co.	KN Gas Marketing Co.	12–23–93	G–S	100,000	N	I	11–01–93	10–01–94
ST94–3013	Williams Natural Gas Co.	Missouri Public Service.	12–23–93	G–S	61,250	N	I	11–01–93	10–01–96.
ST94–3014	Williams Natural Gas Co.	Texarkoma Transportation Co.	12–23–93	G–S	25,000	N	I	11–11–93	Indef.
ST94–3015	Williams Natural Gas Co.	Transok Gas Co	12–23–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–3016	Williams Natural Gas Co.	Rangeline Corp .	12–23–93	G–S	8,173	N	F	11–01–93	11–01–94.
ST94–3017	Williams Natural Gas Co.	Colorado Interstate Gas Co.	12–23–93	G–S	4,000	N	I	11–10–93	11–01–94.
ST94–3018	Williams Natural Gas Co.	City Utilities of Springfield.	12–23–93	G–S	12,880	N	F	12–01–93	03–01–94.
ST94–3019	Williams Natural Gas Co.	Rangeline Corp .	12–23–93	G–S	2,575	N	F	12–02–93	04–01–94.

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ST94–3020	Williams Natural Gas Co.	Colorado Interstate Gas Co.	12–23–93	G–S	1,000	N	I	12–15–93	12–01–94.
ST94–3021	Williams Natural Gas Co.	Universal Resources Corp.	12–23–93	G–S	4,955	N	F	12–02–93	04–01–94.
ST94–3022	Williams Natural Gas Co.	Utilicorp Energy Services, Inc.	12–23–93	G–S	50,000	N	I	12–01–93	Indef.
ST94–3023	Williams Natural Gas Co.	Vesta Energy Co	12–23–93	G–S	5,115	N	F	12–18–93	01–01–94.
ST94–3024	Williams Natural Gas Co.	Rangeline Corp .	12–23–93	G–S	1,200	N	F	12–02–93	03–01–94.
ST94–3025	Williston Basin Inter. P/L Co.	Western Gas Resources, Inc.	12–23–93	G–S	276,135	Y	F	11–24–93	08–31–95.
ST94–3026	Questar Pipeline Co.	Grand Valley Gas Co.	12–23–93	G–S	1,000	N	F	12–01–93	12–31–94.
ST94–3027	Questar Pipeline Co.	Pacificorp	12–23–93	G–S	4,802	N	I	12–01–93	11–30–94.
ST94–3028	Questar Pipeline Co.	Snyder Oil Co ...	12–23–93	G–S	2,069	N	I	12–01–93	11–30–95.
ST94–3029	Florida Gas Transmission Co.	Union Oil Co of California.	12–23–93	G–S	75,000	N	I	11–01–93	Indef.
ST94–3030	Florida Gas Transmission Co.	Texas-Ohio Gas, Inc.	12–23–93	G–S	15,000	N	I	12–01–93	Indef.
ST94–3031	Florida Gas Transmission Co.	Oryx USA Inc	12–23–93	G–S	35,000	N	I	11–01–93	Indef.
ST94–3032	Florida Gas Transmission Co.	Oryx Gas Marketing, L.P.	12–23–93	G–S	103,333	N	I	11–01–93	Indef.
ST94–3033	Florida Gas Transmission Co.	NGC Transportation, Inc.	12–23–93	G–S	500,000	N	I	12–02–93	Indef.
ST94–3034	Florida Gas Transmission Co.	Midcon Gas Services Corp.	12–23–93	G–S	800,000	N	I	11–16–93	Indef.
ST94–3035	Florida Gas Transmission Co.	MG Natural Gas Corp.	12–23–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–3036	Florida Gas Transmission Co.	Koch Gas Services Corp.	12–23–93	G–S	200,000	N	I	11–02–93	Indef.
ST94–3037	Florida Gas Transmission Co.	Hadson Gas Systems, Inc.	12–23–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–3038	Florida Gas Transmission Co.	Fina Natural Gas Co.	12–23–93	G–S	175,000	N	I	11–01–93	Indef.
ST94–3039	Northern Natural Gas Co.	GPM Gas Corp .	12–23–93	G–S	12,000	N	I	12–01–93	Indef.
ST94–3040	Koch Gateway Pipeline Co.	Oxy USA Inc	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3041	Koch Gateway Pipeline Co.	Mid Louisiana Marketing Co.	12–23–93	G–S	10,480	N	F	11–01–93	Indef.
ST94–3042	Koch Gateway Pipeline Co.	Westvaco Corp .	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3043	Koch Gateway Pipeline Co.	Vista Chemical Co.	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3044	Koch Gateway Pipeline Co.	Sonat Marketing Co.	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3045	Koch Gateway Pipeline Co.	Vesta Energy Co	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3046	Koch Gateway Pipeline Co.	Polaris Pipeline Corp.	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3047	Koch Gateway Pipeline Co.	Monsanto Co	12–23–93	G–S	31,000	N	I	11–01–93	Indef.
ST94–3048	Koch Gateway Pipeline Co.	Cytec Industries	12–23–93	G–S	7,000	N	F	11–01–93	Indef.
ST94–3049	Koch Gateway Pipeline Co.	Nerco Oil Gas, Inc.	12–23–93	G–S	35,000	N	F	11–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–3050	Algonquin Gas Transmission Co.	Bay State Gas Co.	12–27–93	B	18,490	N	F	12–01–93	Indef.
ST94–3051	Algonquin Gas Transmission Co.	Northern Utilities, Inc.	12–27–93	B	4,211	N	F	12–01–93	Indef.
ST94–3052	Florida Gas Transmission Co.	Mobil Natural Gas, Inc..	12–27–93	G–S	200,000	N	I	12–01–93	Indef.
ST94–3053	Florida Gas Transmission Co.	Sonat Marketing Co.	12–27–93	G–S	10,000	Y	I	11–01–93	Indef.
ST94–3054	Florida Gas Transmission Co.	Union Carbide Corp.	12–27–93	G–S	200	N	I	11–01–93	Indef.
ST94–3055	Florida Gas Transmission Co.	Tenneco Gas Marketing Co.	12–27–93	G–S	200,000	N	I	12–15–93	Indef.
ST94–3056	Williston Basin Inter P/L Co.	NGC Transportation, Inc.	12–27–93	G–S	100,000	Y	I	11–27–93	10–31–95.
ST94–3057	Sabine Pipe Line Co.	Midcoast Energy Resources Inc.	12–27–93	B	25,000	N	I	11–16–93	Indef.
ST94–3058	Tejas Gas Pipeline Co.	Texas Gas Transmission Corp.	12–27–93	C	40,700	N	I	11–19–93	Indef.
ST94–3059	Northern Illinois Gas Co.	Tenneco Gas Marketing.	12–28–93	C	2,000	N	I	12–01–93	Indef.
ST94–3060	Midwestern Gas Transmission Co.	Hadson Gas Systems Inc.	12–28–93	G–S	7,000	N	I	12–01–93	Indef.
ST94–3061	Arkla Energy Resources Co.	Wickford Energy	12–28–93	G–S	5,000	N	I	12–01–93	Indef.
ST94–3062	Arkla Energy Resources Co.	Arkla Energy Marketing Co.	12–28–93	G–S	30,000	N	I	12–01–93	07–31–94.
ST94–3063	Arkla Energy Resources Co.	Pavers, Inc	12–28–93	G–S	500	N	I	11–01–93	Indef.
ST94–3064	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	12–28–93	G–S	21,080	N	F	11–01–93	Indef.
ST94–3065	Trunkline Gas Co.	Murphy Exploration and Production.	12–29–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–3066	Trunkline Gas Co.	Shell Offshore, Inc.	12–29–93	G–S	31,050	N	I	12–01–93	Indef.
ST94–3067	Panhandle Eastern Pipe Line Co.	Amgas, Inc	12–29–93	G–S	4,000	N	I	12–01–93	03–31–94.
ST94–3068	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc.	12–29–93	G–S	7,000	N	F	12–01–93	02–28–94.
ST94–3069	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	12–29–93	G–S	1,376	N	F	12–01–93	03–31–94.
ST94–3070	Panhandle Eastern Pipe Line Co.	MG Natural Gas Corp.	12–29–93	G–S	3,000	N	F	12–01–93	03–31–94.
ST94–3071	Panhandle Eastern Pipe Line Co.	Stolle Corp	12–29–93	G–S	4,020	N	I	12–01–93	10–31–95.
ST94–3072	Panhandle Eastern Pipe Line Co.	Stolle Corp	12–29–93	G–S	2,505	N	F	12–01–93	10–31–95.
ST94–3073	Panhandle Eastern Pipe Line Co.	Tri-Power Fuels, Inc.	12–29–93	G–S	10,000	N	I	12–01–93	09–30–98.
ST94–3074	Panhandle Eastern Pipe Line Co.	Enogex Service Corp.	12–29–93	G–S	100,000	N	I	12–01–93	06–30–98.
ST94–3075	Panhandle Eastern Pipe Line Co.	Energy Transportation Mgmt., Inc.	12–29–93	G–S	1,200	N	I	12–01–93	03–31–98.

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ST94–3076	Panhandle Eastern Pipe Line Co.	Premier Enterprises, Inc.	12–29–93	G–S	8,000	N	I	12–01–93	04–30–98.
ST94–3077	Black Marlin Pipeline Co.	Houston Pipeline Co.	12–29–93	B	15,000	N	I	12–01–93	Indef.
ST94–3078	Northern Natural Gas Co.	Producers Utilities Corp.	12–29–93	G–S	1,000	N	I	11–01–93	Indef.
ST94–3079	Florida Gas Transmission Co.	Yuma Gas Corp	12–29–93	G–S	10,000	N	F	11–26–93	Indef.
ST94–3080	Natural Gas P/L Co. of America.	City of Montezuma.	12–29–93	G–S	1,743	N	F	12–01–93	11–30–96.
ST94–3081	Natural Gas P/L Co. of America.	Nichols-Homeshield.	12–29–93	G–S	2,300	N	F	12–01–93	12–31–93.
ST94–3082	Natural Gas P/L Co. of America.	Arcadian Corp ...	12–29–93	G–S	21,000	N	F	12–01–93	12–31–97
ST94–3083	Natural Gas P/L Co. of America.	City of Wellman	12–29–93	G–S	828	N	F	12–01–93	11–30–96
ST94–3084	Transok, Inc	ANR Pipeline Co, et al.	12–29–93	C	30,000	N	F	12–01–93	12–01–95
ST94–3085	Columbia Gas Transmission Corp.	Libbey Glass, Inc.	12–29–93	G–S	10,000	N	I	12–01–93	Indef.
ST94–3086	Columbia Gas Transmission Corp.	Riley Natural Gas Co.	12–29–93	G–S	20,000	N	I	12–15–93	Indef.
ST94–3087	Columbia Gas Transmission Corp.	Ashland Exploration, Inc.	12–29–93	G–S	20,000	N	I	12–21–93	Indef.
ST94–3088	Mississippi River Trans. Corp.	Brouk Co	12–29–93	G–S	40	N	F	11–01–93	Indef.
ST94–3089	Mississippi River Trans. Corp.	Arkansas Western Gas Co.	12–29–93	G–S	3,060	N	F	11–01–93	Indef.
ST94–3090	Mississippi River Trans. Corp.	City of Bismarck	12–29–93	G–S	909	N	F	11–01–93	Indef.
ST94–3091	Mississippi River Trans. Corp.	City of Des Arc ..	12–29–93	G–S	740	N	F	11–01–93	Indef.
ST94–3092	Mississippi River Trans. Corp.	City of Augusta .	12–29–93	G–S	1,326	N	F	11–01–93	Indef.
ST94–3093	Mississippi River Trans. Corp.	City of Chester ..	12–29–93	G–S	3,372	N	F	11–01–93	Indef.
ST94–3094	Mississippi River Trans. Corp.	Illinois Power Co	12–29–93	G–S	102,000	N	F	11–01–93	Indef.
ST94–3095	Mississippi River Trans. Corp.	General Chemical Corp.	12–29–93	G–S	74	N	F	11–01–93	Indef.
ST94–3096	Mississippi River Trans. Corp.	Arnold Muffler Co.	12–29–93	G–S	20	N	F	11–01–93	Indef.
ST94–3097	Mississippi River Trans. Corp.	Natural Gas Improvement, Ashley Cty.	12–29–93	G–S	663	N	F	11–01–93	Indef.
ST94–3098	Mississippi River Trans. Corp.	City of Potosi	12–29–93	G–S	2,965	N	F	11–01–93	Indef.
ST94–3099	Mississippi River Trans. Corp.	City of Red Bud	12–29–93	G–S	1,485	N	F	11–01–93	Indef.
ST94–3100	Mississippi River Trans. Corp.	Union Pacific Corp.	12–29–93	G–S	25	N	F	11–01–93	Indef.
ST94–3101	Mississippi River Trans. Corp.	Arkansas Louisiana Gas Co.	12–29–93	G–S	5,184	Y	F	11–01–93	11–15–94
ST94–3102	Mississippi River Trans. Corp.	United Cities Gas Co.	12–29–93	G–S	133	N	F	11–01–93	11–15–94.
ST94–3103	Mississippi River Trans. Corp.	City of Dupo	12–29–93	G–S	264	N	F	11–01–93	11–15–94.
ST94–3104	Mississippi River Trans. Corp.	City of Des Arc ..	12–29–93	G–S	129	N	F	11–01–93	11–15–94.
ST94–3105	Mississippi River Trans. Corp.	Brouk Co	12–29–93	G–S	7	N	F	11–01–93	11–15–94.
ST94–3106	Mississippi River Trans. Corp.	City of Bismarck	12–29–93	G–S	159	N	F	11–01–93	11–15–94.
ST94–3107	Mississippi River Trans. Corp.	City of Chester ..	12–29–93	G–S	586	N	F	11–01–93	11–15–94.
ST94–3108	Mississippi River Trans. Corp.	Maxus Gas Marketing Co.	12–29–93	G–S	50,000	N	F	12–01–93	Indef.

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ST94–3109	Mississippi River Trans. Corp.	United Cities Gas Co.	12–29–93	G–S	765	N	F	11–01–93	Indef.
ST94–3110	Mississippi River Trans. Corp.	Sterling Steel Foundry.	12–29–93	G–S	80	N	F	11–01–93	Indef.
ST94–3111	Mississippi River Trans Corp.	Mississippi Lime Co.	12–29–93	G–S	696	N	F	11–01–93	11–15–94.
ST94–3112	Mississippi River Trans. Corp.	Spectrulite Consortium, Inc.	12–29–93	G–S	478	N	F	11–01–93	11–15–94.
ST94–3113	Mississippi River Trans Corp.	Union Gas Co. of Arkansas.	12–29–93	G–S	87	N	F	11–01–93	11–15–94.
ST94–3114	Mississippi River Trans. Corp.	City of Waterloo	12–29–93	G–S	2,893	N	F	11–01–93	Indef.
ST94–3115	Mississippi River Trans. Corp.	Union Gas Co. of Arkansas.	12–29–93	G–S	500	N	F	11–01–93	Indef.
ST94–3116	Mississippi River Trans. Corp..	Arnold Muffler Co.	12–29–93	G–S	4	N	F	11–01–93	11–15–94.
ST94–3117	Mississippi River Trans. Corp.	National Steel Corp.	12–29–93	G–S	3,553	N	F	11–01–93	11–15–94.
ST94–3118	Mississippi River Trans. Corp.	Arkansas Louisiana Gas Co.	12–29–93	G–S	29,810	A	F	11–01–93	Indef.
ST94–3119	Mississippi River Trans. Corp.	Nesco Steel Barrel Co.	12–29–93	G–S	25	N	F	11–01–93	11–15–94.
ST94–3120	Mississippi River Trans. Corp.	Rhoex, Inc	12–29–93	G–S	78	N	F	11–01–93	11–15–94
ST94–3121	Mississippi River Trans. Corp.	Union Pacific Corp.	12–29–93	G–S	4	N	F	11–01–93	11–15–94
ST94–3122	Mississippi River Trans. Corp.	Associated Natural Gas Co.	12–29–93	G–S	532	N	F	11–01–93	11–15–94.
ST94–3123	Mississippi River Trans. Corp.	Union Electric Co.	12–29–93	G–S	20,400	N	F	11–01–93	Indef.
ST94–3124	Mississippi River Trans. Corp.	American Steel Foundries.	12–29–93	G–S	174	N	F	11–01–93	11–15–94.
ST94–3125	Mississippi River Trans. Corp.	City of Hazen	12–29–93	G–S	918	N	F	11–01–93	Indef.
ST94–3126	Mississippi River Trans. Corp.	City of Potosi	12–29–93	G–S	516	N	F	11–01–93	11–15–94.
ST94–3127	Mississippi River Trans. Corp.	Union Electric Co.	12–29–93	G–S	3,549	N	F	11–01–93	11–15–94.
ST94–3128	Mississippi River Trans. Corp.	Sterling Steel Foundry.	12–29–93	G–S	14	N	F	11–01–93	11–15–94.
ST94–3129	Mississippi River Trans. Corp.	Village of Dupo .	12–29–93	G–S	1,523	N	F	11–01–93	Indef.
ST94–3130	Mississippi River Trans. Corp.	Harcros Pigments, Inc.	12–29–93	G–S	165	N	F	11–01–93	11–15–94.
ST94–3131	Mississippi River Trans. Corp.	Jefferson Smurfit Corp.	12–29–93	G–S	13	N	F	11–01–93	11–15–94.
ST94–3132	Mississippi River Trans. Corp.	Laroache Industries, Inc.	12–29–93	G–S	141	N	F	11–01–93	Indef.
ST94–3133	Mississippi River Trans. Corp.	Laclede Gas Co	12–29–93	G–S	655,160	N	F	11–01–93	Indef.
ST94–3134	Mississippi River Trans. Corp.	City of Augusta .	12–29–93	G–S	230	N	F	11–01–93	11–15–94.
ST94–3135	Mississippi River Trans. Corp.	Laclede Gas Co	12–29–93	G–S	2,400	N	F	11–01–93	11–15–94.
ST94–3136	Mississippi River Trans. Corp.	Cerro Copper Products Co.	12–29–93	G–S	522	N	F	11–01–93	11–15–94.
ST94–3137	Mississippi River Trans. Corp.	National Steel Corp.	12–29–93	G–S	154	N	F	12–01–93	Indef.
ST94–3138	Mississippi River Trans. Corp.	City of Waterloo	12–29–93	G–S	504	N	F	11–01–93	11–15–94.
ST94–3139	Mississippi River Trans. Corp.	Big River Zinc Co.	12–29–93	G–S	124	N	F	11–01–93	11–15–94.
ST94–3140	Mississippi River Trans. Corp.	Natural Gas Improvement Dist. No 2.	12–29–93	G–S	115	N	F	11–01–93	11–15–94.
ST94–3141	Mississippi River Trans. Corp.	City of Hazen	12–29–93	G–S	160	N	F	11–01–93	11–15–94.
ST94–3142	Mississippi River Trans. Corp.	City of Red Bud	12–29–93	G–S	258	N	F	11–01–93	11–15–94.
ST94–3143	Mississippi River Trans. Corp.	Laclede Gas Co	12–29–93	G–S	113,955	N	F	11–01–93	Indef.

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ST94–3144	Mississippi River Trans. Corp.	Doe Run Co	12–29–93	G–S	391	N	F	11–01–93	11–15–94.
ST94–3145	Mississippi River Trans. Corp.	Associated Natural Gas Co.	12–29–93	G–ST	1,916	N	F	11–01–93	Indef.
ST94–3146	Mississippi River Trans. Corp.	American Steel Foundries.	12–29–93	G–ST	626	N	F	11–01–93	Indef.
ST94–3147	Mississippi River Trans. Corp.	Cerro Copper Products Co.	12–29–93	G–ST	1,878	N	F	11–01–93	Indef.
ST94–3148	Mississippi River Trans. Corp.	Brouk Co	12–29–93	G–ST	447	N	F	11–01–93	Indef.
ST94–3149	Mississippi River Trans. Corp.	City of Bismark ..	12–29–93	G–ST	569	N	F	11–01–93	Indef.
ST94–3150	Mississippi River Trans. Corp.	Big River Zinc Co.	12–29–93	G–ST	447	N	F	11–01–93	Indef.
ST94–3151	Mississippi River Trans. Corp.	Mississippi Lime Co.	12–29–93	G–ST	2,504	N	F	11–01–93	Indef.
ST94–3152	Mississippi River Trans. Corp.	Laroche Industries, Inc.	12–29–93	G–ST	511	N	F	11–01–93	Indef.
ST94–3153	Mississippi River Trans. Corp.	City of Waterloo	12–29–93	G–ST	1,812	N	F	11–01–93	Indef.
ST94–3154	Mississippi River Trans. Corp.	National Steel Corp.	12–29–93	G–ST	12,792	N	F	11–01–93	Indef.
ST94–3155	Mississippi River Trans. Corp.	Laclede Steel Co	12–29–93	G–ST	8,766	N	F	11–01–93	Indef.
ST94–3156	Mississippi River Trans. Corp.	Natural Gas Improvement Dist. No. 2.	12–29–93	G–ST	415	N	F	11–01–93	Indef.
ST94–3157	Mississippi River Trans. Corp.	Spectrulite Consortium, Inc.	12–29–93	G–ST	1,722	N	F	11–01–93	Indef.
ST94–3158	Mississippi River Trans. Corp.	City of Hazen	12–29–93	G–ST	575	N	F	11–01–93	Indef.
ST94–3159	Mississippi River Trans. Corp.	Illinois Power Co	12–29–93	G–ST	63,867	N	F	11–01–93	Indef.
ST94–3160	Mississippi River Trans. Corp.	Jefferson Smurfit Corp.	12–29–93	G–ST	47	N	F	11–01–93	Indef.
ST94–3161	Mississippi River Trans. Corp.	Arkansas Louisiana Gas Co.	12–29–93	G–ST	18,666	N	F	11–01–93	Indef.
ST94–3162	Mississippi River Trans. Corp.	Harcros Pigments, Inc.	12–29–93	G–ST	595	N	F	11–01–93	Indef.
ST94–3163	Mississippi River Trans. Corp.	General Chemical Corp.	12–29–93	G–ST	266	N	F	11–01–93	Indef.
ST94–3164	Mississippi River Trans. Corp.	Union Electric Co.	12–29–93	G–ST	12,774	N	F	11–01–93	Indef.
ST94–3165	Mississippi River Trans. Corp.	United Cities Gas Co.	12–29–93	G–ST	479	N	F	11–01–93	Indef.
ST94–3166	Mississippi River Trans. Corp.	Sterling Steel Foundry.	12–29–93	G–ST	50	N	F	11–01–93	Indef.
ST94–3167	Mississippi River Trans. Corp.	Union Pacific Corp.	12–29–93	G–ST	15	N	F	11–01–93	Indef.
ST94–3168	Mississippi River Trans. Corp.	Union Gas Co. of Arkansas.	12–29–93	G–ST	313	N	F	11–01–93	Indef.
ST94–3169	Mississippi River Trans. Corp.	Union Rheox, Inc..	12–29–93	G–ST	282	N	F	11–01–93	Indef.
ST94–3170	Mississippi River Trans. Corp.	Doe Run Co	12–29–93	G–ST	1,409	N	F	11–01–93	Indef.
ST94–3171	Mississippi River Trans. Corp.	Laclede Gas Co	12–29–93	G–ST	410,231	N	F	11–01–93	Indef.
ST94–3172	Mississippi River Trans. Corp.	City of Augusta .	12–29–93	G–ST	830	N	F	11–01–93	Indef.
ST94–3173	Mississippi River Trans. Corp.	Arnold Muffler Co.	12–29–93	G–ST	13	N	F	11–01–93	Indef.
ST94–3174	Mississippi River Trans. Corp.	City of Dupo	12–29–93	G–ST	930	N	F	11–01–93	Indef.
ST94–3175	Mississippi River Trans. Corp.	City of Des Arc ..	12–29–93	G–ST	463	N	F	11–01–93	Indef.
ST94–3176	Mississippi River Trans. Corp.	City of Chester ..	12–29–93	G–ST	2,111	N	F	11–01–93	Indef.
ST94–3177	Mississippi River Trans. Corp.	City of Red Bud	12–29–93	G–ST	930	N	F	11–01–93	Indef.
ST94–3178	Mississippi River Trans. Corp.	City of Postosi ...	12–29–93	G–ST	1,857	N	F	11–01–93	Indef.

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ST94–3179	Mississippi River Trans. Corp.	Nesco Steel Barrel Co.	12–29–93	G–ST	91	N	F	11–01–93	Indef.
ST94–3180	Panhandle Eastern Pipe Line Co.	American Cyanamid Co.	12–30–93	G–S	2,500	N	F	12–01–93	02–28–95.
ST94–3181	East Tennessee Natural Gas Co.	Powell-Clinch Utility Dist.	12–30–93	G–S	17	N	F	12–01–93	Indef.
ST94–3182	Canyon Creek Compression Co.	Natural Gas P/L Co. of America.	12–30–93	G	124,000	N	F	12–01–93	11–16–02.
ST94–3183	Stingray Pipeline Co.	Natural Gas P/L Co. of America.	12–30–93	K	388,000	N	F	12–01–93	12–01–94.
ST94–3184	Natural Gas P/L Co. of America.	Wisconsin Natural Gas Co.	12–30–93	B	50,000	N	I	08–01–92	Indef.
ST94–3185	Tennessee Gas Pipeline Co.	Northern Utilities, Inc.	12–30–93	G–S	175	N	F	12–01–93	Indef.
ST94–3186	Tennessee Gas Pipeline Co.	Xenergy, Inc	12–30–93	G–S	1,457	N	F	12–01–93	Indef.
ST94–3187	Tennessee Gas PipelinE Co.	Global Petroleum.	12–30–93	G–S	282	N	F	12–01–93	Indef.
ST94–3188	Tennessee Gas Pipeline Co.	Aquila Energy Marketing Corp.	12–30–93	G–S	655	N	F	12–01–93	Indef.
ST94–3189	Tennessee Gas Pipelne Co.	Long Island Light Co.	12–30–93	G–S	4,598	N	F	12–01–93	Indef.
ST94–3190	Tennessee Gas Pipeline Co.	Roanoke Gas Co.	12–30–93	G–S	9,326	N	F	12–01–93	Indef.
ST94–3191	Tennessee Gas Pipeline Co.	City of Florence Gas Dept.	12–30–93	G–S	10,000	N	I	12–16–93	Indef.
ST94–3192	Tennessee Gas Pipeline Co.	City of Scottsville	12–30–93	G–S	3,133	N	F	12–01–93	Indef.
ST94–3193	Tennessee Gas Pipeline Co.	O & R Energy, Inc.	12–30–93	G–S	9,402	N	F	12–01–93	Indef.
ST94–3194	Williston Basin Inter. P/L Co.	Cenex	12–30–93	G–S	10,188	A	I	11–30–93	12–31–93.
ST94–3195	Williston Basin Inter. P/L Co.	Exxon Corp	12–30–93	G–S	310	A	F	12–01–93	02–28–94.
ST94–3196	Williston Basin Inter. P/L Co.	Exxon Corp	12–30–93	G–S	100	A	F	12–01–93	02–28–94.
ST94–3197	Williston Basin Inter. P/L Co.	Prairielands Energy Marketing, Inc.	12–30–93	G–S	100,000	A	I	12–01–93	11–30–94.
ST94–3198	El Paso Natural Gas Co.	Texaco Gas Marketing Inc.	12–30–93	G–S	51,000	N	I	12–01–93	Indef.
ST94–3199	El Paso Natural Gas Co.	Anthem Energy Co., L.P.	12–30–93	G–S	75,000	N	I	12–05–93	Indef.
ST94–3200	Anr Pipeline Co .	Chesapeake Energy Corp.	12–30–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–3201	Anr Pipeline Co .	Paris-Henry County Public Utility.	12–30–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–3202	Anr Pipeline Co .	West Tennessee Public Utility.	12–30–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–3203	Florida Gas Transmission Co.	Kogas, Inc	12–30–93	G–S	250,000	N	I	12–18–93	Indef.
ST94–3204	Florida Gas Transmission Co.	Associated Natural Gas, Inc.	12–30–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–3205	Florida Gas Transmission Co.	Florida Power Corp.	12–30–93	G–S	8,800	N	F	12–15–93	Indef.
ST94–3206	Florida Gas Transmission Co.	Coastal Gas Marketing Co.	12–30–93	G–S	100,000	N	I	12–24–93	Indef.
ST94–3207	Florida Gas Transmission Co.	Aristech Chemical Corp.	12–30–93	G–S	216	N	F	11–01–93	Indef.
ST94–3208	Great Lakes Gas Trans., L.P.	AIG Trading Corp.	12–30–93	G–S	30,000	N	F	12–11–93	01–31–94.

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ST94–3209	Great Lakes Gas Trans., L.P.	AIG Trading Corp.	12–30–93	G–S	50,000	N	F	12–01–93	11–30–94.
ST94–3210	Great Lakes Gas Trans., L.P.	Union Gas Limited.	12–30–93	G–S	100,000	N	F	12–01–93	02–28–94.
ST94–3211	Delhi Gas Pipeline Corp.	Transwestern P/L Corp, et al.	12–30–93	C	8,000	N	I	12–01–93	Indef.
ST94–3212	Delhi Gas Pipeline Corp.	Texas Eastern Trans. Corp., et al.	12–30–93	C	2,000	N	I	12–07–93	Indef.
ST94–3213	Westar Transmission Co.	El Paso Natural Gas Co.	12–30–93	C	50,000	N	I	10–01–93	Indef.
ST94–3214	Channel Industries Gas Co.	Cargill, Inc	12–30–93	C	100,000	N	I	12–03–93	Indef.
ST94–3215	Channel Industries Gas Co.	Arco Natural Gas Marketing, Inc.	12–30–93	C	25,000	N	I	12–04–93	Indef.
ST94–3216	Viking Gas Transmission Co.	City of Hawley ...	12–30–93	G–S	96	N	F	12–01–93	02–28–94.
ST94–3217	Viking Gas Transmission Co.	Peoples Natural Gas Co.	12–30–93	G–S	1,098	N	F	12–01–93	02–28–94.
ST94–3218	Viking Gas Transmission Co.	Northern States Power Co.	12–30–93	G–S	23,700	Y	I	11–01–93	10–31–08.
ST94–3219	Viking Gas Transmission Co.	Utilicorp. United Inc.	12–30–93	G–S	1,300	N	F	12–01–93	02–28–94.
ST94–3220	Mojave Pipeline Co.	Southern California Edison Co.	12–30–93	G–S	60,000	N	F	11–06–93	11–30–93.
ST94–3221	Northern Natural Gas Co.	Twister Transmission Co.	01–03–94	G–S	25,000	N	I	12–04–93	Indef.
ST94–3222	ANR Pipeline Co	Associated Natural Gas Co.	12–30–93	G–S	3,150	N	I	11–01–93	10–31–08.
ST94–3223	ANR Pipeline Co	Associated Natural Gas Co.	12–30–93	G–S	1,100	N	I	11–01–93	10–31–08.
ST94–3224	ANR Pipeline Co	Illinois Power Co	12–30–93	G–S	5,684	N	I	11–01–93	10–31–96.
ST94–3225	ANR Pipeline Co	Illinois Power Co	12–30–93	G–S	631	N	I	11–01–93	10–31–03.
ST94–3226	ANR Pipeline Co	Iowa Southern Utilities Co.	12–30–93	G–S	65,267	N	I	11–01–93	10–31–03.
ST94–3227	ANR Pipeline Co	Ohio Gas Co	12–30–93	G–S	1,500	N	I	11–01–93	10–31–03.
ST94–3228	ANR Pipeline Co	Madison Gas & Electric Co.	12–30–93	G–S	21,618	N	I	11–01–93	10–31–03.
ST94–3229	ANR Pipeline Co	Madison Gas & Electric Co.	12–30–93	G–S	37,532	N	I	11–01–93	10–31–03.
ST94–3230	ANR Pipeline Co	Utilicorp United Inc.	12–30–93	G–S	23,400	N	I	11–01–93	10–31–03.
ST94–3231	ANR Pipeline Co	Utilicorp United Inc.	12–30–93	G–S	39,600	N	I	11–01–93	10–31–03.
ST94–3232	ANR Pipeline Co	Wisconsin Fuel & Light Co.	12–30–93	G–S	10,800	N	I	11–01–93	10–31–03.
ST94–3233	ANR Pipeline Co	Wisconsin Fuel & Light Co.	12–30–93	G–S	39,600	N	I	11–01–93	10–31–03.
ST94–3234	ANR Pipeline Co	Midwest Gas	12–30–93	G–S	1,854	N	I	11–01–93	10–31–03.
ST94–3235	ANR Pipeline Co	Midwest Gas	12–30–93	G–S	2,264	N	I	11–01–93	10–31–03.
ST94–3236	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	25,239	N	I	11–01–93	10–31–03.
ST94–3237	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	44,779	N	I	11–01–93	10–31–03.
ST94–3238	ANR Pipeline Co	Northern Indiana Fuel Light Co.	12–30–93	G–S	3,000	N	I	11–01–93	10–31–03.
ST94–3239	ANR Pipeline Co	Northern Indiana Fuel Light Co.	12–30–93	G–S	1,143	N	I	11–01–93	10–31–03.
ST94–3240	ANR Pipeline Co	Northern Indiana Fuel Light Co.	12–30–93	G–S	5,518	N	I	11–01–93	10–31–03.
ST94–3241	ANR Pipeline Co	Northern Indiana Fuel Light Co.	12–30–93	G–S	6,743	N	I	11–01–93	10–31–03.
ST94–3242	ANR Pipeline Co	Natural Gas Marketers, Inc.	12–30–93	G–S	3,000	N	I	11–01–93	10–31–06.
ST94–3243	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	177,115	N	I	11–01–93	10–31–03.

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ST94–3244	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	302,454	N	I	11–01–93	10–31–03.
ST94–3245	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	100,000	N	I	11–01–93	10–31–08.
ST94–3246	ANR Pipeline Co	Wisconsin Natural Gas Co.	12–30–93	G–S	79,980	N	I	11–01–93	10–31–03.
ST94–3247	ANR Pipeline Co	Wisconsin Natural Gas Co.	12–30–93	G–S	70,000	N	I	11–01–93	10–31–03.
ST94–3248	ANR Pipeline Co	Wisconsin Natural Gas Co.	12–30–93	G–S	71,900	N	I	11–01–93	10–31–03.
ST94–3249	ANR Pipeline Co	Wisconsin Public Service Corp.	12–30–93	G–S	82,558	N	I	11–01–93	10–31–03.
ST94–3250	ANR Pipeline Co	Wisconsin Public Service Corp.	12–30–93	G–S	82,558	N	I	11–01–93	10–31–03.
ST94–3251	ANR Pipeline Co	Wisconsin Public Service Corp.	12–30–93	G–S	66,472	N	I	11–01–93	10–31–03.
ST94–3252	ANR Pipeline Co	Ohio Valley Gas Corp.	12–30–93	G–S	3,375	N	I	11–01–93	10–31–08.
ST94–3253	ANR Pipeline Co	Ohio Valley Gas Corp.	12–30–93	G–S	4,125	N	I	11–01–93	10–31–08.
ST94–3254	ANR Pipeline Co	Michigan Consolidated Gas Co.	12–30–93	G–S	216,500	N	I	11–01–93	10–31–08.
ST94–3255	ANR Pipeline Co	Iowa Southern Utilities Co.	12–30–93	G–S	19,180	N	I	11–01–93	12–31–08.
ST94–3256	ANR Pipeline Co	Iowa Southern Utilities Co.	12–30–93	G–S	1,000	N	I	11–01–93	10–31–03.
ST94–3257	ANR Pipeline Co	Natural Gas Marketers, Inc.	12–30–93	G–S	2,000	N	I	11–01–93	05–31–06.
ST94–3258	ANR Pipeline Co	Michigan Consolidated Gas Co.	12–30–93	G–S	100,000	N	I	11–01–93	10–31–03.
ST94–3258	ANR Pipeline Co	Michigan Consolidated Gas Co.	12–30–93	G–S	100,000	N	I	11–01–93	10–31–03.
ST94–3259	ANR Pipeline Co	Madison Gas & Electric Co.	12–30–93	G–S	12,000	N	I	11–01–93	10–31–03.
ST94–3260	ANR Pipeline Co	Michigan Gas Co.	12–30–93	G–S	8,014	N	I	11–01–93	04–30–10.
ST94–3261	ANR Pipeline Co	Michigan Gas Co.	12–30–93	G–S	70,982	N	I	11–01–93	10–31–03
ST94–3262	ANR Pipeline Co	Michigan Gas Utilities Co.	12–30–93	G–S	610	N	I	11–01–93	10–31–98.
ST94–3263	ANR Pipeline Co	Utilicorp United Inc.	12–30–93	G–S	5,000	Y	I	11–01–93	10–31–98.
ST94–3264	ANR Pipeline Co	Utilicorp United Inc.	12–30–93	G–S	7,000	N	I	11–01–93	10–31–98.
ST94–3265	ANR Pipeline Co	Michigan Gas Utilities.	12–30–93	G–S	90,000	N	I	11–01–93	03–31–02
ST94–3266	ANR Pipeline Co	United Cities Co	12–30–93	G–S	3,960	N	F	11–01–93	10–31–03.
ST94–3267	ANR Pipeline Co	United Cities Co	12–30–93	G–S	4,840	N	F	11–01–93	10–31–03.
ST94–3268	ANR Pipeline Co	Michigan Consolidated Gas Co.	12–30–93	G–S	100,000	N	F	11–01–93	10–31–03.
ST94–3269	ANR Pipeline Co	Gen Corp. Polmer Products.	12–30–93	G–S	333	N	F	11–01–93	10–31–94.
ST94–3270	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	1,310	N	F	11–01–93	10–31–99.
ST94–3271	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	150	N	F	11–01–93	10–31–94.
ST94–3272	ANR Pipeline Co	Union Gas Ltd ...	12–30–93	G–S	15,266	N	F	11–01–93	10–31–94.
ST94–3273	ANR Pipeline Co	Kamine Besicorp (Syracuse).	12–30–93	G–S	16,335	N	F	11–01–93	12–31–93.
ST94–3274	ANR Pipeline Co	Philadelphia Gas Works.	12–30–93	G–S	9,551	N	F	11–07–93	03–31–13.
ST94–3275	ANR Pipeline Co	Trunkline Gas Co.	12–30–93	G	2,000	N	F	11–01–93	06–21–94.
ST94–3276	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	15,923	N	F	11–01–93	10–31–03.
ST94–3277	ANR Pipeline Co	Appleton Papers Inc.	12–30–93	G–S	3,000	N	F	11–01–93	10–31–98.

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ST94–3278	ANR Pipeline Co	City of Hamilton	12–30–93	G–S	1,200	N	F	11–01–93	10–31–03.
ST94–3279	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	18,411	Y	F	11–01–93	10–31–03.
ST94–3280	ANR Pipeline Co	Toyota Motor Manufacutring, Inc.	12–30–93	G–S	1,476	N	F	11–01–93	10–31–94.
ST94–3281	ANR Pipeline Co	Ohio Valley Gas Corp.	12–30–93	G–S	4,950	N	F	11–01–93	10–31–08.
ST94–3282	ANR Pipeline Co	Ohio Valley Gas Corp.	12–30–93	G–S	6,050	N	F	11–01–93	10–31–08.
ST94–3283	ANR Pipeline Co	Staten Island Cogeneration.	12–30–93	G–S	11,750	N	F	11–01–93	10–31–13.
ST94–3284	ANR Pipeline Co	Metropolitan Utilities District.	12–30–93	G–S	12,614	Y	F	11–01–93	03–31–95.
ST94–3285	ANR Pipeline Co	Iowa Illinois Gas & Electric.	12–30–93	G–S	2,610	Y	F	11–01–93	03–31–95.
ST94–3286	ANR Pipeline Co	Interstate Power	12–30–93	G–S	7,029	Y	F	11–01–93	03–31–95.
ST94–3287	ANR Pipeline Co	Peoples Natural Gas.	12–30–93	G–S	18,156	Y	F	11–01–93	03–31–95.
ST94–3288	ANR Pipeline Co	NI-Gas	12–30–93	G–S	14,830	Y	F	11–01–93	03–31–95.
ST94–3289	ANR Pipeline Co	Midwest Gas	12–30–93	G–S	13,811	Y	F	11–01–93	03–31–95.
ST94–3290	ANR Pipeline Co	Consumers Power Co.	12–30–93	B	40,000	N	F	11–01–93	10–31–99.
ST94–3291	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	3,015	N	F	11–01–93	10–31–95.
ST94–3292	ANR Pipeline Co	Scott Paper Co .	12–30–93	G–S	6,500	N	F	11–01–93	10–31–04.
ST94–3293	ANR Pipeline Co	Miller Brewing Co.	12–30–93	G–S	1,700	N	F	11–01–93	09–30–98.
ST94–3294	ANR Pipeline Co	Citizens Gas Fuel Co.	12–30–93	B	25,000	N	F	11–01–93	10–31–98.
ST94–3295	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	16,000	N	F	11–01–93	10–31–95.
ST94–3296	ANR Pipeline Co	Kazex Energy Management.	12–30–93	G–S	2,119	N	F	11–01–93	03–31–95.
ST94–3297	ANR Pipeline Co	Oryx Gas Ltd	12–30–93	G–S	5,000	N	F	11–01–93	10–31–94.
ST94–3298	ANR Pipeline Co	Plastics Engineering.	12–30–93	G–S	500	N	F	11–01–93	10–31–96.
ST94–3299	ANR Pipeline Co	CMS Gas Marketing.	12–30–93	G–S	500	N	F	11–01–93	03–31–94.
ST94–3300	ANR Pipeline Co	Banta Co	12–30–93	G–S	225	N	F	11–01–93	03–31–94.
ST94–3301	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	16,500	N	F	11–01–93	10–31–95.
ST94–3302	ANR Pipeline Co	Shell Gas Trading.	12–30–93	G–S	55,000	N	F	11–01–93	10–31–05.
ST94–3303	ANR Pipeline Co	City Gas Co	12–30–93	G–S	400	N	F	11–01–93	10–31–03.
ST94–3304	ANR Pipeline Co	Tinken Co	12–30–93	G–S	2,500	N	F	11–01–93	10–31–94.
ST94–3305	ANR Pipeline Co	Knauf Fiber Glass.	12–30–93	G–S	250	N	F	11–01–93	11–31–94.
ST94–3306	ANR Pipeline Co	Semco Energy Co. Dunn Seco.	12–30–93	G–S	3,500	N	F	11–01–93	09–30–94.
ST94–3307	ANR Pipeline Co	Kerr-McGee Corp.	12–30–93	G–S	3,700	N	F	11–01–93	10–31–94.
ST94–3308	ANR Pipeline Co	New England Power Co.	12–30–93	G–S	16,000	N	F	11–01–93	12–31–14.
ST94–3309	ANR Pipeline Co	Interstate Gas Marketing.	12–30–93	G–S	200	N	F	11–01–93	12–31–99.
ST94–3310	ANR Pipeline Co	Detroit Steel Products., Inc.	12–30–93	G–S	700	N	F	11–01–93	11–30–94.
ST94–3311	ANR Pipeline Co	Kamine Besicorp (Allegany L.P.).	12–30–93	G–S	17,800	N	F	11–01–93	10–31–08.
ST94–3312	ANR Pipeline Co	Altresco Lynn Inc.	12–30–93	G–S	41,500	N	F	11–01–93	12–31–14.
ST94–3313	ANR Pipeline Co	Anderman/Smith Operating.	12–30–93	G–S	8,000	N	F	11–01–93	07–31–02.
ST94–3314	ANR Pipeline Co	ANR Production Co.	12–30–93	G–S	7,500	N	F	11–01–93	05–31–94.
ST94–3315	ANR Pipeline Co	Blodgett Memorial.	12–30–93	G–S	615	N	F	11–01–93	06–30–95.
ST94–3316	ANR Pipeline Co	Grand Rapids Public.	12–30–93	G–S	750	N	F	11–01–93	03–31–94.

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ST94–3317	ANR Pipeline Co	Mid Louisiana Marketing Co.	12–30–93	G–S	12,000	N	F	11–01–93	12–31–98.
ST94–3318	ANR Pipeline Co	Southern Natural Gas Co.	12–30–93	G	1,400	N	F	11–01–93	03–12–97.
ST94–3319	ANR Pipeline Co	Tennessee Gas Pipeline Co.	12–30–93	G	18,750	N	F	11–01–93	10–31–00.
ST94–3320	ANR Pipeline Co	Allerton Gas Co	12–30–93	G–S	750	N	F	11–01–93	11–01–03.
ST94–3321	ANR Pipeline Co	Northern Natural Gas Co.	12–30–93	G–S	14,800	N	F	11–01–93	03–31–94.
ST94–3322	ANR Pipeline Co	SEMCO Energy Services.	12–30–93	G–S	3,200	N	F	11–01–93	02–28–94.
ST94–3323	ANR Pipeline Co	Dayton Power & Light Co.	12–30–93	G–S	24,200	N	F	11–01–93	03–31–94.
ST94–3324	ANR Pipeline Co	Madison Gas & Electric Co.	12–30–93	G–S	N/A	N	I	11–01–93	10–31–96.
ST94–3325	ANR Pipeline Co	Scot Forge Co ...	12–30–93	G–S	N/A	N	I	11–01–93	12–31–96.
ST94–3326	ANR Pipeline Co	International Specialist Products.	12–30–93	G–S	N/A	N	I	11–01–93	12–31–93.
ST94–3327	ANR Pipeline Co	Triumph Gas Marketing.	12–30–93	G–S	N/A	N	I	11–01–93	10–31–94.
ST94–3328	ANR Pipeline Co	Associated Natural Gas Co.	12–30–93	G–S	1,500	N	I	11–01–93	10–31–98.
ST94–3329	ANR Pipeline Co	Illinois Power Co	12–30–93	G–S	631	N	I	11–01–93	10–31–03.
ST94–3330	ANR Pipeline Co	Iowa Southern Utilities Co.	12–30–93	G–S	5,000	N	I	11–01–93	10–31–03.
ST94–3331	ANR Pipeline Co	Ohio Gas Co	12–30–93	G–S	1,500	N	I	11–01–93	10–31–01.
ST94–3332	ANR Pipeline Co	Madison Gas & Electric Co.	12–30–93	G–S	5,915	N	I	11–01–93	10–31–08.
ST94–3333	ANR Pipeline Co	Michigan Gas Co.	12–30–93	G–S	2,500	N	I	11–01–93	10–31–03.
ST94–3334	ANR Pipeline Co	Utilicorp United Inc.	12–30–93	G–S	8,400	N	I	11–01–93	10–31–03.
ST94–3335	ANR Pipeline Co	Wisconsin Fuel & Light Co.	12–30–93	G–S	7,200	N	I	11–01–93	10–31–08.
ST94–3336	ANR Pipeline Co	Midwest Gas	12–30–93	G–S	500	N	I	11–01–93	10–31–08.
ST94–3337	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	5,000	N	I	11–01–93	10–31–03.
ST94–3338	ANR Pipeline Co	Northern Indiana Fuel & Light Co.	12–30–93	G–S	700	N	I	11–01–93	10–31–03.
ST94–3339	ANR Pipeline Co	Northern Indiana Public Service Co.	12–30–93	G–S	1,226	N	I	11–01–93	10–31–03.
ST94–3340	ANR Pipeline Co	Ohio Valley Gas Corp.	12–30–93	G–S	1,500	N	I	11–01–93	10–31–08.
ST94–3341	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	67,670	N	I	11–01–93	10–31–03.
ST94–3342	ANR Pipeline Co	Wisconsin Natural Gas Co.	12–30–93	G–S	25,800	N	I	11–01–93	10–31–96.
ST94–3343	ANR Pipeline Co	Wisconsin Public Service Corp.	12–30–93	G–S	26,631	N	I	11–01–93	10–31–03.
ST94–3344	ANR Pipeline Co	United Cities Gas Co.	12–30–93	G–S	880	N	I	11–01–93	10–31–03.
ST94–3345	ANR Pipeline Co	Ohio Valley Gas Corp.	12–30–93	G–S	1,500	N	I	11–01–93	10–31–08.
ST94–3346	ANR Pipeline Co	City of Albany	12–30–93	G–S	1,550	N	I	11–01–93	10–31–03.
ST94–3347	ANR Pipeline Co	City of Aledo	12–30–93	G–S	3,550	A	I	11–01–93	10–31–03.
ST94–3348	ANR Pipeline Co	City of Allerton ..	12–30–93	G–S	1,340	N	I	11–01–93	10–31–03.
ST94–3349	ANR Pipeline Co	City of Alta Vista	12–30–93	G–S	602	A	I	11–01–93	10–31–03.
ST94–3350	ANR Pipeline Co	City of Bethany .	12–30–93	G–S	2,600	N	I	11–01–93	10–31–03.
ST94–3351	ANR Pipeline Co	City of Bloomfield.	12–30–93	G–S	2,134	A	I	11–01–93	10–31–03.
ST94–3352	ANR Pipeline Co	City of Chrisney	12–30–93	G–S	410	N	I	11–01–93	10–31–03.
ST94–3353	ANR Pipeline Co	City Gas Co	12–30–93	G–S	6,138	N	I	11–01–93	10–31–03.
ST94–3354	ANR Pipeline Co	Community Natural Gas Co., Inc.	12–30–93	G–S	3,000	N	I	11–01–93	10–31–03.
ST94–3355	ANR Pipeline Co	Fountaintown Gas Co., Inc.	12–30–93	G–S	5,504	A	I	11–01–93	10–31–03.
ST94–3356	ANR Pipeline Co	City of Grant	12–30–93	G–S	678	A	I	11–01–93	10–31–03.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–3357	ANR Pipeline Co	City of Havensville.	12–30–93	G–S	100	A	I	11–01–93	10–31–03.
ST94–3358	ANR Pipeline Co	Indiana Natural Gas Corp.	12–30–93	G–S	500	A	I	11–01–93	10–31–03.
ST94–3359	ANR Pipeline Co	Lamoni Municipal Utilities.	12–30–93	G–S	1,831	N	I	11–01–93	10–31–03.
ST94–3360	ANR Pipeline Co	Lincoln Natural Gas.	12–30–93	G–S	2,200	N	I	12–01–93	10–31–03.
ST94–3361	ANR Pipeline Co	City of Lineville ..	12–30–93	G–S	226	N	I	11–01–93	10–31–03.
ST94–3362	ANR Pipeline Co	City of Milan	12–30–93	G–S	2,920	N	I	11–01–93	10–31–03.
ST94–3363	ANR Pipeline Co	City of Morning Sun.	12–30–93	G–S	629	A	I	11–01–93	10–31–03.
ST94–3364	ANR Pipeline Co	City of Moulton ..	12–30–93	G–S	492	A	I	11–01–93	10–31–03.
ST94–3365	ANR Pipeline Co	City of New Boston.	12–30–93	G–S	439	A	I	11–01–93	10–31–03.
ST94–3366	ANR Pipeline Co	Paris-Henry County Public Utility.	12–30–93	G–S	6,338	N	I	11–01–93	10–31–03.
ST94–3367	ANR Pipeline Co	City of Princeton	12–30–93	G–S	1,150	N	I	11–01–93	10–31–03.
ST94–3368	ANR Pipeline Co	St. Joseph Light & Power.	12–30–93	G–S	7,600	N	I	11–01–93	10–31–03.
ST94–3369	ANR Pipeline Co	St. Joseph Light & Power.	12–30–93	G–S	6,138	N	I	11–01–93	10–31–03.
ST94–3370	ANR Pipeline Co	City of Stanberry	12–30–93	G–S	1,164	A	I	11–01–93	10–31–03.
ST94–3371	ANR Pipeline Co	City of Unionville	12–30–93	G–S	1,800	N	I	11–01–93	10–31–03.
ST94–3372	ANR Pipeline Co	City of Wayland .	12–30–93	G–S	900	A	I	11–01–93	10–31–03.
ST94–3373	ANR Pipeline Co	West Tennessee Pub. Utility District.	12–30–93	G–S	6,138	N	I	11–01–93	10–31–03.
ST94–3374	ANR Pipeline Co	City of Westmore.	12–30–93	G–S	296	A	I	11–01–93	10–31–03.
ST94–3375	ANR Pipeline Co	City of Winfield ..	12–30–93	G–S	800	Y	I	11–01–93	10–31–03.
ST94–3376	ANR Pipeline Co	Wisconsin Southern Gas Co.	12–30–93	G–S	4,000	Y	I	11–01–93	10–31–03.

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 94–6055 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2376–001 Virginia]

Appalachian Power Co.; Availability of Environmental Assessment[1]

March 10, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Reusens Hydroelectric Project located on the James River in Amherst and Bedford Counties, Virginia, near the city of Lynchburg, and has prepared a Final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental effects of the project and concludes that approval of the project, with appropriate environmental protection measures, would not be a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6056 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[1] This notice supersedes the notice issued on March 2, 1994.

[Docket No. MG91–4–002]

East Tennessee Natural Gas Co.; Filing

March 10, 1994.

Take notice that on March 4, 1994, East Tennessee Natural Gas Company (East Tennessee) filed a revised Code of Conduct pursuant to Order No. 497–E.[1]

East Tennessee states that the purpose of the filing is to reflect (1) certain changes mandated in Order No. 497–E, (2) certain organizational changes at Tenneco Gas, and (3) certain changes necessitated by the restructuring of services under Order No. 636.

East Tennessee states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests 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

[1] Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993).

intervene or protest should be filed on or before March 25, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6028 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–30–000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

March 10, 1994.

Take notice that on March 3, 1994, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following revised tariff sheets, proposed to become effective as of April 4, 1994:

Fortieth Revised Sheet No. 1
Third Revised Sheet No. 47
Seventh Revised Sheet No. 69
Second Revised Sheet No. 859
Third Revised Sheet No. 898
First Revised Sheet No. 1001

Great Lakes states that the above-described tariff sheets were filed to reflect the cancellation of Rate Schedules T–4, T–5, T–17, T–28 and T–31, pertaining to firm transportation service for TransCanada PipeLines Limited, Northern Natural Gas Company, Peoples Natural Gas Company, Midland Cogeneration Venture Limited Partnership and Southeastern Michigan Gas Company, respectively, pursuant to the Commission's authorization granted in Docket No. RS92–63–000 on July 2, 1993 to abandon these services under section 7(b). The conversion of these services from case-specific section 7 to part 284 service agreements, pursuant to the implementation of Order 636, was complete and thus Great Lakes made the present filing.

Great Lakes states that the comparative revenue statement as required under § 154.63(b)(2) of the Commission's Regulations was not included herewith as the capacity which became available due to the abandonment of transportation services attributable to TransCanada, Northern, Peoples, Midland and Southeastern is to be utilized by the same customers due to their conversion to firm transportation service agreements reflected in a concurrent filing of Great Lakes. Therefore, no material change in revenues received by Great Lakes occurred as a result of the revised transportation levels.

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 214 or 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 17, 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 Commission's public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6029 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG90–4–004]

Midwestern Gas Transmission Co.; Filing

March 10, 1994.

Take notice that on March 4, 1994, Midwestern Gas Transmission Company (Midwestern) filed a revised Code of Conduct pursuant to Order No. 497–E.[1]

Midwestern states that the purpose of the filing is to reflect (1) certain changes mandated in Order No. 497–E, (2) certain organizational changes at Tenneco Gas, and (3) certain changes necessitated by the restructuring of services under Order No. 636.

Midwestern states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 March 25, 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.

[1] Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993).

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6030 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–173–000]

Southern Natural Gas Co.; Refund Report

March 10, 1994.

Take notice that on March 7, 1994, Southern Natural Gas Company (Southern) tendered for filing a refund report pursuant to section 35 of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1.

Pursuant to the letter order issued in Docket No. RP94–124–000 by the Office of Pipeline and Producer Regulation on February 23, 1994, Southern resubmits herewith for filing a summary refund report and Original Tariff Sheet No. 34A on the termination of its purchased gas adjustment provision.

By this initial filing, Southern proposes to refund the credit balance in its Account 191 attributable to gas purchases made prior to November 1, 1993, in connection with the provision of its former bundled merchant service. Southern is proposing to refund to its customers a total balance of $1,114,434, comprised of a credit balance of $1,456,431 in the commodity subaccount and a debt balance in the demand subaccount of $341,997 which arose during the deferral period of December 1, 1992 through October 31, 1993.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Section 385.214 and 385.211). All such petitions or protests should be filed on or before March 17, 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 petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6031 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–19–006]

Tennessee Gas Pipeline Co.; Filing

March 10, 1994.

Take notice that on March 4, 1994, Tennessee Gas Pipeline Company (Tennessee) filed a revised Code of Conduct pursuant to Order No. 497–E.[1]

Tennessee states that the purpose of the filing is to reflect (1) certain changes mandated in Order No. 497–E, (2) certain organizational changes at Tenneco Gas, and (3) certain changes necessitated by the restructuring of services under Order No. 636.

Tennessee states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 March 25, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6032 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–119–001]

Texas Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

March 10, 1994

Take notice that on March 7, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet:

Fourth Revised Sheet No. 12
First Revised Sheet No. 229

Texas Gas states that the revised tariff sheets are being filed to comply with the Commission's Order issued February 25, 1994, in Docket No. RP94–119, which requires Texas Gas to reflect a change in its IT rates applicable to 10 percent of its GSR costs.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers and interested state commissions.

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 and Regulations. All such protests should be filed on or before March 17, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6033 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

OFFICE OF ENERGY RESEARCH

Call for Expressions of Interest for the On-Site Utilization of Major Assets Developed for the Superconducting Super Collider

AGENCY: U.S. Department of Energy.

ACTION: Call for expressions of interest.

SUMMARY: The U.S. Department of Energy (DOE) and the Texas National Research Laboratory Commission (TNRLC) request from interested parties the submission of Expressions of Interest for the utilization of major assets and facilities developed by the DOE and TNRLC as part of the Superconducting Super Collider (SSC) project. This project was recently terminated by the U.S. Congress.

The SSC was to have been an accelerator complex and laboratory for basic research, providing access to particle collision energies 20 times greater than available at existing facilities. The project was under construction in Ellis County, Texas, about 30 miles south of Dallas.

Existing facilities and equipment include: (1) The N15 site which houses extensive cryogenic facilities and superconducting magnet tooling and test equipment in the Magnet Development Laboratory, the Magnet Test Laboratory, and the Accelerator System String Test; (2) the Central Facility, a 550,000 sq. ft. building including 200,000 sq. ft. of office/training space; 160,000 sq. ft. of shop/lab space, serviced with low conductivity water and compressed air systems, and some crane coverage; a well-equipped machine shop; a 550 watt liquid helium refrigerator (in partially assembled condition); and warehouse space; (3) buildings for the linear accelerator (linac) as well as its negative hydrogen ion source and 2.5–MeV radiofrequency quadrupole (the higher energy sections are not complete); (4) nearly 15 miles of unfinished tunnel, 14 feet in diameter, at a depth of typically 150 feet, connected to the surface by several vertical shafts; and (5) an integrated network of distributed workstations.

DATES AND ADDRESSES: One easily reproducible master and five copies of each Expression of Interest (on 8½ by 11 inch paper) should be received by Dr. Robert E. Diebold, GTN, ER–912, U.S. Department of Energy, Washington, DC 20585, no later than 5 p.m. local time, April 15, 1994. For hand delivery, the address is 19901 Germantown Road, Germantown, MD 20874.

A meeting of interested parties will be held at 9 a.m. on March 22, 1994, in the auditorium of the Central Facility (just north of Waxahachie). Following brief presentations of the facilities, questions will be taken and tours of the facilities will be provided. Please contact Dr. Haas, not later than March 18, 1994, for a reservation to attend this meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Gregory Haas, DOE SSC Project Office, 2550 Beckleymeade, Mail Stop 1020, Dallas, TX 75237. Telephone (214) 708–2414.

SUPPLEMENTARY INFORMATION: This call for Expressions of Interest (EOIs) is an important part of the process of determining the best way to maximize the value of the investment made in the project and minimize the loss to the United States, Texas, and individuals. For this step in the process, only the on-site use of major systems and facilities will be considered.

The EOIs should be concise, covering the following topics:

I. Summary

A one-page summary suitable for incorporation into a booklet of summaries. It should have sufficient information to stand alone and should

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[1] Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993).

include a descriptive title, a point of contact, a list of the authors/institutions expressing interest, and brief summaries of the following topics.

II. Motivation

Benefits to be expected from the suggested use of the facilities, a comparison with the capabilities of other similar facilities, and reasons why the suggested facility might be considered the best utilization of the assets.

III. Description

A brief, but complete description of the facility or use being suggested. It should explicitly describe the existing facilities to be used (as-is and/or modified) and identify any additional facilities that would be required.

IV. Cost and Schedule

Tables and a brief discussion justifying the estimated costs and schedules required to bring the suggested facility into operation. Give costs in present-day (FY 1994) dollars and include an amount for contingency, as appropriate.

V. Annual Costs

List and discuss the expected annual costs required for operation of the suggested facility.

VI. Funding/Business Plan

Present a plan to meet the costs identified in IV and V above. This plan should identify the specific funding sources expected and the amount expected from each source. Note that there are no federal funds appropriated for the construction or operation of any facility at the SSC site.

While limited technical consultations may be available from SSC Laboratory staff to assist in the development of the Expressions of Interest, the Department of Energy will not reimburse any costs associated with the preparation or submission of an Expression of Interest in response to this call.

The EOIs will be evaluated by expert teams assembled by the DOE, other federal agencies as appropriate, and TNRLC. The EOIs will be evaluated on: The merit of the suggested use; match of the assets to the purpose advocated; and credibility of viable funding and other required resources.

Once the EOIs are evaluated and the range of potentially viable best uses of the assets are identified, DOE expects to issue a notice of availability for grant applications, to those parties having submitted an EOI by the above deadline, for project definition studies with detailed analysis of the benefits and costs for the use of specific facilities.

This call for Expressions of Interest is not a commitment by the Government in any way to make available such assets or facilities.

Issued in Washington, DC, on March 11, 1994.

Martha A. Krebs,

Director, Office of Energy Research.

[FR Doc. 94–6215 Filed 3–15–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180926; FRL 4765–4]

Receipt of Application for Emergency Exemption to use Avermectin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Idaho, Oregon and Washington Departments of Agriculture (hereafter referred to as the "Applicants") for use of the pesticide Avermectin (EPA Reg. No. 618–98) to control Tetranychus urticae (Two-spotted spider mite) on up to 42,000 acres of Hops. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 31, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180926," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Lawrence Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of the miticide/insecticide, avermectin, available as Agrimek 0.15EC (EPA Reg. No. 618–98) from Merck and Company, Incorporated, to control the Two-spotted spider mite (TSSM), in Idaho, Oregon and Washington. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicants, the TSSM is a serious pest problem in hop yards. The TSSM's rapid reproduction cycle results in a significant expansion of their population size. With such a high fecundity rate stimulated by extended hot, dry weather conditions, it takes only a short period of time for mites to reach injurious densities resulting in reduced plant vigor, yields and the discoloration of hop cones which decreases product quality. This reduction in quality can result in rejection by brewers, the major buyers of hops, and severely impacts hop growers economically. The Applicants claim that none of the registered pesticides are effective against the TSSM and that, without an effective control, growers will incur significant economic losses during the 1994 growing season.

Under the proposed exemption a maximum of 10,500 gallons of formulated product could be used if conditions conducive to mite propagation occur during the growing season. A 14–day pre-harvest interval will be observed. In addition, livestock would not be grazed in treated hop yards. Applications would be made between April 15 and September 20, 1994.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section

18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of avermectin on hops have been requested and granted for the past 3 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Idaho, Oregon and Washington Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 4, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–5998 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4849–6]

Clean Water Act (CWA) 304(1): Availability of List Submissions and Proposed Approval Decisions

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of lists submitted to USEPA pursuant to section 304(l)(1)(C) of the Clean Water Act ("CWA") as well as USEPA's proposed approval decisions, and requests for public comment.

DATES: Comments must be submitted to USEPA on or before April 15, 1994.

ADDRESSES: Copies of these items can be obtained by writing or calling: Mr. Howard Pham, USEPA—Region 5, 304(l) Coordinator, U.S. Environmental Protection Agency—Region 5, Water Division (Mail Code WQP–16J), 77 West Jackson Blvd., Chicago, Illinois 60604–3507, telephone: (312) 353–2310. Comments on these items should be sent to Howard Pham, USEPA—Region 5 at the address given above.

FOR FURTHER INFORMATION CONTACT: Howard Pham at the address and telephone number given above.

SUPPLEMENTARY INFORMATION: Section 304(l) of the CWA, 33 U.S.C. 1314(l), required each state, within two years after February 4, 1987, to submit to the U.S. Environmental Protection Agency, three lists of waters, including a list of those waters that the state does not expect to achieve applicable water quality standards, after application of technology-based controls, due to discharges of toxic pollutants from point sources (the "B List" or "Short List"). 33 U.S.C. 1314(l)(1)(B). The second, or "Mini" list consists of waters that are not meeting the new water quality standards developed under section 303(c)(2)(B) for toxic pollutants because of pollution from point and nonpoint sources. 33 U.S.C. 1314(l)(1)(A)(i). The third, or "Long" list includes all waters on the other two lists, plus any waters which, after the implementation of technology-based controls, are not expected to meet the water quality goals of the Act. 33 U.S.C. 1314(l)(1)(A)(ii).

For each water segment identified in these lists, the state was required, by February 4, 1989, to submit a "C List" specifying point sources discharging toxic pollutants believed to be preventing or impairing such water quality. 33 U.S.C. 1314(l)(1)(C); see *Natural Resources Defense Council* v. *USEPA*, 915 F.2d 1313, 1323–24 (9th Cir. 1990); 57 FR 33040, 33050 (July 24, 1992) (amending USEPA's section 304(l) regulations to require point sources to be identified for each listed water segment). For each point source identified on the state's C list as discharging toxic pollutants into a water segment on the state's B list, the state was further required to submit to USEPA an individual control strategy that the state determined would serve to reduce point source discharges of toxic pollutants to the receiving water to a degree sufficient to attain water quality standards in that water within three years after the date of the establishment of the ICS. 33 U.S.C. 1314(l)(1)(D).

USEPA initially interpreted the statute to require states to identify on the C list only those facilities that discharge toxic pollutants believed to be impairing waters listed on the B list. In *Natural Resources Defense Council* v. *USEPA*, the Ninth Circuit Court of Appeals remanded that portion of the regulation and directed USEPA to amend the regulation to require the states to identify all point sources discharging any toxic pollutant that is believed to be preventing or impairing water quality of any stream segment listed on any of the three lists of waters, and to indicate the amount of the toxic pollutant discharges by each source. USEPA amended 40 CFR 130.10(d)(3) accordingly. See 57 FR 33040 (July 24, 1992).

Consistent with USEPA's amended regulation, the States of Indiana, Michigan, Minnesota and Ohio have submitted to USEPA, for approval, their listing decisions under section 304(l)(1)(C). The following table indicates the decisions made by three Region 5 states, Michigan, Minnesota and Ohio. Indiana indicated that it does not have any additional point sources to add to this list. USEPA today proposes to approve Indiana's, Michigan's, Minnesota's, and Ohio's lists. USEPA solicits public comment on the approval decisions and on the state lists.

Dated: March 3, 1994.

Valdas V. Adamkus,

Regional Administrator.

U.S. EPA Region 5 Section 304(l) Additional Listings/Revisions

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
MI	River Rouge, Middle Branch	MI0024287	Oakland C. Walled Lk./ Novi WWTP	PCBs.
MI	Grand River	MI0023027	Grandville WWTP	Hg.
MI	(Same as above)	MI0023400	Lansing WWTP	Hg.
MI	Kalamazoo River	MI0023299	Kalamazoo WWTP	PCB.
MI	(Same as above)	MI0000779	Allied Paper Company	PCB.
MI	Saginaw River	MI0001121	GM-Engine Division-Bay City	PCB.
MN	Mississippi River	MN0000256	Ashland Oil Incorporated	PCB, Hg.
MN	(Same as above)	MN0001449	3M-Chemolite	Hg.
MN	Minnesota River	MN0030007	MWCC/MC-Senenca (Dewatering)	Hg.
MN	Minnesota River	MN0029963	MWCC/MC Chaska	PCB.
MN	St. Croix River	MN0029998	MWCC/MC Stillwater	Hg.

U.S. EPA REGION 5 SECTION 304(l) ADDITIONAL LISTINGS/REVISIONS—Continued

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
MN	Mississippi	MN0029955	MWCC/MC-Hastings	Hg.
MN	Shell Rock River	MN0041092	Albert Lea	Cu.
MN	Kawaishiwi River	MN0046981	Cyprus Northshore Mining Babbitt	Cu, Zn.
MN	69–0003 Birch Lake	MN0002208	LTV Steel/Erie Corp	Cu, Zn.
OH	Mahoning River (Yellow Cr. to Mill Cr.)	OH0011207	Copperweld Steel	Cd, CN, Cu, Pb, Zn.
OH	(Same as above)	OH0024325	Campbell WWTP	Cd, Cu, Cr, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0028221	Youngstown WWTP	Cd, Cu, Cr, Pb, Ni, Zn, Hg, Phenolics.
OH	Mill Cr	OH0037249	Mahoning County-Boardman WWTP	CN, Cd, Cr, Cu, Pb, Zn, Hg.
OH	Mahoning River (Mill Cr. to Meander Cr.)	OH0011533	Ohio Edison-Niles Plant	Cu.
OH	(Same as above)	OH0025364	Girard WWTP	Cd, Cr, Cu, Pb, Zn, Hg.
OH	(Same as above)	OH0026743	Niles WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Endosulfan sulfate.
OH	Meander Cr	OH0045721	Mahoning County-Meander Cr	Cd, Cr, Cu, Pb, Tl, Ni, Zn, Hg.
OH	Mosquito Cr. (Mosquito Cr. Reservoir to Mahoning River).	OH0043401	Trumbull County Mosquito Cr. WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Mahoning River (Meander Cr. to Duck Cr.).	OH0011274	LTV Steel—Warren	Cr, Phenolics, Bis(2-ethylhexyl)phthalate.
OH	(Same as above)	OH0027987	City of Warren	Cr, Cu, Pb, Ni, Zn, Hg.
OH	Yankee Run	OH0036285	Brookfield WWTP	Cd, Cu, Ni, Zn.
OH	Leslie Run	OH0021784	East Palestine WWTP	Cd, Cr, Cu, Pb, Zn, Hg.
OH	Tuscarawas River (Pigeon Run to Sandy Cr.).	OH0020036	Navarre WWTP	Cd, Cr, Cu, Pb, Zn, Hg.
OH	Tuscarawas River (Newman Cr. to Pigeon Run).	OH0092444	Mercury Stainless Steel	Cr, Ni.
OH	(Same as above)	OH0020516	Massillon WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	River Styx	OH0027936	Medina County Wadsworth WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Little Chippewa Cr	OH0020371	Orrville WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics, Ag.
OH	Pigeon Cr	OH0088072	Polysar Resins	Organics.
OH	Tuscarawas River (Headwaters to Wolf Cr.).	OH0008010	Wright Tool and Forge	Cr, Ni.
OH	Sugar Cr. (South Fork Sugar Cr. to Tuscarawas River).	OH0007269	Dover Chemical	Organics, Cd, Pb, CN, Cr, Cu, Ni, Zn.
OH	Lower Tuscarawas River	OH0004235	Stone Container	Tl.
OH	Tuscarawas River (Sugar Cr. To Stillwater Cr.).	OH0007196	Union Camp Corporation	Organics, Ni, Cu, Hg.
OH	(Same as above)	OH0026727	New Philadelphia WWTP	Cd, Cr, Cu, Ni, Zn.
OH	Tuscarawas River (Conotton Cr. to Sugar Cr.).	OH0005606	Greer Steel	Pb, Zn.
OH	(Same as above)	OH0041572	General Electric/Dover Wire	Cu, Ni.
OH	Black Fork Mohican River (Rocky Fork to Clear Fork).	OH0008338	Copperweld Corporation	Pb, Zn.
OH	Rocky Fork Mohican River	OH0005649	Stone Container Corp	Cr, Cu, Pb, Ni, Zn.
OH	(Same as above)	OH0006840	Cyclops Industries	Cr, Pb, Ni, Cu, Phenolics, Organics.
OH	Black Fork Mohican River (Headwaters to Leatherwood Cr.).	OH0023540	Shelby WWTP	Cd, Cu, Pb, Ni, Zn, Hg.
OH	Jerome Fork Mohican River (Lang Cr. to Lake Fork).	OH0023906	Ashland WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics
OH	Beaver Run	OH0021539	Hebron WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Muskingum River (Salt Cr. to Millers Run).	OH0048372	Galcier Clevite/McConnelsville	Organics, Cd, Cr, Cu, Pb, Ni, Zn, CN.
OH	(Same as above)	OH0048364	Gould/McConnelsville	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Meadow Run	OH0023507	Wellston North	Cd, Cu, Pb, Ni, Zn, Hg, 2,2,7,8–TCDD.
OH	Little Scioto River (Rock Fork to Scioto River).	OH0026352	Marion WWTP	Cd, Cu, Pb, Ni, Zn, Hg, phenolics.
OH	Mill Creek	OH0020630	Marysville WWTP	Cd, Cu, Pb, Ni, Zn.
OH	Phelps Run	OH0007455	BMY Wheeled Vehicle (Rockwell International).	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Olentangy River (Headwaters to Mud Run).	OH0025313	Galion WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.

U.S. EPA REGION 5 SECTION 304(l) ADDITIONAL LISTINGS/REVISIONS—Continued

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
OH	Tussing Ditch	OH0034240	Canal Wire (Nestaway)	Cu, Pb, Zn, Ag.
OH	Scioto River (Big Darby to Scippo Cr.)	OH0005681	Container Corporation	Cu.
OH	(Same as above)	OH0006327	DuPont/Circleville	Organics.
OH	(Same as above)	OH0024465	Circleville WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Paint Cr. (Jeffersonville to East Fork Paint Cr.).	OH0028002	Washington Court House WWTP	Cd, Cu, Pb, Zn, Hg, Cr.
OH	Little Salt Cr. (Headwaters to Buckeye Cr.).	OH0020834	Jackson WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Little Beaver Cr	OH0026590	Montgomery County Eastern Regional WWTP.	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Ag.
OH	Second Cr	OH0021733	Blanchester WWTP	Cu, Pb, Ni, Zn.
OH	Lytle Cr	OH0028134	Wilmington WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Bluejacket Cr	OH0024066	Bellefontaine WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Mad River (Donnels Cr. to Mud Run)	OH0049794	Clark County Southwest Regional WWTP	Hg.
OH	Great Miami River (Dicks Cr. to Fourmile Cr.).	OH0010413	Armco Steel/New Miami	CN, phenolics.
OH	Great Miami River (Twin Cr. to Dicks Cr.)	OH0009997	Armco Steel/Middletown	Pb, Zn, CN, phenolics.
OH	Great Miami River (Wolf Cr. to Bear Run)	OH0009377	Appleton Paper	2,3,7,8–TCDD.
OH	(Same as above)	OH0020133	West Carrollton WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0024881	Dayton WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0026638	Montgomery County Western Regional WWTP.	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Great Miami River (Taylor Cr. to Ohio River).	OH0009318	B.F. Goodrich	Cr.
OH	(Same as above)	OH0027758	Troy WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Wabash River (Headwaters to Stony Cr.)	OH0010138	Fort Recovery Industries	CN, Cr, Cu, Ni, Zn.
OH	John Lattaner Ditch	OH0002941	Chase Brass and Copper	Cr, Cu, Pb, Ni, Zn.
OH	Blanchard (Eagle Cr. to Ottawa River)	OH0025135	Findlay WWTP	Cu, Pb, Zn, Hg.
OH	Ottawa River (Hog Cr. to Little Ottawa River).	OH0002615	Sohio Chemical	CN, Acrylonitrile.
OH	(Same as above)	OH0026069	Lima WWTP	Cr, Cu, Pb, Ni, Zn, Hg.
OH	Town Cr	OH0027910	Van Wert WWTP	Cd, Cu, Pb, Ni, Zn, Hg.
OH	Evans Ditch	OH0003697	Ohio Electropolishing	Cd, Cr, Cu, Zn.
OH	Jennings Cr	OH0024929	Delphos WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Prairie Cr	OH0020532	Bryan WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Maumee River (Auglaize River to Wade Cr.).	OH0002666	GMC/Defiance	Cu, Pb, Zn, Phenolics.
OH	(Same as above)	OH0024899	Defiance WWTP	Cd, Cu, Zn, Hg.
OH	Maumee River (Waterville to Swan Cr.)	OH0021008	Perrysburg WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0034223	Lucas County Maumee River WWTP	Cd, Cu, Ni, Zn.
OH	Otter Cr	OH0002763	Sun Oil Refinery	Cr, Phenolics.
OH	(Same as above)	OH0002445	Libbey-Owens-Ford	Pb, As.
OH	East Branch Portage River	OH0052744	Fostoria WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Mills Cr	OH0000264	GMC/Sandusky	Cr, CN, Cu, Pb, Phenolics, Ni, Zn.
OH	(Same as above)	OH0001201	Ford Motor Company	Cr, Pb, Zn.
OH	Snyders Ditch	OH0020672	Bellevue WWTP	Cd, Cr, Pb, Ni, Zn, Hg, Cu.
OH	Raccoon Cr	OH0024686	Clyde WWTP	Cd, Cu, Pb, Zn, Hg.
OH	Black River	OH0001652	USX-Lorain	Cd, Cu, Pb, Hg, CN, Zn, Napthalene, Phenolics.
OH	(Same as above)	OH0026093	Lorain WWTP	CN, Cd, Cu, Pb, Ni, Zn, Hg, Ag.
OH	Rocky River	OH0026778	North Olmsted WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0026018	Lakewood WWTP	Cd, Cu, Pb, Ni, Zn.
OH	Cuyahoga River (Congress Lake Out. to Lower Cuyahoga).	OH0000213	Ohio Edison Gorge Plant	Cu.
OH	(Same as above)	OH0025917	Kent WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0064009	Summit County Fish Creek WWTP	Cd, Cu, Pb, Ni, Zn, Hg.

U.S. EPA Region 5 Section 304(l) Additional Listings/Revisions—Continued

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
OH	Cuyahoga River (Big Cr. to Lake Erie)	OH0000957	LTV Steel Cleveland East Side	Pb, Zn, CN. Phenolics, Napthalene.
OH	(Same as above)	OH0000850	LTV Steel Cleveland West Side	CN, Zn, Pb, Phenolics.
OH	(Same as above)	OH0000990	DuPont/Cleveland	Cd, Cr, Pb, Zn.
OH	Cuyahoga River (Tinkers Cr. to Big Cr.)	OH0000655	Harshaw Chemical	Ni, Cu.
OH	(Same as above)	OH0024651	NEORSD Southerly WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	Tinkers Cr. (Pond Brook to Cuyahoga River).	OH0024058	Bedford Heights WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0027863	Twinsburg WWTP	Cu, Pb, Ni, Zn, Hg.
OH	Beaver Meadow Cr	OH0027430	Solon Central WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Euclid Cr	OH0000281	Argo-Tech (TRW)	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Grand River (Paine Cr. to Lake Erie)	OH0026948	Painesville WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	Fields Brook	OH0000442	RMI Extrusion Plant	Cd, Cr, Cu, Pb, Ni, Zn.
OH	(Same as above)	OH0003205	RMI Titanium Metals Plant	Cr, Cu, Pb, Mo, Zn.
OH	(Same as above)	OH0029149	Occidental Electrochemical	Organics, CN, Cr.
OH	(Same as above)	OH0001872	Detrex Chemical	Cd, Cu, Zn.
WI	Lower Fox River	W10001848	Fort Howard Paper Co	PCBs.

U.S. EPA Region 5, Section 304(l) Revisions to Original Listings

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
MI	Saginaw River	MI0000868	Dow Chemical U.S.A.—Midland	2,3,7,8–TCDD.
MN	Mississippi River	MN0000418	Koch Refinery	Hg.
MN	Mississippi River	MN0029815	MWCC/MC Metro	PCB, Hg.
MN	St. Louis Bay	MN0049786	Western Lake Superior SD	PCB, Hg, Pb.
OH	Mahoning River (Meander Cr. to Duck Cr.).	OH0011363	Thomas Steel Strip	Cr, Cu, Pb, Ni, Zn, CN, Tetrachloroethylene.
OH	Red Run	OH0083852	Sharon Steel	CN, Cr, Zn, Cd, Cu, Pb, Ni.
OH	Big Darby Cr. (Buck Run to Sugar Run)	OH0004502	Ranco/Plain City	CN, Cd, Cr, Cu, Ni, Zn.
OH	Cuyahoga River (Little Cuyahoga Rv. to Yellow Cr.).	OH0023833	Akron WWTP	Cd, Cu, Pb, Ni, Hg, Phenolics, Zn.
OH	Lytle Cr	OH0028134	Wilmington WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Bluejacket Cr	OH0024066	Bellefontaine WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Mad River (Donnels Cr. to Mud Run)	OH0049794	Clark County Southwest Regional WWTP	Hg.
OH	Great Miami River (Dicks Cr. to Fourmile Cr.).	OH0010413	Armco Steel/New Miami	CN, Phenolics.
OH	Great Miami River (Twin Cr. to Dicks Cr.)	OH0009997	Armco Steel/Middletown	Pb, Zn, CN, Phenolics.
OH	Great Miami River (Wolf Cr. to Bear Run)	OH0009377	Appleton Paper	2,3,7,8–TCDD
OH	(Same as above)	OH0020133	West Carrollton WWTP	CN, Cd, Cr, CU, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0024881	Dayton WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0026638	Montgomery County Western Regional WWTP.	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Great Miami River (Taylor Cr. to Ohio River).	OH0009318	B.F. Goodrich	Cr.
OH	(Same as above)	OH0027758	Troy WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Wabash River (Headwaters to Stony Cr.)	OH0010138	Fort Recovery Industries	CN, Cr, Cu, Ni, Zn.
OH	John Lattaner Ditch	OH0002941	Chase Brass and Copper	Cr, Cu, Pb, Ni, Zn.
OH	Blanchard (Eagle Cr. to Ottawa River)	OH0025135	Findlay WWTP	Cu, Pb, Zn, Hg.
OH	Ottawa River (Hog Cr. to Little Ottawa River).	OH0002615	Sohio Chemical	CN, Acrylonitrile.
OH	(Same as above)	OH0026069	Lima WWTP	Cr, Cu, Pb, Ni, Zn, Hg.
OH	Town Cr	OH0027910	Van Wert WWTP	Cd, Cu, Pb, Ni, Zn, Hg.
OH	Evans Ditch	OH0003697	Ohio Electropolishing	Cd, Cr, Cu, Zn.
OH	Jennings Cr	OH0024929	Delphos WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Prairie Cr	OH0020532	Bryan WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Maumee River (Auglaize River to Wade Cr.).	OH0002666	GMC/Defiance	Cu, Pb, Zn, Phenolics.
OH	(Same as above)	OH0024899	Defiance WWTP	Cd, Cu, Zn, Hg.

U.S. EPA REGION 5, SECTION 304(l) REVISIONS TO ORIGINAL LISTINGS—Continued

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
OH	Maumee River (Waterville to Swan Cr.)	OH0021008	Perrysburg WWTP	Cd, Cr, Cu, Pb, Nl, Zn, Hg.
OH	(Same as above)	OH0034223	Lucas County Maumee River WWTP	Cd, Cu, Nl, Zn.
OH	Otter Cr	OH0002763	Sun Oil Refinery	Cr, Phenolics.
OH	(Same as above)	OH0002445	Libbey-Owens-Ford	Pb, As.
OH	East Branch Portage River	OH0052744	Fostoria WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Mills Cr	OH0000264	GMC/Sandusky	Cr, CN, Cu, Pb, Phenolics, Ni, Zn.
OH	(Same as above)	OH0001201	Ford Motor Company	Cr, Pb, Zn.
OH	Snyders Ditch	OH0020672	Bellevue WWTP	Cd, Cr, Pb, Ni, Zn, Hg, Cu.
OH	Raccoon Cr	OH0024686	Clyde WWTP	Cd, Cu, Pb, Zn, Hg.
OH	Black River	OH0001652	USX-Lorain	Cd, Cu, Pb, Hg, CN, Zn, Napthalene, Phenolics.
OH	(Same as above)	OH0026093	Lorain WWTP	CN, Cd, Cu, Pb, Ni, Zn, Hg, Ag.
OH	Rocky River	OH0026778	North Olmsted WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0026018	Lakewood WWTP	Cd, Cu, Pb, Ni, Zn.
OH	Tuscarawas River (Pigeon Run to Sandy Cr.).	OH0020036	Navarre WWTP	Cd, Cr, Cu, Pb, Zn, Hg
OH	Tuscarawas River (Newman Cr. to Pigeon Run).	OH0092444	Mercury Stainless Steel	Cr, Ni.
OH	(Same as above)	OH0020516	Massillon WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	River Styx	OH0027936	Medina County Wadsworth WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Little Chippewa Cr	OH0020371	Orrville WWTP	CN, Cd, Cr, Cu, Pb, Nl, Zn, Hg, Phenolics, Ag.
OH	Pigeon Cr	OH0088072	Polysar Resins	Organics.
OH	Tuscarawas River (Headwaters to Wolf Cr.).	OH0008010	Wright Tool and Forge	Cr, Ni.
OH	Sugar Cr. (South Fork Sugar Cr. to Tuscarawas River).	OH0007269	Dover Chemical	Organics, Cd, Pb, CN, Cr, Cu, Nl, Zn.
OH	Lower Tuscarawas River	OH0004235	Stone Container	Tl.
OH	Tuscarawas River (Sugar Cr. to Stillwater Cr.).	OH0007196	Union Camp Corporation	Organics, Ni, Cu, Hg.
OH	(Same as above)	OH0026727	New Philadelphia WWTP	Cd, Cr, Cu, Ni, Zn.
OH	Tuscarawas River (Conotton Cr. to Sugar Cr.).	OH0005606	Greer Steel	Pb, Zn.
OH	(Same as above)	OH0041572	General Electric/Dover Wire	Cu, Ni.
OH	Black Fork Mohican River (Rocky Fork to Clear Fork).	OH0008338	Copperweld Corporation	Pb, Zn.
OH	Rocky Fork Mohican River	OH0005649	Stone Container Corp.	Cr, Cu, Pb, Ni, Zn.
OH	(Same as above)	OH0006840	Cyclops Industries	Cr, Pb, Nl, Cu, Phenolics, Organics.
OH	Black Fork Mohican River (Headwaters to Leatherwood Cr.).	OH0023540	Shelby WWTP	Cd, Cu, Pb, Ni, Zn, Hg.
OH	Jerome Fork Mohican River (Lang Cr. to Lake Fork).	OH0023906	Ashland WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	Beaver Run	OH0021539	Hebron WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Muskingum River (Salt Cr. to Millers Run).	OH0048372	Galcier Clevite/McConnelsville	Organics, Cd, Cr, Cu, Pb, Nl, Zn, CN.
OH	(Same as above)	OH0048364	Gould/McConnelsville	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Meadow Run	OH0023507	Wellston North	Cd, Cu, Pb, Ni, Zn, Hg, 2,2,7,8–TCDD.
OH	Little Scioto River (Rock Fork to Scioto River).	OH0026352	Marion WWTP	Cd, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	Mill Creek	OH0020630	Marysville WWTP	Cd, Cu, Pb, Nl, Zn.
OH	Phelps Run	OH0007455	BMY Wheeled Vehicle (Rockwell International).	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Olentangy River (Headwaters to Mud Run).	OH0025313	Galion WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Tussing Ditch	OH0034240	Canal Wire (Nestaway)	Cu, Pb, Zn, Ag.
OH	Scioto River (Big Darby to Scippo Cr.)	OH0005681	Container Corporation	Cu.
OH	(Same as above)	OH0006327	DuPont/Circleville	Organics.

U.S. EPA REGION 5, SECTION 304(l) REVISIONS TO ORIGINAL LISTINGS—Continued

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
OH	(Same as above)	OH0024465	Circleville WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Paint Cr. (Jeffersonville to East Fork Paint Cr.).	OH0028002	Washington Court House WWTP	Cd, Cu, Pb, Zn, Hg, Cr.
OH	Little Salt Cr. (Headwaters to Buckeye Cr.).	OH0020834	Jackson WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Little Beaver Cr	OH0026590	Montgomery County Eastern Regional WWTP.	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Ag.
OH	Second Cr	OH0021733	Blanchester WWTP	Cu, Pb, Ni, Zn.

[FR Doc. 94–6052 Filed 3–15–94; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 10, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507)

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0041.

Title: Application for Authority to Operate a Broadcast Station by Remote Control.

Form Number: FCC Form 301–A.

Action: Extension of currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 80 responses; 0.5 hours average burden per response; 40 hours total annual burden.

Needs and Uses: FCC Form 301–A is required to be filed by AM licensees or permittees with directional antennas when requesting authority to operate a station by remote control. In this submission, the form has been revised to eliminate all references to miles. In addition, we are changing the reference to kilometers from 11 to 16 (16 kilometers is the equivalent of 10 miles). The data is used by FCC staff to assure that the directional antenna system is stable.

OMB Number: 3060–0282.

Title: Section 94.17, Shared use of radio stations and the offering of private carrier communications service.

Action: Extension of a currently approved collection.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 300 recordkeeper; .333 hours average burden per recordkeeper; 100 hours total annual burden.

Needs and Uses: Licensees are allowed to share use of their microwave radio facilities on a non-profit basis or may offer service on a for-profit private carrier basis, subject to the condition that all sharing and private carrier arrangements must be conducted pursuant to a written agreement to be kept as part of the station records. The licensee of the station must keep an up-to-date list of system sharers and private carrier subscribers and the basis of their eligibility under part 94. This information is required to be retained in order to assure that the rules on shared use of microwave radio stations and the offering of private carrier microwave communications service are complied with.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–6059 Filed 3–15–94; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1999]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

March 11, 1994.

The petition for reconsideration published on February 22, 1994, 59 FR 8475, is withdrawn because of an incorrect subject matter and is replaced with the following.

Petitions for reconsideration have 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 these documents are 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. Opposition to these petitions must be filed March 31, 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 the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz. (PR Docket No. 93–35)

Petition for Reconsideration

Number of Petitions Filed: 7

Request for Waiver

Number of Petitions Filed: 2

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–6058 Filed 3–15–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Citizens Development Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 8, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Citizens Development Company, Billings, Montana, to acquire 80.98 percent of the voting shares of Western Bank, N.A., Chinook, Montana, 100 percent of the voting shares of Citizens State Bank, Hamilton, Montana and 99.75 percent of the voting shares of First National Bank of Lewistown, Lewistown, Montana.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Cardinal Bancshares, Inc., Lexington, Kentucky, to acquire 100 percent of the voting shares of CNB Bank of Kentucky, Louisville, Kentucky.

Board of Governors of the Federal Reserve System, March 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-6048 Filed 3-15-94; 8:45 am]

BILLING CODE 6210-01-F

Robert Scott Taylor; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 8, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Robert Scott Taylor, Cleveland, Tennessee, to acquire an additional 7.5 percent, for a total of 25.9 percent of the voting shares of Bradley County Financial Corporation, Cleveland, Tennessee, and thereby indirectly acquire Bank of Cleveland, Cleveland, Tennessee.

Board of Governors of the Federal Reserve System, March 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-6049 Filed 3-15-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D-0012]

Uniform Labeling of Drugs for Dairy and Beef Cattle; Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guideline entitled "Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle" prepared by the Center for Veterinary Medicine (CVM). This guideline was formulated to promote uniform labeling of drug products for cattle by recommending use of geometric symbols on labels to identify certain target animals and certain categories of drug products. Using the recommendations within the guideline should promote correct use of animal drugs and, thus, reduce drug residues in milk and meat products. The guideline was made available in a draft form (58 FR 8054) and this notice summarizes the received comments.

DATES: Written comments may be submitted at any time. Received comments will be considered to determine if further revision of the guideline is necessary.

ADDRESSES: Submit written requests for single copies of the guideline to the Communications and Education Branch (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with dockets number found in brackets in the heading of this document. A copy of the guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1642.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guideline entitled "Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle." The guideline is based on a draft guideline for which a notice of availability was published in the **Federal Register** of February 11, 1993 (58 FR 8054).

This guideline was developed as a part of the agency's ongoing efforts to protect the public health from harmful residues in food resulting from improper use of animal drugs. The agency continues to strive to ensure that the directions for use and other information in animal drug labeling is clear and followed in practice. The agency's efforts in this regard resulted in changes to provisions regarding proper labeling and storage of drugs on dairy farms in the Grade A Pasteurized Milk Ordinance (PMO) which specifies standards, requirements, and procedures that must be followed to ensure the safety of milk. Implementation of the PMO changes revealed, however, that many of the labels for animal drugs approved for use in cattle are confusing to both veterinarians and lay persons. For example, drug users were confused regarding whether products were for lactating dairy cattle or other classes of cattle. Furthermore, these individuals had difficulty distinguishing between prescription and over-the-counter drugs.

As a result of these findings, the agency developed the system of symbolic representations set out in this guideline. The system is designed to assist users of animal drugs by making the labeling information more understandable. The system was tested and evaluated, on a limited basis, in

workshops, training sessions, and meetings with dairy producers, veterinarians, State regulatory personnel and dairy sanitarians. The labeling features provided in this guideline were developed in conjunction with this testing. The agency is making the symbolic system available in this guideline, for use on a voluntary basis, to further evaluate the effectiveness of this type of system. In this regard, the agency intends to distribute the symbolic system to producers and veterinarians for their use and feedback. The agency will subsequently evaluate use of the symbolic system set out in the guideline to determine whether the system or some variation of the system is useful as well as whether a symbolic system or some other type of labeling changes should be incorporated into the agency's regulations.

Two comments were received in response to the notice published in the **Federal Register**, one from a drug manufacturer, the other from a manufacturer's association. The drug manufacturer's main concern was size and prominence of the proposed symbols, and the lack of an exemption for use on small volume parenterals. The manufacturer also mentioned the emphasis on cattle without considering any approved use in other species; whether the colors are appropriate and legible; whether inclusion of a narrative description of the symbol is needed; and the excessive size of some symbols. The manufacturer's association stated that the guideline did not clearly state the problem and thus failed to provide a case for a change in the labeling scheme. The association noted that the original coverage was expanded from dairy cows to beef cattle, calves, and veal; that use of the human Rx symbol would be misleading; that the new symbols can be confusing; and that the current voluntary symbols are adequate.

CVM has considered these comments and concluded that use of the guideline, though voluntary, would promote a more uniform and clearer labeling, would more clearly indicate the drug category, should result in more uniform use, and should aid in the reduction of illegal residues in milk and meat.

The guideline recommends use of certain symbols to designate the drug's OTC or Rx status, class of target animal, milk discard time, and slaughter withholding times. The guideline represents a cooperative effort with the animal drug industry to promote labeled use of certain drugs and to reduce drug residues in meat and milk products.

The guideline summarizes the codified labeling requirements for over-the-counter (OTC) and Rx animal drugs and prior CVM labeling recommendations. It has been prepared for voluntary use by the animal drug industry to promote the uniform labeling of animal drug products, primarily for that used in cattle. The guideline recommends that labels of drugs include easily interpreted geometric symbols to indicate the category of drug product and animal for treatment. Use of the guideline would promote proper animal drug use and thus reduce drug residues in milk and meat products.

Labeling revised in conformance with this guideline must be the subject of an approved supplemental new animal drug application prior to its use.

Guidelines state practices or procedures that may be useful but are not legal requirements. The guideline represents the agency's position at the time of its issuance. A person may follow the guideline or may choose to follow alternate practices or procedures. If a person chooses to use an alternate practice or procedure, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable. The guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. When a guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

Interested persons may submit further comments at any time. Submit written comments on the guideline to the Dockets Management Branch (address above) or to the contact person (address above). FDA will consider these comments in determining whether further amendments to, or revisions of, the guideline are warranted. Comments should be submitted in duplicate (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 10, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–6007 Filed 3–15–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Reorganization of the Health Care Financing Administration

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (49 FR 3547, September 6, 1984, as amended most recently at 58 FR 42079, August 6, 1993) is amended to reflect a major reorganization of HCFA. The Administration's "reinventing government" initiative has been considered in developing this reorganization. In addition, the reorganization is also designed to improve the efficiency of HCFA's total operation and to provide increased responsiveness to the needs of the Administration, beneficiaries, the States, and the health care industry.

The specific amendments to Part F are:

- Section F.10., Health Care Financing Administration (Organization) is amended to read as follows:

Section F.10., Health Care Financing Administration (Organization)

The Health Care Financing Administration (HCFA) is an Operating Division of the Department. It is headed by an Administrator, HCFA, who is appointed by the President and reports to the Secretary. It consists of the following organizational elements:

A. Office of the Administrator (FA).
   1. Provider Reimbursement Review Board (FA–1).
   2. Equal Employment Opportunity Staff (FA–3).
   3. Executive Secretariat (FA–4).
   4. Office of Legislative and Inter-Governmental Affairs (FAA).
   5. Medicaid Bureau (FAB).
   6. Office of Managed Care (FAC).

B. Office of the Associate Administrator for Customer Relations and Communications (FF).
   1. Office of Beneficiary Services (FFA).
   2. Office of Public Affairs (FFB).
   3. Office of Public Liaison (FFC).

C. Office of the Associate Administrator for Policy (FK).
   1. Special Analysis Staff (FK–1).
   2. Bureau of Policy Development (FKA).
   3. Office of Research and Demonstrations (FKB).
   4. Office of the Actuary (FKC).

D. Office of the Associate Administrator for Operations and Resource Management (FL).
1. Office of the Attorney Advisor (FL–1).
2. Office of Financial & Human Resources (FLA).
3. Bureau of Program Operations (FLB).
4. Bureau of Data Management and Strategy (FLC).
5. Office of the Regional Administrators (FLD(1–X)).
6. Health Standards and Quality Bureau (FLE).

• Section F.20., Health Care Financing Administration (Functions) is amended by deleting the statement in its entirety and replacing it with the following statements. The statements that follow provide the organizational structure of the Health Care Financing Administration to the Bureau and Primary Office level. The remainder of the organizational substructure will be published at a later date. The new HCFA organizational structure is described as follows:

A. Office of the Administrator (FA)

The Administrator, Health Care Financing Administration, directs the planning, coordination and implementation of the programs under titles XI, VIII, and XIX of the Social Security Act, and related statutes, as amended, and directs the development of effective relationships between these programs and private and federally supported health-related programs. The Administrator works with the States, other Federal agencies and other concerned nongovernmental organizations in administering health care financing programs.

1. Provider Reimbursement Review Board (FA–1)

The Provider Reimbursement Review Board (Board) is organizationally assigned to the HCFA for administrative support. The Board, after determining that it has jurisdiction, conducts hearings to resolve disputes on cost and prospective payment submitted by Medicare providers under Section 1878 of the Social Security Act. Upon the completion of these hearings, the Board renders impartial decisions on these appeals. This is the initial step in the judicial review process. Provides staff support to the Medicare Geographic Classification Review Board (MGCRB) and conducts Medicare and Medicaid hearings on behalf of the Secretary or the Administrator that are not within the jurisdiction of the Department Appeals Board, the Social Security Administrations' Office of Hearings and Appeals, or the States.

2. Equal Employment Opportunity Staff (FA–3)

Provides principal advisory services to the Administrator concerning equal employment opportunity (EEO) and civil rights policies and programs. Develops EEO and voluntary civil rights compliance policy for HCFA and assesses the Agency's compliance with applicable equal opportunity statutes, executive orders, regulations and policies. Identifies policy and operational issues and proposes solutions for resolving these issues. Serves as the central liaison point with the Department on EEO and civil rights issues. Coordinates the development of HCFA affirmative EEO plans and evaluates their implementation by HCFA components. Promotes EEO special emphasis programs and activities affecting the concerns of minority groups, women and individuals with disabilities. Provides for conciliation and adjudication of informal and formal discrimination complaints by means of EEO counseling, formal hearings, issuance of final decisions, etc. Manages, coordinates and monitors HCFA's equal employment opportunity activities working directly with bureau and office personnel.

3. Executive Secretariat (FA–4)

Assists the HCFA Administrator in the resolution of agency program and administrative policy matters through memoranda, actions documents, or correspondence. Monitors HCFA performance in developing necessary documents for the Administrator's review. Manages the clearance system and reviews documents for consistency with the Administrator's and Secretary's assignments, previous decisions on related matters, and editorial standards. Facilitates the resolution of issues connected with matters forwarded to the Administrator. Operates the agency-wide correspondence tracking and control system, and provides guidance and technical assistance on standards for content of correspondence and memoranda. Serves as a primary focal point for liaison with the Executive Secretariat in the Office of the Secretary on HCFA correspondence and special administrative matters.

4. Office of Legislative and Inter-Governmental Affairs (FAA)

The Office of Legislative and Inter-Governmental Affairs provides leadership and executive direction within HCFA for legislative planning and congressional and intergovernmental affairs. Develops and evaluates recommendations concerning legislative proposals for changes in health care financing. Develops the long-range HCFA legislative plans. Coordinates activities with the Office of the Assistant Secretary for Legislation (ASL) and serves as the ASL's principal contact point on legislative and congressional relations, and intergovernmental affairs. Manages HCFA involvement in congressional hearings. Provides technical, analytical, and advisory services to HCFA components, to the Department, to other elements of the Executive Branch, and other government agencies interested in health care financing legislation, congressional relations, and intergovernmental affairs. In conjunction with the ASL, provides information services to congressional committees, individual Congressmen, and private organizations on health care financing legislation. Provides leadership for HCFA in the area of intergovernmental affairs. Advises the Administrator on program matters which affect other units and levels of government. In coordination with the Department's Inter-Governmental Affairs office, the Regional Directors, and other HCFA offices, meets with key State and local officials in order to strengthen HCFA's relationships with other governmental jurisdictions and to resolve sensitive intergovernmental problems and issues. Reviews and consults with State and local officials regarding proposed HCFA policy and operational issuances. Assists States and localities in requesting and obtaining technical materials, assistance, and support for appropriate HCFA components. Upon State requests, coordinates the exchange of HCFA staff with State and local agencies. Develops and provides briefings on intergovernmental affairs issues for HCFA staff. Briefs State and local agencies on HCFA's mission, organization, and functions.

5. Medicaid Bureau (FAB)

Directs the planning, coordination, and implementation of the Medicaid program under title XIX of the Social Security Act and related statutes, as amended, except for Medicaid managed health care. Formulates, evaluates, and prepares policies, specifications for regulations, instructions, preprints and procedures related to Medicaid eligibility, coverage, and payment activities; makes recommendations for legislative changes; and, reviews State plan amendments and make recommendations on approvals/

disapprovals. Oversees, coordinates, processes and assesses the operation of State Medicaid Home and Community-Based Services Waivers. Administers the State grants process for administrative and program payments, including budget preparation by States. Provides Medicaid payment policy for administrative costs, availability of Federal Financial Participation (FFP) and designation of appropriate FFP rates. Develops and monitors planning, development and implementation of Medicaid program operations in regional offices and State Medicaid agencies. Develops and promulgates policies and procedures for the proper maintenance, review, and approval of State plans and their amendments. Monitors State compliance with State plan and oversees the compliance process. Develops requirements, standards, procedures, guidelines, and methodologies pertaining to the review and evaluation of State agencies' automated systems. Develops, operates, and manages a program for the performance evaluation of Medicaid State agencies and fiscal agents. Implements Medicaid maternal and infant health initiative and the Early and Periodic Screening, Diagnostic, and Treatment program through coordination of HCFA resources and activities with those of the Public Health Service and other national organizations, monitoring program performance, effective interagency and interprogram liaison, guidance, and technical assistance. Provides technical assistance to States, regional offices, and other interested groups in all special Medicaid initiatives. Coordinates with HCFA's Office of Legislative and Inter-Governmental Affairs on all issues that affect States. Coordinates with the Office of Research and Demonstrations HCFA review and management of State waiver requests and projects.

6. Office of Managed Care (FAC)

Provides national direction and executive leadership for managed health care operations, including health maintenance organizations (HMOs), prepaid health plans (PHPs), primary care case management programs, competitive medical plans (CMPs), and other capitated health organizations. Serves as the departmental focal point in the areas of managed health care plan qualification, including quality assurance, ongoing regulation, State and employer compliance efforts, Medicare and Medicaid HMO, Medicare CMP contracting and Medicaid freedom of choice waivers. Develops national managed care policies and objectives for the development, qualification, and ongoing compliance of HMOs and CMPs. Plans, coordinates, and directs the development and preparation of related legislative proposals, regulatory proposals, and policy documents. Formulates, evaluates, and prepares policies, specifications for regulations, instructions, preprints, and procedures related to managed health care. Makes recommendations for legislative changes to improve managed health care program policy.

B. Office of the Associate Administrator for Customer Relations and Communications (FF)

The Associate Administrator for Customer Relations and Communications is responsible for the effective direction and implementation of HCFA policies, rules, and procedures in the areas of: advising the Administrator, HCFA, and HCFA components concerning the services, requirements, and initiatives relating to HCFA beneficiaries; liaison with external medical, dental, and allied health practitioners, institutional providers of health services, and academic institutions responsible for the education of health care professionals; and directing the public affairs activities of HCFA.

1. Office of Beneficiary Services (FFA)

Provides advisory services to the Associate Administrator for Customer Relations and Communications and HCFA components concerning the services for, needs of, and initiatives relating to HCFA beneficiaries. Promotes an awareness of the concerns of children, the elderly, and needy among the HCFA components responsible for developing program policies, regulations, and legislative proposals. Analyzes the impact of proposed HCFA policies, regulations, and instructions on beneficiaries. Maintains close working relationships with HCFA central and regional components, the Social Security Administration District Offices, the Public Health Service, other Federal agencies, State agencies, and beneficiary consumer groups to identify and assess the need for information, benefits and services; the impact of proposed HCFA actions; and the effects that operating systems and programs have on the health care system programs and current and future beneficiaries. Presents the overall HCFA mission and promotes its acceptance by beneficiaries and representatives of the constituent organizations. Participates with other HCFA components in the development and implementation of program objectives and strategies pertaining to beneficiary services. Through direct contact with children, the elderly, the needy and/or their representative groups determines their understanding of HCFA's programs and services and conveys this information to HCFA components. Responds to beneficiary referrals concerning accessing and utilizing the Agency's health care financing programs. Plans, directs, and coordinates the production of radio, television, and film products, and the preparation of general-purpose publications. Reviews and clears all print, audiovisual, and exhibit plans and material intended for external dissemination and serves as clearance liaison with the Office of the Secretary, Office of the Assistant Secretary for Public Affairs.

2. Office of Public Affairs (FFB)

Plans, directs and coordinates the public affairs activities of HCFA including: Speech writing, public appearances, Administrator's meetings, special Associate Administrator for Customer Relations and Communications (AACR&C) projects as well as conducting evaluations and analyses. Provides advice and counsel from a public affairs perspective to the AACR&C and all HCFA components. Administers the Freedom of Information Act and Privacy Act responsibilities for HCFA.

3. Office of Public Liaison (FFC)

Directs and implements HCFA policies, rules, and procedures in the areas of liaison with external medical, dental, and allied health practitioners, institutional providers of health services, and business and academic institutions responsible for the education of health care professionals. Also, plans, directs and coordinates media relations.

C. Office of the Associate Administrator for Policy (FK)

The Associate Administrator for Policy is responsible for the effective direction and implementation of the development and review of policies and regulations pertaining to all HCFA programs including HCFA's research and demonstrations activities. Conducts research and develops legislative proposals designed to make improvements in the health care delivery system and develops the technical specifications for such legislation. Performs actuarial, economic and demographic studies to predict HCFA program expenditures under current law and under proposed modifications to current law.

1. Special Analysis Staff (FK–1)

Conducts legislative, economic and policy analyses related to the private health insurance industry and the overall structure of health care financing and reform. Analyzes and reviews current literature regarding the state of the Nation's health policy in order to develop national trend analyses for future HCFA program directions. Plans and develops future HCFA program policy in order to assist in the development of legislative strategies that will enhance the Department's legislative program. Coordinates policy development and research relating to legislative proposals designed to reform and make improvements in the health care delivery system including the technical specifications for such legislation.

2. Bureau of Policy Development (FKA)

Establishes national program policy on all issues of Medicare payment including provider payment policy, provider accounting and audit policy, and physician and medical services payment policy. Develops, evaluates, and reviews national policies and standards concerning the coverage and utilization effectiveness of items and services under the Medicare program provided by hospitals, long-term care facilities, hospices, End Stage Renal Disease facilities, home health agencies, alternative health care organizations, comprehensive outpatient rehabilitation facilities, physicians, health practitioners, clinics, laboratories, and other health care providers and suppliers. Serves as the principal organization within HCFA for evaluating the medical aspects of Medicare coverage issues and for developing provider conditions of participation. Develops, evaluates, and reviews national Medicare and Medicaid coverage issues concerning reasonableness and necessity for medical and related services. Develops, interprets, and evaluates program policies pertaining to Medicare eligibility, Medicare secondary payer policies and other technical issues. Develops regulations for the Medicare and Medicaid programs. Manages the HCFA system for developing regulations, setting regulations priorities, and corresponding work agenda. In cooperation with the Office of the General Counsel, coordinates litigation affecting the Medicare program.

3. Office of Research and Demonstrations (FKB)

Provides leadership and executive direction within HCFA for a wide range of health care financing research and demonstration activities. Develops, tests and evaluates new payment methods, coverage policies and delivery mechanisms in Medicare, Medicaid and other health care programs. Has primary responsibility for managing HCFA's Medicare and Medicaid demonstration waiver authorities including the Federal review, approval, and oversight of State health reform waivers. Develops new and innovative ways to reform the quality, efficiency, and cost effectiveness of Federal, State and private health care financing programs. Works closely with the Associate Administrator for Policy, other Bureau/Office Directors, and high level staff outside HCFA to insure that the Agency's objectives and long range planning in these areas are accomplished. Participates with departmental components in a wide range of experimental health care delivery projects. Performs claims adjudication, payment, and data collection for demonstration projects. Undertakes research to facilitate informed program and policy decisions designed to make improvements in the health care delivery system.

4. Office of the Actuary (FKC)

Conducts and directs the actuarial program for HCFA and directs the development of and methodologies for macroeconomic analysis of health care financing issues. Performs actuarial, economic and demographic studies to predict HCFA program expenditures under current law and under proposed modifications to current law. Provides program estimates for use in the President's budget and for reports required by Congress. Studies questions concerned with financing present and future health programs, evaluates operations of the Federal Hospital Insurance Trust Fund and Supplementary Medical Insurance Trust Fund and performs macroanalyses for the purpose of assessing the impact of various health care financing factors upon the costs of Federal programs. Develops and conducts studies to estimate and project national and area health expenditures. Analyzes trend data sources such as the Consumer Price Index to develop projections of health care costs. Analyzes data on physicians' costs and charges to develop payment indices and monitors expansion of service and inflation of costs in the health care sector. Publishes cost projections and economic analyses, and provides actuarial, technical advice and consultation to HCFA components, governmental components, Congress and outside organizations.

D. Office of the Associate Administrator for Operations and Resource Management (FL)

The Associate Administrator for Operations and Resource Management (AAORM) is responsible for the effective direction, coordination and implementation of all aspects of headquarters and regional program operations and resource management activities. The program operational functions include the Medicare financial management systems; the development, negotiation, execution and management of contracts with Medicare contractors; enforcement of health quality and safety standards for providers and suppliers of health care services; the administration of professional review and other medical review programs; the evaluation of contractors and State agencies against performance standards; and the statistically based quality control programs which measure the financial integrity of Medicare. The 10 Regional Administrators report to the AAORM through the Deputy Associate Administrator for Operations and Resource Management. The resource management responsibilities include developing and implementing HCFA's policies, rules and procedures in the areas of financial, personnel and contracts management, project grant administration, management evaluation and analysis and administrative services; the nationwide operation of a centralized Automated Data Processing (ADP) and telecommunications facility; establishing and maintaining computerized records supporting HCFA programs; developing and coordinating information and statistical plans and policies; and maintaining a statistical data system which will provide program accountability data to the Administrator, HCFA, Congress, and the public.

1. Office of the Attorney Advisor (FL–1)

The Office of the Attorney Advisor is attached to AAORM for administrative issues but continues to report to the Administrator, HCFA, for substantive issues. The Supervisory Attorney Advisor recommends initiation of "own motion review" of Provider Reimbursement Review Board decisions and of Medicare Geographical Classification Review Board (MGCRB) decisions. Evaluates cases under "own motion review" and recommends the

disposition of such cases by the Administrator. Evaluates and makes recommendations for disposition of MGCRB decisions appealed to the Administrator.

2. Office of Financial and Human Resources (FLA)

Provides HCFA-wide policy direction, coordination and control in the areas of budget, financial and accounting operations, personnel, management evaluation and analysis, administrative services, project grants, contracting and procurement, audit resolution, and workplanning. Develops and promulgates HCFA policy in these areas and executes these policies throughout HCFA; also assures consistency with departmental policy. Designs systems support for personnel management, financial management, procurement, and facilities management programs within HCFA. The Director serves as the Chief Financial Officer and the Deputy Ethics Counselor for the Agency.

3. Bureau of Program Operations (FLB)

Provides direction and technical guidance for the nationwide administration of the Medicare health care financing programs. Develops, negotiates, executes, and manages contracts with Medicare contractors. Manages the Medicare financial management system and national budgets for Medicare contractors. Establishes national policies and procedures for the procurement of claims processing and related services from the private sector. Defines the relative responsibilities of all parties in the health care financing operations and designs the operational systems which link these parties. Directs the establishment of standards of performance for contractors. Compiles operational and performance data for recurring and special reports to reflect status and trends in program operations effectiveness. Prepares recommendations regarding terminations, awards, penalties, non-renewals, or other appropriate contract actions. Establishes national policy and procedures for the recovery of overpayments. Directs the processing of Part A beneficiary appeals and issues instructions and guidance for resolving beneficiary overpayments. Following coordination with pertinent HCFA components, notifies carriers and fiscal intermediaries of findings resulting from quality control programs.

Makes recommendations to the Associate Administrator for Operations and Resource Management regarding financial penalties authorized and determined appropriate under regulations. Assists Medicare contractors in improving the management of Federally required quality control programs. Identifies significant trends and priority problems through comprehensive analyses and program operations and performance and evaluates findings surfaced through various assessment programs. Develops and conducts comprehensive analyses and studies of selected areas of policy and operations to evaluate the appropriateness, cost effectiveness, or other impact resulting from the implementation of law, regulations, policies or operational procedures and systems. Develops recommendations for specific policy or operational improvements based on assessment findings. Coordinates, monitors, and evaluates all corrective action initiatives resulting from program assessment findings. Develops programwide policies, regulations, procedures, guidelines, and studies dealing with program oversight and improvement. Coordinates the preparation of manuals and other policy issuances required to meet the instructional and informational needs of providers, contractors, State Agencies, Regional Offices, Peer Review Organizations, the Social Security Administration, and other audiences directly involved in the administration of HCFA programs.

4. Bureau of Data Management and Strategy (FLC)

Serves as the focal point for the management of HCFA's information resources. Provides Agency-wide information management, decision support, automated data processing (ADP), and data communication services essential to the management and administration of HCFA programs. Provides technical information planning and developmental review of HCFA data collection initiatives. Collects, analyzes, and disseminates data on beneficiary eligibility, enrollment entitlement, and medical utilization. Collects and maintains data on Medicare contractor claims processing workloads and maintains contractor quality assurance and performance evaluation systems. Manages statistical data systems on HCFA programs to support policy and program decisions. Coordinates the development of special purpose statistical data bases and tabulations required for assessing (1) the impact of proposals which change health care financing programs, (2) the characteristics of HCFA beneficiaries and (3) the utilization and cost of program benefits. Provides applications software support to HCFA headquarters and Regional Offices in administrative/program management systems.

The Director serves as HCFA's Principal Information and Resource Management (IRM) Official and is responsible for overseeing the Agency's IRM programs including those of the Medicare contractors, Peer Review Organizations, and End Stage Renal Disease Networks. Directs the HCFA ADP systems security program including its application to Medicare contractors. Develops common coding standards and quality assurance monitoring mechanisms. Negotiates and administers agreements and provides ADP liaison between HCFA users and other external organizations for the provisions of ADP capacity and support services. Provides support and data handling capability to control/examine, audit, investigate, and process/release a variety of provider billing, query, enrollment, and premium billing correspondence and transactions.

5. Office of the Regional Administrators (FLD (I–X))

The Office of the Regional Administrator manages regional operation in each of the Health Care Financing Administration's 10 regions. The Regional Administrators provide executive leadership and guidance on behalf of the Associate Administrator for Operations and Resource Management to HCFA components at the regional level. Implements national policy at the regional level. Assures the effective administration of HCFA programs including Medicare, Medicaid, Peer Review Organizations (PROs), HMOs/CMPs, quality control, and certification of institutional providers in a major geographical area. Participates in the formulation of new policy and recommends changes in existing national policy for HCFA programs. Develops and implements a professional relations program within the region for all HCFA programs and serves as the principal HCFA contact for all professional organizations such as hospital and medical associations. At the regional level, takes action to implement HCFA national initiatives undertaken to integrate HCFA program operations and is responsible for coordination of HCFA programs with other departmental components and Federal agencies. Coordinates with the Department's Regional Director to assure effective relationships with State and local governments. Manages all administrative activities for HCFA components and coordinates such activities with the Regional Administrative Support Center. Initiates and directs the implementation of

special regional and headquarters projects affecting HCFA programs. Directs regional responsibilities relating to experimental and demonstration projects. Oversees a beneficiary services program within the region for HCFA programs. Provides regional perspective to the Administrator, Associate Administrators, Bureau Directors, and Staff Office Directors in the development of HCFA policies, programs and objectives.

6. Health Standards and Quality Bureau (FLE)

Provides leadership and overall programmatic direction for implementation and enforcement of health quality and safety standards for providers and suppliers of health care services and evaluates their impact on the utilization, quality and cost of health care services. Plans, develops and establishes procedures and guidelines for administering and evaluating the nationwide Medicare and Medicaid survey and certification program. Monitors and validates the process for certifying that participating providers and suppliers are in compliance with established conditions and standards. Responsible for implementation and operation of professional review and other medical review programs. Administers a comprehensive system for assessment of individual professional and medical review organizations to determine compliance with program requirements and to document the effectiveness and impact of their activities. Establishes specifications for information and data reporting, collection and systems requirements for the survey and certification, professional review and other medical review activities.

Dated: March 8, 1994.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 94–6008 Filed 3–15–94; 8:45 am]

BILLING CODE 4120–01–M

Public Health Service

Orientation to PHS Grants and Contracts Activities for Applicants and Recipients of Awards

AGENCY: Office of the Assistant Secretary for Health, PHS.

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary for Health is announcing a training course entitled "Orientation to PHS Grants and Contracts Activities for Applicants and Recipients of Awards" which will be presented 12 times at locations around the country between April 1994 and march 1995. Complete information as to locations and dates is provided below under **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

Course Title

"Orientation to PHS Grants and Contracts Activities for Applicants and Recipients of Awards."

Note: This is not a course on grantwriting. Rather, it is designed to provide a broad overview of PHS and how it uses the grant and contract mechanisms.

Course Description

This is a 2-day course which is designed to provide applicants for and recipients of PHS grants and contracts a better understanding of the procedures and expectations in applying for funding and administering an award from PHS. Day one and roughly 25% of day two of the course concentrate on the grants process; the remainder of day two is devoted to contracting. Students will be provided with a broad overview of PHS including how it is organized, when the grant or contract mechanism is used, how the PHS contracts and grants processes are structured, how to identify grants and contract funding opportunities, how to submit effective proposals, and how to properly administer a contract or grant once it has been awarded. This is not, however, a course on "grantsmanship" or writing technical proposals.

Target Population

Grant and contract staff of organizations which are presently receiving funding from PHS or which plan to submit applications for grants or proposals for contracts. The course is intended for staff who are inexperienced with PHS grant and contract mechanisms.

COURSE DATES AND LOCATIONS

Date	Location
April 21–22, 1994	Washington, DC.
May 12–13, 1994	Boston, Mass.
June 30–July 1, 1994.	Denver, Colo.
August 8–9, 1994	Kansas City, Mo.
August 25–26, 1994 ..	Chicago, Ill.
September 26–27, 1994.	San Francisco, Cal.
September 29–30, 1994.	Seattle, Wash.
November 9–10, 1994	Washington, DC.
December 12–13, 1994.	San Diego, Cal.
January 17–18, 1995.	Dallas, Tex.
February 21–22, 1995	Atlanta, Ga.
March 6–7, 1995	Washington, DC.

All sessions will be held from 8:30 a.m. to 4:30 p.m. both days.

Early registration is encouraged, since past offerings of this course have filled rapidly.

Course Outline

Day 1

Introduction to PHS Assistance (grants/cooperative agreements) and Acquisition (contracts): PHS Mission and Organizational Structure; Assistance vs. Acquisition (The Federal Grant and Cooperative Agreement Act); PHS Grant and Contract Expenditures and Recipients; Introduction to Types and Purposes of PHS Grants; Roles of PHS Grants and Program Management Staff.

Seeking and applying for PHS Grants/ Cooperative Agreements: Sources of Information; Understanding Program Announcements; The Application Package; The Complete, Effective Application; Competition and Objective Review.

Negotiation and award process for Grants/Cooperative Agreements: Cost Analysis and Preaward Review; Negotiation—Clarifying and Revising Proposed Activities; Funding Outcomes; Contents of a Grant Award Document; General and Special Conditions.

Day 2

Grant/Cooperative Agreement Post-Award Issues and Concerns: Monitoring; Audit; Appeals; Progress Reports; Drawdowns; Financial Status Reports; Grant Budget Control; Cost Principles and Unallowable Costs; Purchasing; Property Management.

Seeking PHS Contracts: Identifying PHS Contracting Opportunities; The Legal Framework of PHS Contracting; Small Business Contracting Programs; Roles of PHS Contracting and Project Staff.

Responding to Contract Solicitations: Small Purchases—$25,000 or Less; Purchases Greater Than $25,000; Preparing the Technical Proposal; Preparing the Business Proposal.

Proposal Submission, Contract Negotiation, and Award: Submitting the Proposal; Evaluation of the Proposal; Negotiation; Award of Contract.

Contract administration: Initial Contract Administration Steps; Significant Contract Administration Concerns.

Class size: Limited to *30* participants per session to maximize interaction.

Attendance: Students are encouraged to attend *both* full days of the course. A Certificate of Attendance will be issued to those who complete the course.

Cost: Tuition is $295 per session. Travel and accommodations are the responsibility of participants.

Information Contact: For information on how to register and to receive a copy of the course brochure, contact: John Laffey, Management Concepts Incorporated, 8230 Leesburg Pike, suite 800, Vienna, VA 22182, Phone: 703–790–9595, extension 140, FAX: 703–790–1371.

Dated: February 28, 1994.

Wilford J. Forbush,

Director, Office of Management, OASH.

[FR Doc. 94–6070 Filed 3–15–94; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Substance Abuse and Mental Health Services Administration (SAMHSA) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (57 FR 53907, November 13, 1992) is amended to reflect changes within the Center for Mental Health Services (CMHS). These changes involve the transfer of evaluation functions from the Office of Evaluation, Extramural Policy, and Review to the Division of Demonstration Programs.

Section HM–B, Organization and Functions, Substance Abuse and Mental Health Services Administration (HM) is amended as follows:

Delete the title and functional statement for the *Office of Evaluation, Extramural Policy, and Review (HMS12)* and substitute the following title and functional statement:

Office of Extramural Policy and Review (HMS12): (1) Administers the Center's peer and objective review of grants and contracts; (2) in consultation with the Director, establishes extramural policy for the Center; (3) coordinates with Center programs to ensure program announcements are in compliance with policy and provides guidance for clearance through SAMHSA and Office of Management and Budget channels; and (4) provides committee management and support for the CMHS Advisory Council.

Under the heading *Division of Demonstration Programs (HMSB),* following the semicolon after item (4), delete all remaining words and add the following words: (5) Coordinates Center-wide evaluation of programs; (6) develops evaluation policy for the Center designed to generate new knowledge on mental health treatment and services; (7) works with division and office programs to refine and develop methods for evaluation; (8) provides policy and oversight for data activities related to the evaluation of Center programs, working with the Office of Applied Studies; and (9) evaluates programs to generate new knowledge on treatment and services.

Dated March 7, 1994.

Elaine M. Johnson,

Acting Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–6051 Filed 3–15–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Privacy Act of 1974—Revision of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise two notices describing systems of records managed by the Office of Administrative Services. Except as noted below, all changes are editorial in nature, clarify and update existing statements, and reflect organization, address and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the Federal Register. The two notices being revised, which are published in their entirety below, are:

1. "Privacy Act Files—Interior, DOI–57," previously published on August 8, 1986 (51 FR 28627) as "Privacy Act Files—Interior, Office of the Secretary-57."

2. "Freedom of Information Act Appeal Files—Interior, OS–69," previously published on August 8, 1986 (51 FR 28629) as "Freedom of Information Appeal Files—Interior, Office of the Secretary-69."

In notice DOI–57, the existing system name has been revised to more adequately convey the Departmentwide extent of the scope-of-system coverage. In both notices, the existing categories of records in the system statement is revised to more clearly identify the types of records maintained in the system; the existing retrievability statement is revised to add the current method of accessing records; the existing retention and disposal statement is revised to reflect the current length of, and/or authority for, record retention; and the existing system location statement and existing system manager(s) and address statements are revised to reflect changes in addresses of system managers.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective on March 16, 1994.

Additional information regarding these actions may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, (PMO) 1849 C Street NW., Mail Stop 5412–MIB, Washington, DC 20240, telephone (202) 208–6045.

Dated: March 8, 1994.

Albert C. Camacho,

Director, Office of Administrative Services.

INTERIOR/DOI–57

SYSTEM NAME:

Privacy Act Files—Interior, DOI–57.

SYSTEM LOCATION:

1. U.S. Department of the Interior, Office of Administrative Services, m.s. 5412–MIB, 1849 C Street, NW., Washington, DC 20240.

2. Offices of Privacy Act Officers for each of the Department's bureaus. (Consult the Appendix for addresses of bureau headquarters offices.)

3. Offices of System Managers and other officials authorized to receive requests for notification of, access to, and petitions for amendment of records. (Consult system notices for addresses of System Managers.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests for notification of, access to, and petitions for amendment of records maintained as systems of records under the Privacy Act. Individuals who have filed Privacy Act appeals with the Assistant Secretary—Policy, Management and Budget under Departmental appeal procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, appeals, and decisions on requests and appeals; accounting of disclosure files; reports and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a,

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is: (a) To support action on Privacy Act requests and appeals; and (b) To gather information for management and reporting purposes.

Disclosure outside the Department of the Interior may be made: (1) To other

Federal agencies having a subject matter interest in a request or an appeal or a decision thereon; (2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) Of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (4) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual and automated form.

RETRIEVABILITY:

Records are indexed by name or personal identifier.

SAFEGUARDS:

Records are maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 14, Items 21–26.

SYSTEM MANAGER(S) AND ADDRESS:

1. Departmental Privacy Act Officer, U.S. Department of the Interior, Office of Administrative Services, m.s.5412–MIB, 1849 C Street, NW., Washington, DC 20240.

2. Bureau Privacy Act Officers. (Consult the Appendix for addresses of bureau headquarters offices.)

3. System Managers. (Consult system notices for addresses of System Managers.)

NOTIFICATION PROCEDURES:

A request for notification of the existence of records shall be addressed to the pertinent System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the pertinent System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the pertinent System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals filing requests and appeals; Departmental officials acting on requests and appeals.

INTERIOR/OS–69

SYSTEM NAME:

Freedom of Information Act Appeal Files—Interior, OS–69.

SYSTEM LOCATION:

U.S. Department of the Interior, Office of Administrative Services, m.s.5412–MIB, 1849 C Street, NW., Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed appeals under Department of the Interior Freedom of Information Act (FOIA) appeal procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

FOIA appeals, initial requests and decisions on requests issued by bureaus and offices, recommendations of the Office of the Solicitor and of other Departmental officials, final decisions on appeals, extension of time and related records, and records to track the processing of appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is: (a) To support review and decision-making for FOIA appeals; and (b) To prepare an annual report to Congress.

Disclosure outside the Department of the Interior may be made: (1) To other Federal agencies having a subject matter interest in an appeal or bureau or office decision; (2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records where compiled; (3) Of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (4) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Appeal records are maintained in manual form in file folders. Appeal tracking information is maintained in computerized form on magnetic media.

RETRIEVABILITY:

Manual records are indexed by appeal number. A cross-reference list permits retrieval of records by appellant's name. Computer records are indexed by name of appellant, appeal number, date and subject of appeal.

SAFEGUARDS:

Records are maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are destroyed six years after final determination by agency, or three years after final adjudication by courts, in accordance with General Records Schedule No. 14, Item 12.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Act Appeals Officer, U.S. Department of the Interior, Office of Administrative Services, m.s.5412–MIB, 1849 C Street, NW., Washington, DC 20240.

NOTIFICATION PROCEDURES:

A request for notification of the existence of records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Appellants; bureau, office and Departmental officials.

[FR Doc. 94–6095 Filed 3–15–94; 8:45 am]
BILLING CODE 4310–WA–M

Bureau of Land Management

[UTU–64463]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–64463 for lands in Utah County, Utah, was timely filed and required rentals accruing from November 1, 1993, the date of termination, have been paid.

The lessees have agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessees have reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease UTU–64463 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–64463, effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals Adjudication Section.

[FR Doc. 94–6091 Filed 3–15–94; 8:45 am]
BILLING CODE 4310–DQ–M

[WY–920–41–5700; WYW–117799]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW117799 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW117799 effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94–6090 Filed 3–15–94; 8:45 am]
BILLING CODE 4310–22–M

[AK–040–04–5700–10; AA–65151–P]

Realty Action; Sale of Reversionary Interest

AGENCY: Bureau of Land Management, Anchorage District.

ACTION: Notice of realty action, sale of reversionary interest in public land—Seward, Alaska

SUMMARY: Reversionary interest held by the United States in the following lands has been determined suitable for direct sale to the City of Seward, Alaska, under the authority of section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713). The lands are described as Seward Meridian, T. 1 S., R. 1 W., USS 1117, Block 5, Lots 1, 2, 17, 18, 19, 20, 21 and 22 and contain .83 acre. The lands are currently owned by the City of Seward, but the purposes for which the lands can be used are restricted by a reversionary clause in the patent under which the lands were conveyed. The lands are not needed for federal purposes and the United States has no present interest in the property. It is in the public interest to allow the City of Seward to purchase the reversionary rights. The property may then be used for whatever purposes are determined to be of most benefit to the city.

FOR FURTHER INFORMATION CONTACT: Lorri Denton, Anchorage District, 6881 Abbott Loop, Anchorage, Alaska 99507, 907–267–1244.

SUPPLEMENTARY INFORMATION: The purpose of the sale of the reversionary interests in this land is so the land, currently owned by the City of Seward, can be used for the purposes which will be the best and highest uses of the lands and best meet the needs of the City of Seward. The land is not required for any federal purpose. This action is consistent with federal, state and local planning and zoning.

The reversionary interest in this land will be offered by direct sale to the City of Seward for Fair Market Value which is $10,800. The reversionary interest in these lands will not be offered for sale until 60 days after this notice.

The patent, when issued, will be for the reversionary interest only. All other terms and conditions of Patent No. 1137469 will continue to apply to the lands involved. For a period of 45 days following the publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Anchorage District, at the above address. In the absence of timely objections, this proposal shall become the final decision of the Department of the Interior.

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 94–6073 Filed 3–15–94; 8:45 am]
BILLING CODE 4310–JA–P

[CO–010–4210–05; COC14445, COC24135; 4210–C010]

Realty Action: Recreation and Public Purposes (R & PP) Act Classification in Grand County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: In response to an application from Grand County, Colorado, the following public lands have been examined and found suitable for classification for conveyance to Grand County, Colorado, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands are currently leased to Grand County for landfill purposes under Recreation and Public Purposes Lease C–14445, Kremmling Landfill, and Lease C–24135, Granby Landfill, and would continue to be used for landfill purposes. The mineral interests will be included in the conveyance of the property to Grand County, with the exception of the Oil and Gas estate for the Granby Landfill.

Affected Public Lands

Sixth Principal Meridian, Colorado

T. 1 N., R. 80 W.,
Sec. 9, N½N½NW¼

The lands described above are contained in Lease C–14445 for the Kremmling Landfill and contain 40 acres.

Sixth Principal Meridian, Colorado

T. 2 N., R. 77 W.,
Sec. 23, Lot 7

The lands described above are contained in Lease C–24135 for the Granby Landfill and contain 40.36 acres.

FOR FURTHER INFORMATION CONTACT: The environmental assessments, Landfill Transfer Audits and other information concerning this proposed conveyance is available for review by contacting Madeline Dzielak at the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459, (303) 724–3437.

SUPPLEMENTARY INFORMATION: Publication of this notice in the Federal Register segregates the public land from the operation of the public land laws, including the mining laws, except for conveyance under the Recreation and Public Purposes Act and conveyance of the mineral estate under section 209 of the Federal land Policy and Management Act, for a period of two years from the date of publication of this notice. The segregative effect shall terminate upon issuance of a patent, upon rejection of the application, or two years from the date of publication of this notice.

The following reservations, terms and conditions will be made in a patent issued for the public lands:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for buried telephone line purposes as have been granted to US West Communications, Inc., its successors and assigns, by right-of-way Colorado 22642 under the Act of February 15, 1901, as amended (43 U.S.C. 959 (1988)). (This applies to the Kremmling Landfill only.)

3. The provisions of the Recreation and Public Purpose Act amended and to all applicable regulations of the Secretary of the Interior.

4. The patentee shall comply with all Federal and State laws applicable to the disposal, placement or release of hazardous substances (substance as defined in 40 CFR part 302).

5. The lands have been utilized for solid waste disposal and that any proposed future uses of the land should take into account that a solid waste disposal facility was located on the lands.

6. No portion of the land covered by such patent shall under any circumstance revert to the United States.

7. Grand County, its assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States, its officers, agents, representatives and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, and 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 attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from the N½N½NW¼ of section 9, T. 1 N., R. 80 W., Sixth Principal Meridian, Colorado, and Lot 7 of section 23, T. 2 N., R. 77 W., Sixth Principal Meridian, Colorado, 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.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Interested parties should indicate which landfill they are commenting on. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: March 3, 1994.

William J. Pulford,

District Manager.

[FR Doc. 94–6093 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–84–M

[OR134–4210–08; GP4–095]

Notice of Intent To Prepare a Planning Analysis for Palmer Mountain Land Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning analysis for Palmer Mountain-Snohomish County Land Exchange.

SUMMARY: The Bureau of Land Management is initiating a planning analysis pursuant to section 43 CFR 1610.8 of the planning regulations for the exchange of 40 acres of public land located in Snohomish County, Washington for 1356.03 acres in Okanogan County, Washington.

Selected Federal Lands: T31N, R6E, WM, Snohomish County, Washington, Section 27, NE¼NW¼ (40 acres). Title will be conveyed subject to the following reservation: A right-of-way thereon for ditches or canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

Offered non-Federal lands: (T38N, R26E, WM, Section 5: Lots 1–4, S½NE¼ (228.36 acres), Section 6: Lots 1–5, S½NE¼, SE¼NW¼, NE¼SE¼, (327.67 acres); T39N, R26E, WM. Section 31: E½NE¼, SW¼NE¼, E½SW¼, SE¼ (360 acres), Section 32: E½, W½NW¼, SE¼NW¼, SW¼, (600 acres).

The purpose of this planning analysis and associated environmental assessment will be used to assess the impacts of the proposal and to provide a basis for BLM to make an informed decision.

The proposed exchange would result in the acquisition of subject private lands, which are within the Okanogan Management Area on Palmer Mountain by trading an isolated tract of public land in Snohomish County. The private lands have important wildlife and recreation values. The acquisition of these lands will consolidate the existing public ownership pattern in the Okanogan Management Area and it will significantly improve access to adjacent public lands.

As indicated in the Spokane District Resource Management Plan Record of Decision of 1987, and as amended in 1982, it is anticipated that the acquired lands would be managed under existing BLM Resource Management Plan guidelines for the Okanogan Management Unit (i.e. Recreation, Wildlife Habitat, and Grazing Management).

The public land to be traded has no public access and is considered by BLM to be difficult and uneconomical to manage. The transfer of this land from public ownership would not significantly affect endangered or threatened species or their habitat that has been determined to be critical under the Endangered Species Act of 1973.

SUPPLEMENTARY INFORMATION: The interdisciplinary team which will prepare the planning analysis includes BLM resource specialists in botany, wildlife biology, access, recreation, geology and minerals, archaeology, forestry, and range. All persons with an interest in management of these two

areas and resources are requested to submit comments on this proposal within 30 days of the date on this **Federal Register** notice. Comments and requests for further information or requests to be placed on a mailing list should be addressed to Joseph K. Buesing, District Manager, Spokane District Office, East 4217 Main Avenue, Spokane Washington 99202, (509) 353–2570 or James F. Fisher, Area Manager, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, Washington 98801, (509) 662–4223. No public meetings are anticipated, but may be scheduled if there is a strong public interest. Copies of the planning document will be available for public review at the above offices of the BLM and at public libraries in Snohomish and Okanogan Counties. The draft analysis is expected to be available in May and final in June 1994.

The date of this notice initiates the 30 day scoping period.

ADDRESSES: Spokane District, Bureau of Land Management, East 4217 Main Avenue, Spokane, Washington 99202.

Authority: (43 CFR 1610.8)

Dated: March 8, 1994.

Joseph K. Buesing,

District Manager.

[FR Doc. 94–5842 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–33–M

[OR–014–6350–02; G4–098]

Draft Upper Klamath Basin Resource Management Plan and Environmental Impact Statement; Availability

ACTION: Notice of Availability, Draft Upper Klamath Basin Resource Management Plan and Environmental Impact Statement.

SUMMARY: The U.S. Department of the Interior through the Bureau of Land Management (BLM) gives notice of the availability of the Draft Upper Klamath Basin Resource Management Plan and Environmental Impact Statement (EIS) for review and public comment. The EIS was prepared pursuant to section 102 (2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, section 202(f) of the Federal Land Policy and Management Act of 1976, and the BLM's planning procedures (43 CFR 1610). The RMP/EIS analyzes the effects of converting land of the newly acquired Wood River property, approximately 3,220 acres in Klamath County, Oregon, into a functioning wetland community.

Preparation of the Upper Klamath Basin Resource Management Plan and Environmental Impact Statement (RMP/EIS) is a separate process from the ongoing Klamath Falls Resource Area Resource Management Plan and Environmental Impact Statement process. Although both plans will be comparable (that is, guiding future management actions in specified areas), they are being prepared separately due to the geographical distance between the Wood River property and the rest of the BLM-administered lands in the Resource Area.

Copies of the draft RMP/EIS may be obtained from the Klamath Falls Resource Area office, 2795 Anderson Ave. Bldg. 25, Klamath Falls, Oregon. Copies will also be available at the following locations:

BLM Lakeview District office, 1000 South 9th St., Lakeview, OR 97630

BLM Office of Public Affairs, Main Interior Building, room 5600, 18th and C Street NE., Washington DC 20240

BLM Oregon State office, 1300 N.E. 44th Avenue, Portland, OR 97213

Klamath County Public Library, 126 South 3rd St., Klamath Falls, OR 97601

Oregon Institute of Technology Library, 3201 Campus Drive, Klamath Falls, OR 97601

Public meetings on the draft plan will be announced in the local print media. Information on the public meetings can also be obtained by calling Cathy Humphrey at (503) 885–4110.

DATES: The public comment period on the RMP/EIS will be 90 days. Written comments on the draft must be submitted or postmarked no later than May 31, 1994.

ADDRESSES: Written comments should be addressed to A. Barron Bail, Area Manager, Bureau of Land Management, Klamath Falls Resource Area, 2795 Anderson Ave. Bldg 25, Klamath Falls, Oregon 97603.

CONTACT FOR FURTHER INFORMATION: Write to the above address or call Cathy Humphrey at (503) 885–4110.

SUPPLEMENTARY INFORMATION: The RMP/EIS describes and analyzes four alternatives for BLM-administered lands in the Upper Klamath Basin to address the goal of wetland restoration. The alternatives include a No Action alternative (continuation of current management) which does not include wetland restoration, and three alternatives that do include wetland restoration. In all four alternatives the following issues were addressed: fish and wildlife habitat, special status species habitat, recreation opportunities, access, water resources, wetland restoration, livestock grazing, and public involvement.

The No Action Alternative would maintain the current use of the property as predominantly for livestock grazing in an irrigated pasture. Livestock grazing would remain at current levels. Water would be pumped off in the spring at current schedules. The amounts of upland, wet meadow, and marsh habitat would remain constant. Recreation facilities would not be developed. Recreation use, limited to day use only, would neither be encouraged nor restrained and the area would remain closed to motorized vehicles.

Alternative B would restore the Wood River Property to a functioning wetland with diverse plant communities and healthy, productive vegetation. Initial management actions could require highly engineered techniques, such as restoring the Wood River and Sevenmile Creek to their historic meandering channels; however, in the long term, wetland restoration systems and methods would be designed for minimum maintenance using the existing landscape features. The minimum maintenance methods used would vary, but could include such tools as grazing, prescribed fire, and mechanical vegetation manipulation. Some recreation facilities would be developed. Recreation use and some motorized access would be allowed, but would be limited to certain areas and times of day.

Alternative C would also restore the Wood River property to a functioning wetland with diverse plant communities and healthy, productive vegetation. However, initial and long-term restoration actions could involve highly engineered techniques. The methods used for wetland restoration could include experimental techniques, such as artificial water circulation, or other constructed wetlands. General design principles could be complex. The research would encompass both the methods used for wetland restoration and the examination of the effects of restoration on water quality and quality and quantity, fish and wildlife habitat, etc. Recreation would be limited to day use only. Development of recreation facilities would emphasize wetland restoration education. Various tools, such as grazing, prescribed fire, and mechanical manipulation of vegetation, could be used to meet the goals of this alternative.

A Preferred Alternative was chosen, Alternative D, which would restore the Wood River property to its previous form and function as a wetland community, within unalterable constraints (such as existing dikes, water rights, land ownership patterns,

and funds). Labor-intensive, highly engineered wetland restoration methods using complex designs would be allowed; however, the preference would be to use wetland restoration systems and methods that were designed with less labor-intensive practices using the existing landscape features. Long-term improvements in water quality entering Agency Lake would be a goal. Adaptive management, the process of changing land management as a result of monitoring or research, would be used.

The Preferred Alternative would emphasize improving an increasing wetland habitat for federally listed fish species. It would also protect habitats of federally listed or proposed threatened or endangered species to avoid contributing to the need to list category 1 and 2 federal candidate, state listed, and Bureau sensitive species. This alternative would emphasize management of special status species, including a complete inventory for these species, and maintain a diversity of habitats to meet or exceed viable population levels. Other wildlife species would have habitat improved within the constraints of other resource objections.

Recreation would be managed for moderate use levels, with roaded natural recreation experiences provided. Off-highway vehicles would be limited to designated, signed roads. The area would be identified as a Watchable Wildlife site. The Wood River property would be designated an Area of Critical Environmental Concern to protect the area's relevant and important values (cultural, fish, and wildlife values, and natural processes and systems). Neither the Wood River nor Sevenmile Creek were found eligible or suitable for designation under the Wild and Scenic Rivers Act under any of the alternatives.

A. Barron Bail,

Area Manager, Klamath Falls Resource Area.

[FR Doc. 94–6094 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–33–M

[WY–030–4210–05; WYW–124767]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; direct sale of public land in Carbon County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for direct sale under Section 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713; 1719).

Sixth Principal Meridian,

T. 21 N., R. 88 W.,

Sec. 24, Lot 53.

The above contains approximately 4.82 acres.

FOR FURTHER INFORMATION CONTACT: Chuck Reed, Acting Area Manager, Bureau of Land Management, Great Divide Resource Area, P.O. Box 670, Rawlins, Wyoming 82301, 307–324–4841.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface and mineral estates to Mr. Tom Lankford, under section 203 and 209 of the Federal Land Policy and Management Act of 1976 43 U.S.C. 1713 and 1719. Mr Lankford currently operates Butane Power and Equipment Company adjacent to the subject lands. Mr. Lankford's business is being impacted through a Federal Highway Administration action and must be relocated. Mr. Lankford has requested a sale of the public lands as a result of the Federal Highway Administration action.

The proposed direct sale to Mr. Lankford would be made at fair market value.

Additionally, Mr. Lankford will be required to submit the non-refundable application fee of $50.00 dollars in accordance with 43 CFR part 2720 for conveyance of all unreserved mineral interests in the lands.

The proposed sale is consistent with the Great Divide Resource Management Plan. The planning document and environmental assessment covering the proposed sale are available for review at the Great Divide Resource Area Office, Rawlins, Wyoming.

Conveyance of the above public lands will be subject to: Reservations to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945 and those rights for a road and public utility easement being 30 wide feet along the west boundary of Lot 53. There will be no cancellation of grazing rights. A grazing waiver will be obtained for the subject parcel.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of the patent or 270 days from the date of publication of this notice whichever occurs first.

For a period of forty-five (45) days from the issuance of this notice, interested parties may submit comments to the District Manager, Rawlins District, P.O. Box 670, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action. In the absence of timely objections, this proposed realty action will become final.

Dated: March 11, 1994.

Charles E. Reed,

Supervisory Range Conservationist.

[FR Doc. 94–6222 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF INTERIOR

Bureau of Reclamation

Draft Interim Guidelines for the Implementation of the Interim Renewal Contract Provisions Central Valley Project Improvement Act, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of workshops.

SUMMARY: The Department of the Interior, through the Bureau of Reclamation (Reclamation), has developed draft interim guidelines for implementation of the interim renewal contracts pursuant to the provisions of the Central Valley Project Improvement Act (CVPIA). To facilitate an understanding of the draft interim guidelines on interim renewal contracts, there will be a series of five workshop sessions at which the guidelines will be explained in detail. There will be an opportunity to ask questions. The sessions are open to the general public and are to promote an exchange of ideas and to answer questions prior to the finalization of the interim guidelines.

DATES AND ADDRESSES: The proposed draft interim guidelines for the interim renewal contracts dated March 10, 1994, may be obtained without charge by writing to the Regional Director, Bureau of Reclamation, (MP–440), 2800 Cottage Way, Sacramento CA 95825. Reclamation is encouraging written comments. Please provide all written comments to the above address.

All written comments must be received by April 22, 1994.

All workshops will be conducted as follows:

- Monday, March 28, 1994, 7–9 p.m., Convention Center, Sand Room, 303 E. Acequia, Visalia, California
- Tuesday, March 29, 1994, 7–9 p.m., Tracy Inn Restaurant, 30 W. Eleventh Street, Tracy, California
- Wednesday, March 30, 1994, 1:30–3:30 p.m., Franco's Restaurant, 610 Tehama Street, Willows, California
- Thursday, March 31, 1994, 7–9 p.m., Parc Oakland, California Room, 1001 Broadway, Oakland, California

• Friday, April 1, 1994, 8:30 a.m.–12 p.m., Sacramento Hilton, Ballroom, 2200 Harvard Street, Sacramento, California

FOR FURTHER INFORMATION CONTACT: Questions by telephone should be directed to Betty Riley at (916) 978–5036 (TDD) (916) 978–4417.

SUPPLEMENTARY INFORMATION: Section 3404(c) of the CVPIA provides that no long-term repayment or water service contract will be renewed until appropriate environmental review, including the programmatic environmental impact statement (PEIS) on the Central Valley Project (CVP) required under Section 3409 has been completed. The Section further provides that the United States and the CVP Contractors may enter into interim renewal contracts during the period between expiration of their long-term contracts and completion of appropriate environmental documentation including the PEIS required under CVPIA. The objective of the interim renewal contracts is to provide existing CVP Contractors water deliveries during the period from expiration of the original contract until the environmental documentation is complete in accordance with Section 3404(c) of Public Law 102–575. The interim renewal contracts are also intended to provide a means of carrying out the goals and requirements of the CVPIA and other provisions of Federal and state law.

To implement these provisions, Reclamation intends to execute an initial interim renewal contract with each contractor for a term of up to 3 years. Subsequent interim renewal contracts may be provided subject to the requirements of these guidelines and applicable law for terms of up to 2 years.

The CVP was originally authorized as an Army Corps of Engineers project by the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1028, 1038). Congressional reauthorization of the project under Reclamation law was provided in Section 2 of the Rivers and Harbors Act of August 26, 1937 (50 Stat. 844), as amended by the CVPIA and by the Rivers and Harbors Act of October 17, 1940 (54 Stat. 1198). Congress further reauthorized the project by the Act of October 14, 1949 (663 Stat. 852) and the Act of September 26, 1950 (64 Stat. 1036). Additional units were authorized by the Congress as integral parts of the project by the Acts of August 12, 1955 (69 Stat. 719); June 3, 1960 (74 Stat. 156); October 23, 1962 (76 Stat. 1191 and 1192); September 2, 1965 (79 Stat. 615); August 19, 1967 (81 Stat. 167); August 27, 1967 (81 Stat. 173); October 23, 1970 (84 Stat. 1097); and September 28, 1976 (90 Stat. 1328).

The authority for the interim renewal contracts includes the Acts of August 4, 1939, July 2, 1956, June 21, 1963, and October 30, 1992.

Draft interim guidelines for interim renewal contracts were previously made available for review and comment to interested parties on February 12, 1993 and July 17, 1993. Reclamation met with interested parties to discuss their comments on the previous draft interim guidelines. All written comments and comments from the workshop will be considered prior to finalizing the draft interim guidelines. The final interim guidelines will establish Reclamation's position on issues included in the negotiations of all interim renewal contracts.

Significant issues addressed in the draft interim guidelines include the following: The process used to determine water quantities; water transfers; water shortages, water quality, water measurement, payments and surcharges, and water conservation.

Dated: March 11, 1994.

James O. Malila,

Acting Deputy Commissioner.

[FR Doc. 94–6199 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Sacramento Prickly-Poppy for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Sacramento prickly-poppy (*Argemone pleiacantha* ssp. *pinnatisecta*). This plant is known only from the Sacramento Mountains in Otero County, south-central New Mexico. Approximately 80 percent of the known population occurs on the Lincoln National Forest. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before May 16, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, suite D, Albuquerque, New Mexico 87107 (505) 883–7877. Written comments and materials regarding the plan should be addressed to the State Supervisor. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Cully (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Sacramento prickly-poppy (*Argemone pleiacantha* ssp. *pinnatisecta*) was listed as endangered on August 24, 1989 (54 FR 35305). Major threats to this species include surface-disturbing activities from water pipeline projects, road construction and maintenance, flash floods, trampling and grazing from livestock, and off road vehicle use. The draft recovery plan specifies management procedures for protecting habitat and expanding the species range and abundance.

The objectives of the Draft Sacramento prickly-poppy recovery plan are to maintain extant populations

in place and ensure the species is safe from extinction. Further, that at least 10 geographically distinct, self-sustaining natural populations be protected before the species is considered for downlisting.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The Authority fopr this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 9, 1994.

John G. Rogers,

Regional Director.

[FR Doc.94–6062 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Decisions on Routine Appeal Cases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: The Royalty Management Program (RMP) of the Minerals Management Service (MMS) has been delegated authority to render decisions on routine appeals from orders and decisions issued by RMP regarding Federal leases. The authority was transferred from the Appeals and Litigation Support Division (ALSD) at MMS.

EFFECTIVE DATE: The effective date of this delegation is March 15, 1994, based on direction from the Deputy Director for MMS to realize the benefits of more timely agency decisions for the appellant.

FOR FURTHER INFORMATION CONTACT: Platte Clark, Chief, Appeals and Litigation Support Division, Minerals Management Service (Mail Stop 9110), Parkway Atrium Building, 381 Elden Street, Herndon, Virginia 22070–4817. Telephone (703) 787–1275.

SUPPLEMENTARY INFORMATION: The MMS regulations at 30 CFR 290, Appeals Procedures, provides rules and procedures on appeals to the Director, MMS (and the Bureau of Indian Affairs when Indian lands are involved) from final orders or decisions of officers of the MMS, issued under authority of the regulations. On routine appeals to the Director, the final agency decision was delegated to the Chief, ALSD, MMS, in June 1993. To further streamline the appeals process and reduce the time for a final agency decision, routine appeals on orders or decisions issued by RMP have been re-delegated through the Associate Director for Royalty Management to the Chief of the applicable RMP Office from the Deputy Director of MMS.

Routine appeals are defined by the delegation as follows:

(a) Appeals not timely filed as required by 30 CFR 290.

(b) Appeals from an assessment for a required report filed late (30 CFR 216.40 and 218.40).

(c) Appeals from an assessment for failure to file a required report (30 CFR 216.40 and 218.40).

(d) Appeals from an assessment for an incorrectly completed report (30 CFR 216.40 and 218.40).

(e) Appeals from an assessment of interest for unpaid and underpaid amounts due (30 CFR 218.54, 218.102, 218.150, 218.202 and 218.302). This category is limited to factual issues involving the time value of money and non-precedent-setting appeals. Appeals with complex issues will be referred to the Director of MMS for a decision.

(f) Appeals in which the appellant neglects to file a statement of reasons to justify modification of the RMP order or decision.

(g) Appeals in which the order or decision is being rescinded.

The decision process to be used by RMP involves a procedure whereby: (1) The RMP office responsible for the original order or decision will examine the appeal and any statement of reasons provided by the appellant to modify the RMP directive; (2) the RMP office will issue a report to the appellant for comment back to RMP within 21 days of receipt; and (3) following the comment period, the Chief of the RMP office will render the final agency decision.

MMS believes that routine appeal cases have similar issues that have been decided in prior cases by either the Director or the Interior Board of Land Appeals (IBLA). The fact that the final agency decision is at the RMP level should greatly enhance the timeliness of the decision for the appellant and reduce the workload at ALSD to focus on complex cases. The benefits for the appellant and MMS are significant.

The authority to render decisions on routine appeals that pertain to royalty issues for mineral leases on Indian lands is carried out by the Deputy Commissioner of Indian Affairs or designee. This authority has not been delegated.

This delegation does not affect the right of a party to further appeal a final MMS decision to the IBLA after the RMP has rendered a final MMS decision.

Dated: March 10, 1994.

Lucy R. Querques,

Associate Director for Policy and Management Improvement.

[FR Doc. 94–6000 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee, Correction.

This Notice corrects the Notice published in the **Federal Register** on March 7, 1994. The place of the May 12th, 13th and 14th, 1994 Meeting of the Native American Graves Protection and Repatriation Act Review Committee will be the Rushmore Civic Center, 444 Mount Rushmore Road, Rapid City, SD 57701, in meeting room Rushmore E, not the Rapid City Hilton Inn as previously stated.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127–suite 210, Washington, D.C. 20013–7127, telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capital Street, Washington, D.C.

Dated: March 9, 1994.

Francis P. McManamon,

Departmental Consulting Archeologist and Chief, Archeological Assistance Division.

[FR Doc. 94–6057; Filed 3–15–94; 8:45 am]

BILLING CODE 4310–70–F

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 5, 1994. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 31, 1994.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Spalding County

St. George's Episcopal Church, 132 N. Tenth St., Griffin, 94000284.

KENTUCKY

Floyd County

DeRossett—Johns Site, Address Restricted, Prestonsburg vicinity, 94000304.

Madison County

Fort Boonesborough Townsite Historic District, 4375 Old Boonesborough Rd., Richmond vicinity, 94000303.

MASSACHUSETTS

Essex County

Fort Lee, Address Restricted, Salem vicinity, 94000285.

MISSOURI

Franklin County

International Shoe Company Building, 160 N. Main St., St. Clair, 94000287.

Jackson County

Hughes, Mollie and Josephine, House, 801 S. Main St., Independence, 94000289.
Kansas City Water Department Building, 201 Main St., Kansas City, 94000290.
Townley Metal & Hardware Company Building, 200–210 Walnut St., Kansas City, 94000286.

Johnson County

Johnson County Courthouse, Courthouse Sq., Warrensburg, 94000288.

OKLAHOMA

Carter County

Healdton Armory, Jct. of Fourth and Franklin Sts., Healdton, 94000280.

Custer County

Clinton Armory, 723 S. Thirteenth St., Clinton, 94000281.

Greer County

Mangum Armory, 115 E. Lincoln St., Mangum, 94000278.

Kingfisher County

Kingfisher Armory, 301 N. 6th St., Kingfisher, 94000279.

Stephens County

Marlow Armory, 702 W. Main St., Marlow, 94000282.

SOUTH CAROLINA

Greenville County

Greenville County Courthouse, 130 S. Main St., Greenville, 94000300.

TENNESSEE

Gibson County

Freed, Julius, House, Eaton St. W of Gibson Co. Courthouse, Trenton, 94000301.

Moore County

Bobo Hotel, Main St., Lynchburg, 94000283.

UTAH

Iron County

Meeks—Green Farmstead, Approximately 40 N. 400 West., Parowan, 94000295.

Plute County

Morrill, John and Ella, House, 95 N. Main St., Junction, 94000294.

Salt Lake County

Hollywood Apartments (Salt Lake City MPS), 234 E. 100 South, Salt Lake City, 94000302.
Midvale City Hall (Public Works Buildings TR), 12 E. Center St., Midvale, 94000293.
Smith, Joseph M. and Celestia, House, 12357 S. Relation St. (1565 East), Draper, 94000291.
Smith, Mary, House, 12544 S. Relation St. (1565 East), Draper, 94000292.

Utah County

American Fork City Hall, 31 Church St., American Fork, 94000298.
Beers House—Hotel, 65 N. 100 East, Pleasant Grove, 94000296.
Fugal Blacksmith Shop, Approximately 680 N. 400 East, Pleasant Grove, 94000297.
Legion Memorial Building, 48 N. Merchant's St., American Fork, 94000299.

[FR Doc. 94–6034 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

Certain Anisotropically Etched One Megabit and Greater DRAMs, Components Thereof, and Products Containing Such DRAMs; Commission Determination Not To Review Initial Determination Granting Jointing Motion To Terminate the Investigation of the Basis of a Settlement Agreement

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 the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting a joint motion to terminate the investigation on the basis of a settlement agreement between complainant Micron Semiconductor, Inc., and the only remaining respondents in the investigation, Hyundai Electronics Industries, Co. Ltd. and Hyundai Electronics America, Inc.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3093. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 14, 1992, based on a complaint alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of certain anisotropically etched one megabit and greater DRAMs, components thereof, and products containing such DRAMs, allegedly manufactured abroad by a process covered by claims 1, 2, 5, and 6 of U.S. Letters Patent 4,436,584.

On February 4, 1994, complainant Micron Semiconductor, Inc. and respondents Hyundai Electronics Industries, Co. Ltd. and Hyundai Electronics America, Inc. (the "Hyundai respondents") filed a joint motion to terminate the investigation with prejudice on the basis of a settlement and license agreement. On February 9, 1994, complainant and the Hyundai respondents filed an amended motion, superseding the first motion, and clarifying that the license agreement covers the patent and products at issue in the investigation. On February 9, 1994, the Commission investigative attorney filed a response in support of the joint motion.

On February 14, 1994, the ALJ granted the amended motion, issuing an ID terminating the investigation. No petitions for review or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended).

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 public 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.

Issued: March 9, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6128 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P–M

[Investigation No. 337–TA–347]

Commission Determination Not To Review An Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

In the Matter of Certain Anti-theft Deactivatable Resonant Tags and Components Thereof.

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 the final initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ID found no violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: On March 10, 1993, the Commission instituted an investigation of a complaint filed by Checkpoint Systems Inc. (Checkpoint) under section 337 of the Tariff Act of 1930. The complaint, as amended, alleged that six respondents imported, sold for importation, or sold in the United States after importation certain anti-theft deactivatable resonant tags and components thereof that infringed claims 1, 2, 4, 6, 9, 10, 20, 21, 23, and 25 of U.S. Letters Patent 4,498,076 (the '076 patent) and claims 1, 2, 4, 6, 9, 10, 19, 20, 22, 24, 25, 26, and 27 of U.S. Letters Patent 4,567,473 (the '473 patent). On March 10, 1993, the Commission instituted an investigation of Checkpoint's complaint.

The Commission's notice of investigation named six respondents, each of whom was alleged to have committed one or more unfair acts in the importation or sale of components or finished tags that infringe the asserted patent claims. Those respondents are: (1) Actron AG (Actron); (2) Tokai Denshi Co., Ltd. (Tokai); (3) ADT, Limited (ADT); (4) All Tag Security AG (All Tag); (5) Toyo Aluminum Co., Ltd. (Toyo); and (6) Custom Security Industries, Inc. (CSI). Respondent CSI was found to be in default and to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. See 58 FR 52523 (Oct. 17, 1993).

On December 1, 1993, the Commission issued notice that it would follow a modified procedure for considering the final ID in this investigation. 58 FR 63391. The notice set out a schedule for the parties to file petitions for review of the ID, responses to the petitions for review, and replies to the responses. The notice also indicated that the Commission might later issue a notice requesting written submissions from the parties, other federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding, and/or requiring the parties to file supplemental briefs on violation issues selected by the Commission.

The ALJ conducted an evidentiary hearing in August and September, 1994, and issued his final ID on December 9, 1993. He found that: (1) There is a domestic industry involving each of the asserted claims of the '076 and '473 patents; (2) none of the asserted claims of these patents are infringed by respondents' tags; (3) the asserted claims are invalid under 35 U.S.C. 102(g); and (4) the asserted claims are not invalid under 35 U.S.C. 102, 103, or 112. Based upon his findings of invalidity and non-infringement, the ALJ concluded that there was no violation of section 337.

Complainant Checkpoint filed a petition for review of the ALJ's findings on both infringement and validity; respondents and the Commission investigative attorney (IA) filed responses to the petition for review, and all parties filed reply submissions.

On January 21, 1994, the Commission issued a notice requesting the parties, interested government agencies, and other interested persons to file submissions addressing the issues of remedy, the public interest, and bonding. 59 FR 3867 (January 27, 1994). The Commission noted that it had not yet completed its review of the record in the investigation and had made no determinations with respect to the ID or complainant's petition for review, but that it was requesting submissions on the issues of remedy, the public interest, and bonding for use in the event that it ultimately determined that a violation of section 337 had been established. All parties filed submissions on these issues, but no agency or public submissions were received.

Having considered the record in this investigation, including the ID and all submissions filed on review, the Commission determined not to review any portion of the ID. The Commission also determined that issuance of a remedy as to defaulting respondent CSI is precluded by public interest factors.

This action constitutes the Commission's final disposition of this investigation.

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 non-confidential 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 202–205–3000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: March 10, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6133 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–364]

Investigation

In the Matter of Certain Curable Fluoroelastomer Compositions and Precursors Thereof.

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 7, 1994, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133. The complaint, as amended, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation,

and the sale within the United States after importation of certain curable fluoroelastomer compositions and precursors thereof, by reason of alleged induced and contributory infringement of claims 1–2, 4–6, 11–12, and 14–15 of U.S. Letters Patent 4,287,320, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on March 8, 1994, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337(a)(1)(B)(i) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain curable fluoroelastomer compositions, by reason of alleged infringement of claims 1–2, 4–6, 11–12, and 14–15 of U.S. Letters Patent 4,287,320, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ausimont U.S.A., Inc., 44 Whippany Road, Post Office Box 1838, Morristown, New Jersey 07962–1838.

Ausimont, S.p.A., Foro Buonaparte, 31, 20121 Milano, Italy.

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401–M, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to sections 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: March 9, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6132 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

Decision Not To Review An Initial Determination Granting a Joint Motion To Terminate the Investigation With Respect To Respondent Microcomputer Cable Co. on the Basis of a License Agreement

In the Matter of Certain Devices for Connecting Computers Via Telephone Lines.

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. 3) issued on February 8, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Farallon Computing, Inc. ("Farallon") and respondent MicroComputer Cable Co. ("MCC") to terminate the investigation as to MCC on the basis of a licensing agreement.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the **Federal Register** on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of certain claims of U.S. Letters Patent 5,003,579.

On January 25, 1994, Farallon and MCC filed a joint motion to terminate the investigation with respect to MCC on the basis of a licensing agreement. The Commission investigative attorney supported the motion. The ALJ issued an ID granting the joint motion and terminating the investigation as to MCC. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 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 individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

By order of the Commission.

Issued: March 9, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6130 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–349]

Effects of the Arab League Boycott of Israel on U.S. Businesses

AGENCY: International Trade Commission.

ACTION: Cancellation of hearing.

SUMMARY: As of the March 9, 1994, deadline for filing notices of appearances, the Commission had not received any requests to appear at its public hearing scheduled for March 17, 1994 in this matter. Therefore, the hearing in connection with this investigation scheduled for March 17, 1994 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, has been cancelled.

Notice of institution of the investigation and the scheduling of the hearing was published in the **Federal Register** of December 8, 1993, (58 FR 234).

EFFECTIVE DATE: March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Peg O'Laughlin (202–205–1819), Office of Public Affairs, U.S. International Trade Commission. Hearing impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202–205–1810).

By order of the Commission.

Issued: March 11, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6145 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–351]

Certain Removable Hard Disk Cartridges and Products Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on March 17, 1994, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: March 11, 1994

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 94–6135 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–351]

Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

In the Matter of Certain Removable Hard Disk Cartridges and Products Containing Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a consent order agreement: Kevin Scheier.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on March 7, 1994.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are 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 individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

By order of the Commission.

Issued: March 7, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6129 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 22–54]

Wheat, Wheat Flour, and Semolina

AGENCY: International Trade Commission.

ACTION: Scheduling of additional public hearings.

SUMMARY: The Commission will hold additional hearings in connection with this investigation beginning at 9:30 a.m. on April 7, 1994, in Bismarck, ND and at 10 a.m. on April 8, 1994, in Shelby, MT. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before March 25, 1994. Requestors will be notified by the Commission of the location of the public hearings, as well as any time limitations to be imposed on testimony. Oral testimony and written materials to be submitted at the public hearings are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: For further information concerning the scope of investigations and the conduct of this investigation and rules of general application, see the Commission's notice of institution (59 FR 3736,

January 26, 1994) and consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 204 (19 CFR part 204).

Written submissions.—Each person or group of persons filing a request to appear at these hearings is encouraged to submit a written copy of testimony/information pertinent to the subject of the investigation on or before March 30, 1994. A signed original and fourteen (14) copies of each submission must be filed with the Secretary in accordance with the provisions of section 201.8 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules.

All written submissions except for confidential business information will be available for public inspection during regular business hours, 8:45 a.m. to 5:15 p.m. in the Office of the Secretary.

Any information for which confidential business treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

As stated in the Commission's **Federal Register** notice of January 26, 1994, the Commission has also scheduled a hearing in this matter for Washington, DC, on May 12, 1994. The overall deadline for written submissions in this investigation, including post-hearing briefs, is May 19, 1994.

This notice is published pursuant to section 204.4 of the Commissions rules (19 CFR 204.4).

By order of the Commission.

Issued: March 9, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6131 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–644 (Final)]

Welded Stainless Steel Pipe From Malaysia

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports from Malaysia of welded austenitic stainless steel pipe, provided for in subheadings 7306.40.10 and 7306.40.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective September 1, 1993, following a preliminary determination by the Department of Commerce that imports of welded stainless steel pipe from Malaysia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 22, 1993 (58 FR 49317). The hearing was held in Washington, DC, on January 27, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 7, 1994. The views of the Commission are contained in USITC Publication 2744 (March 1994), entitled "Welded Stainless Steel Pipe from Malaysia: Investigation No. 731–TA–644 (Final)."

Issued: March 11, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6134 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Newquist and Commissioner Rohr dissenting.

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–55 (Sub-No. 478X), CSX Transportation, Inc. abandonment in Bell County, Kentucky and Claiborne County, Tennessee and,

AB–290 (Sub-No. 138X), Norfolk Southern Railway Company discontinuance of trackage rights in Bell County, Kentucky and Clairborne County, Tennessee. Ea available 3/11/94.

AB–400 (Sub-No. 2X), Seminole Gulf Railway, Inc., as general partner of Seminole Gulf Railway, L.P.—Abandonment exemption—portion of Baker Spur Line in Lee County, Florida. Ea available 3/8/94.

AB–156 (Sub-No. 19X), Delaware and Hudson Railway Company, Inc.—Abandonment exemption—in Saratoga and Warren Counties, New York. Ea available 3/8/94.

AB–167 (Sub-No. 1129X) Consolidated Rail Corp.—Abandonment Exemption—in Chester County, PA. Ea available 3/11/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–406 (Sub-No. 2X), Central Kansas Railway, Inc.—Abandonment Exemption—in Barber and Kiowa Counties, KS. Ea available 3/10/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–6089 Filed 3–15–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1658–94]

Immigration and Naturalization Service User Fee Advisory Committee: Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee Holding Meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and Time: March 30, 1994, at 9:30 a.m.

Place: The Third Floor Assembly Room at Baltimore-Washington International Airport, Baltimore, Maryland, telephone number: (410) 962–3610.

Status: Open. Tenth meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspectional services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public Participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received at least five (5) days prior to the meeting by the contact person will be considered for discussion at the meeting.

Contact Person: Elaine Schaming, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, room 7223, 425 I Street, NW., Washington, DC 20536, telephone number (202) 514–9587 or fax number 202–514–8345.

Dated: March 10, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–6040 Filed 3–15–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,253]

Plains Petroleum Operating Co., Lakewood, CO; Affirmative Determination Regarding Application for Reconsideration

On February 16, 1994, the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on February 4, 1994 and was published in the **Federal Register** on February 23, 1994 (59 FR 8662).

The petitioners, all involved in exploration, state that they are a separate appropriate subdivision from the Plains Operating Company and that their petition should be evaluated on the basis of the criteria relevant to the Exploration Group.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 7th day of March 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–6016 Filed 3–15–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than March 28, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than March 28, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of March 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Armco Stainless and Products (USWA).	Bridgeville, PA	02/24/94	02/24/94	NAFTA–00035	Stainless steel products.
Key Tronic Corporation (Co)	Cheney, WA	03/01/94	02/25/94	NAFTA–00036	Keyboards.
True Temper Hardware Company (USWA).	Harrisburg, PA	03/01/94	02/28/94	NAFTA–00037	Workmate tables.
Heater Wire (Co)	El Paso, TX	03/02/94	02/28/94	NAFTA–00038	Foil heater, pet heater.
J.C. Penney Inc. (wkrs)	Newark, DE	03/04/94	02/28/94	NAFTA–00039	Window coverings.
Peterson Shake Co. Inc. (wkrs)	Amanda Park, WA	03/04/94	03/03/94	NAFTA–00040	Wood shingles and ridges.

[FR Doc. 94-6017 Field 3-15-94; 8:45 am]
BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D–9601, et al.]

Proposed Exemptions; Genelabs Technologies, Inc.; Section 401(k) Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Genelabs Technologies, Inc. Section 401(k) Plan (the Plan) Located in Redwood City, CA

[Application No. D–9601]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of Group Annuity Contract Number 7410 (GA–7410) issued by Mutual Benefit Life Insurance Company (Mutual Benefit), located in Newark, New Jersey to Genelabs Technologies, Inc., located in Redwood City, California (the Employer), the sponsoring employer and a party in interest with respect to the Plan; provided that: (1) The Sale is a one-time transaction for cash; (2) the plan does not experience any loss nor incur any expenses from the transaction; (3) the Plan receives no less than the fair market value of GA–7410 as determined at the time of the Sale; and (4) the independent trustee for the Plan determines the fair market value of GA–7410 and also determines that the Sale is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Employer, a California corporation, was incorporated in 1984, and its securities are publicly traded on NASDAQ. The Employer is engaged primarily in the research and development of human health care products for the diagnosis, prevention, and treatment of viral diseases and cancer. Currently, the Employer is conducting research on therapeutics for

AIDS, hepatitis, herpes, and drug resistant cancer.

2. The Plan is a defined contribution plan, with individual accounts for the participants, which is intended to meet the qualification requirements of sections 401(a) and 401(k) of the Code. Also, the Plan intends to comply with section 404(c) of the Act and the regulations thereunder whereby the participants of the Plan self-direct the investments of their respective accounts in the Plan.

As of December 31, 1992, the Plan had 148 participants and total assets of $966,657. Approximately 35 percent of the total assets, valued at $343,108, were invested under GA–7410 in three different guaranteed investment certificates (GCs) on behalf of 54 participants in the Plan.

The Plan is administered by a committee of at least three individuals (the Committee) that is appointed by the President or The Board of Directors of the Employer.[1] Among other things, the Committee has the responsibility for selecting the optional investment vehicles that are used by the participants when self-directing the investments of their individual accounts in the Plan. Also, the Committee appoints legal counsel, accountants, investment advisers, and the trustee for the Plan.

The current investment adviser for the Plan is Retirement Benefits Planning (RBP), a California partnership, located in San Ramon, California. RBP is registered under the Investment Advisers Act of 1940 and is retained by the Committee to advise the Committee on funding policies; to monitor the quarterly performance of investments by the Plan; and, based on the funding policy of the Plan, to advise the Committee on new fund managers.

On September 26, 1991, the Bank of America National Trust and Savings Association (Bank of America), located in San Francisco, California, was appointed trustee (the Trustee) for the Plan. The applicant represents that the Trustee, as the custodian of the assets of the Plan, is to ensure that assets of the Plan are properly and legally held in trust as required by the Act, and is to oversee the establishment and maintenance of the investment and disbursement accounts of the Plan.

3. The Plan authorizes the Employer to appoint the named fiduciaries who are to select the optional investment vehicles offered to participants of the Plan. After the named fiduciaries make a selection of the investment vehicles, the Plan participants make their own decisions as to which investment vehicles to invest the assets of their individual accounts. At the selection and direction of previous fiduciaries,[2] from September 1, 1988, the effective date of the Plan, until October 30, 1991, all assets in the Plan were invested in GA–7410.[3] The Mutual Benefit investment vehicles under GA–7410 included the GCs, providing for yields at a fixed rate of interest to be paid at stated maturity periods, and two different variable annuity accounts ("separate accounts"), designated as the Equity Growth Account and the Aggressive Equity Account.

4. On July 16, 1991, the Commissioner of Insurance for the State of New Jersey (the Insurance Commissioner) placed Mutual Benefit in conservatorship and rehabilitation, causing Mutual Benefit to suspend all payments on Mutual Benefit accounts, including the GCs. On August 7, 1991, the Superior Court of New Jersey removed restrictions on withdrawals of assets from Mutual Benefit which were maintained in "separate accounts." This court order of August 7, 1991, enabled the Plan to withdraw all its investment in GA–7410, except for the portion invested in the GCs.

On September 27, 1991, the Employer requested that Mutual Benefit transfer the assets of the Plan freed by the Order of the Superior Court of New Jersey to the Bank of America as Trustee for the Plan. On October 30, 1991, and November 14, 1991, Mutual Benefit transferred the total sum of $414,262.92, which consisted of the value of the Plan assets invested in the "separate accounts" under GA–7410. The transfer of Plan assets to the Bank of America did not include the remaining assets invested in Mutual Benefit GCs under GA–7410, which are valued at $343,108 and make up approximately 35 percent of the total assets of the Plan.

5. On November 10, 1993, the New Jersey Superior Court approved a rehabilitation plan for Mutual Benefit. The terms of the rehabilitation plan provided that either the Mutual Benefit GCs would be paid in full with a reduced rate of interest over an extended period of time; or alternatively, the investors in the GCs could choose not to participate in the rehabilitation plan but instead, could choose to receive 45 percent of the value of their respective investment in the GCs.

In lieu of subjecting participants of the Plan to either of these choices under the rehabilitation plan of the court, the Employer proposes to purchase for cash the Mutual Benefit GA–7410. In this regard, the Employer proposes to pay the Plan, in a one-time cash sale transaction, the face value of the GCs. No expenses will be incurred by the Plan from the proposed transaction. The payment to be made by the Employer to the Plan will be the total amount paid by the Plan for the GCs (less any withdrawals previously made under the GCs) plus accrued interest. The amount of interest accrued to each GC to December 31, 1991, will be calculated by using the rates guaranteed under the terms of each GC.[4] Interest accrued on all three GCs after December 31, 1991, to the date of the Sale will be calculated at the rate of 4 percent for the period from January 1, 1992, through December 31, 1992, and at the rate of 3½ percent for the period from January 1, 1993, to the date of the proposed Sale. The 4 percent interest rate to be used to calculate the amount of interest accumulated by the GCs for 1992, and the 3½ percent interest rate to be used to calculate the amount of interest accumulated by the GCs for 1993 to the date of the proposed Sale are rates of interest that were determined under the rehabilitation plan ordered by the New Jersey Superior Court on November 13, 1993.

The applicant represents that the amount of the payment for GA–7410 will be determined on the date of the proposed Sale by the Bank of America, as the independent trustee of the Plan.

6. The applicant represents that the proposed transaction will relieve the Plan and its participants of any risk associated with retaining the GCs and

[1] The current Committee consists of four employees of the Employer: Kenneth P. McCarthy, Vice President, Human Resources; Robert Benson, Vice President and General Counsel; Michael Anderson, Controller; LaVonne Young, Associate Scientist. (Mr. Michael Anderson is represented by the applicant to be resigning his position with the Employer and the Committee.)

[2] The original fiduciaries, who were employees of the Employer, have since left their employment and resigned as fiduciaries of the Plan.

[3] The Department notes that the decision by the named fiduciaries to offer GA–7410 as an investment vehicle is governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not proposing relief herein for any violations of Part 4 of the Act which may have arisen as a result of the acquisition and holding by the Plan of GA–7410 issued by Mutual Benefit.

[4] Certificate No. 0001: 8.90 percent for the period September 1, 1988, to August 31, 1989, and 8.40 percent from September 1, 1989 to December 31, 1991.

Certificate No. 0002: 7.60 percent for the period September 1, 1989, to August 31, 1990, and 7.10 percent from September 1, 1990, to December 31, 1991.

Certificate No. 0003: 7.75 percent for the period September 1, 1990, to August 31, 1991, and 7.25 percent from September 1, 1991, to December 31, 1991.

will permit the participants to redirect the funds invested in the GCs to safer investments without any loss to the individual accounts of the participants in the Plan. Furthermore, the applicant represents that the proposed transaction will enable the Plan to resume paying distributions out of the funds that were invested in the GCs and due to participants under the terms of the Plan.

7. The Bank of America as the independent fiduciary of the Plan has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries, and is protective of the rights of the participants and beneficiaries. The Bank of America represents that the proceeds from the Sale will enable the Plan and its participants and beneficiaries to avoid the continued risk associated with holding the GCs under GA–7410. Also, the Bank of America represents that the proposed transaction will permit the participants to direct the proceeds from the Sale into safer investments and remove their funds in the Plan from an illiquid investment.

In addition, the Bank of America represents that in its capacity of independent fiduciary for the Plan it will calculate the value of GA–7410, as stated above, on the date of the Sale to determine the price that the Employer will pay for its purchase of GA–7410.

8. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The Plan will receive in a one-time transaction cash for the Mutual Benefit GCs, an amount equal to their face value plus accrued interest as of the date of Sale, which a qualified, independent fiduciary has determined to be not less than the fair market value of the Mutual Benefit GCs; (b) the transaction will enable the Plan and its participants and beneficiaries to avoid any risk that would be associated with the continued holding of the Mutual Benefit GCs, and will permit the directing of assets to safer investments; (c) the Plan will not incur any expenses with respect to the proposed transaction; and (d) the Trustee has determined that the Sale at the proposed price is in the best interests of the participants and beneficiaries of the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Southern Union Company, Southern Union Savings Plan (the Plan) Located in Austin, TX

[Application No. D–9594]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The past acquisition by the Plan of certain transferable stock rights (the Rights) pursuant to a stock rights offering (the Offering) by Southern Union Company (the Employer), the sponsor of the Plan; (2) the past holding of the Rights by the Plan during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan; provided that the following conditions are satisfied:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Employer;

(B) The Plan's acquisition and holding of the Rights resulted from an independent act of the Employer as a corporate entity, and all holders of the common stock of the Employer, including the Plan, were treated in the same manner with respect to the Offering; and

(C) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering (except for those participants who failed to file timely and valid instructions concerning the Rights, in which case the Rights were sold).

EFFECTIVE DATE: This exemption, if granted, will be effective as of November 30, 1993.

Summary of Facts and Representations

1. The Employer, a natural gas company, is a Delaware Corporation with corporate headquarters in Austin, Texas. As of November 30, 1993, there were issued and outstanding 5,252,110 shares of Employer common stock (the Common Stock), of which 54,463 shares, or about 1.04 percent, were held by the Plan. The Plan is a defined contribution employee benefit plan intended to satisfy the requirements of sections 401(a) and 401(k) of the Code. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts among four investment funds, one of which invests exclusively in the Common Stock (the Stock Fund). Participants can also choose to invest in an equity fund, a balanced portfolio fund and a fixed income fund.[5] Each participant may have as many as four Accounts under the Plan, including a tax-deferred personal contributions account, a rollover account, a post-tax personal contributions account and an employer contributions account. As of November 30, 1993, there were 810 participants in the Plan, of which 773 had at least one Account with an investment in the Stock Fund. As of that same date, the Plan held total assets of approximately $6,047,003. The trustee of the Plan is Merrill Lynch Trust Company of Texas (the Trustee).

2. The Employer represents that it decided to commence the Offering as a means of raising equity capital in connection with the anticipated purchase of certain natural gas operations located in Missouri. The Employer represents that this decision was reached after consultation with the Employer's financial advisors and that the Offering was extended to all holders of the Common Stock.

3. On November 30, 1993 (the Record Date), the Employer commenced the Offering by issuing to all record holders of the Common Stock .38 Rights[6] for each share of Common Stock held.

The number of Rights actually distributed to each shareholder was rounded up to the nearest whole Right. Each Right entitled its holder to purchase one share of Common Stock (the Basic Subscription Privilege) at an exercise price of $25.00 per share. Each Right also included the right to subscribe (the Additional Subscription Privilege), at the exercise price of $25.00 per share, for an additional, unlimited number of shares of Common Stock (Additional Shares) remaining after satisfaction of subscriptions pursuant to the Basic Subscription Privilege. Only

[5] The Department expresses no opinion as to whether the Plan provisions satisfy the requirements of section 404(c) of the Act and the regulations promulgated thereunder.

[6] The Department notes that the Rights do not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act.

owners of the Common Stock who exercised the Basic Subscription Privilege in full were entitled to exercise the Additional Subscription Privilege. All funds submitted in exercise of Additional Subscription Privileges were deposited in escrow with Chemical Bank pending satisfaction of all Basic Subscription Privilege subscriptions. If the number of Additional Shares available to satisfy Additional Subscription Privilege requests were insufficient to meet all such requests, the available Additional Shares were to be allocated pro rata among all Additional Subscription Privilege subscribers in proportion to the number of shares purchased by them through exercise of the Basic Subscription Privilege. The Employer authorized the issuance of up to 2,000,000 Additional Shares through the Offering, which also featured a standby purchase agreement which is not involved in the exemption proposed herein. Under the standby purchase agreement certain individuals agreed to purchase any shares not purchased by holders of the Rights.

The Employer represents that the Offering did not involve any guarantee or other assurance that any market for the Rights would develop or remain available during the Offering. However, the Rights traded on the American Stock Exchange through December 22, 1993.[7] The Offering expired at 5 p.m. on December 23, 1993, at which time no further exercising of Rights occurred.

4. In anticipation of the Offering, the Plan and its related trust agreement (the Trust Agreement) were amended to establish procedures which would permit each Plan participant with an Account balance invested in the Stock Fund (collectively, the Invested Participants) as of November 30, 1993 to elect to either exercise or sell the Rights attributable to his Account. The Employer represents that on December 3, 1993, all Invested Participants were sent, by first class United States mail, a copy of the prospectus relating to the Offering published by the Employer, a letter from the Trustee providing information about the Offering and describing the procedures for participant elections with respect to the Offering, and an election form. The election forms sent to Invested Participants enabled each of them to direct the Plan's third party administrator to instruct the Plan's broker to exercise the Rights allocable to the Invested Participant's Accounts or to sell such Rights on the open market. Invested Participants' instructions to sell Rights were executed as they were received. As provided in the Plan and Trust Agreement, as amended, the Rights of any Invested Participant[8] who failed to submit an election form by the due date, or submitted an invalid election form, were sold on the open market on December 22, 1993. The Employer represents that such required sales were disclosed to the Invested Participants in the informational documents sent on December 3, 1993.

5. Rights were exercisable and Additional Shares could be subscribed for under the Additional Subscription Privilege by an Invested Participant only to the extent of non-Stock Fund investments available in his or her Accounts. If such investments in an Invested Participant's Accounts were insufficient to pay the exercise price for all the Rights that the Invested Participant instructed should be exercised, any Rights that could not be exercised were sold on the open market on December 22, 1993. The Employer represents that such required sales were disclosed in the informational documents sent to Invested Participants on December 3, 1993. For each Invested Participant who directed the exercise of Rights attributable to his or her Accounts, the funds needed to pay the exercise price were obtained by liquidating the non-Stock Fund investments in the Invested Participant's Accounts based upon the values of such investments as of the close of the market on December 20, 1993. The Employer represents that the actual liquidations of non-Stock investments took place on December 21, 1993.

Because the per unit selling prices of the non-Stock Fund investments on December 21, 1993 were generally less than the market values of such units at the close of the market on December 20, 1993, a shortfall of funds occurred. To the extent this shortfall caused an Invested Participant to have insufficient funds available to exercise all of the Rights the Invested Participant had elected to exercise, the excess Rights were sold on the open Market on December 22, 1993 and the proceeds were allocated to the Accounts of the Participants whose Rights were sold.

6. In the event that the market price for the Common Stock, including any applicable brokerage commissions and other expenses, at 10 a.m. C.S.T. on December 23, 1993 was less than $25.00 per share (the exercise price under the Offering), the Plan and Trust Agreement, as amended, provided that Rights would not be exercised. However, in the above situation, an Invested Participant was permitted to: (a) Elect in anticipation of such circumstances that the proceeds otherwise available to fund the exercise of Rights and the purchase of Additional Shares under the Additional Subscription privilege be used instead to purchase shares of the Common Stock on the open market, or (b) in the absence of such an election, refrain from purchasing any Common Stock, either through exercise of the Rights or on the open market. The Employer represents that at 10 a.m. C.S.T. on December 23, 1993, the exercise price of a Right was less than the market price for a share of the Common Stock on the American Stock Exchange, after giving effect to any applicable brokerage commissions and other expenses. Accordingly, the Plan's broker exercised all Rights for which directions to exercise were submitted by the Invested Participants.

7. The Employer represents that in order to allow sufficient time to perform the administrative procedures required to review participant election forms and implement elections, including, as required, the liquidation of non-Stock Fund investments, the procedure for participant elections with respect to the Offering included timing deadlines for the filing of instructions in advance of the expiration of the Offering. Accordingly, Invested Participants were required to return the election forms by 11 a.m. C.S.T. on December 20, 1993.

8. The Employer represents that the following is a summary of the Offering:

(a) The Plan received a total of 20,682 Rights in connection with the Offering.

(b) A total of 1,653,001 Rights were exercised on December 23, 1993. Eighty-four of the 773 Invested Participants directed the exercise of Rights, resulting in the exercise of 3,715 Rights, or about .23 percent of the total number of Rights exercised.

(c) Fifty-eight Invested Participants directed the exercise of a number of Rights the exercise price of which exceeded their non-Stock investments available for liquidation. In accordance with the Plan and Trust Agreement, as amended, in such instances, any Rights that could not be exercised were sold, resulting in the sale of 262 Rights.

[7] The common stock of the Employer is also traded on the American Stock Exchange.

[8] The Employer represents that no Rights attributable to the Accounts of Invested Participants subject to the provisions of section 16(b) of the Securities Exchange Act of 1934 (collectively, the section 16(b) Participants) were sold. Section 16(b) Participants were allowed to exercise Rights and subscribe for Additional Shares under the Additional Subscription Privilege on the same basis as other Invested Participants. Persons subject to section 16(b) are officers, directors, and 10% or more shareholders of the Employer. The Employer represents that there were six section 16(b) Participants.

(d) Among the Invested Participants, 101 affirmatively directed that the Rights allocated to their Accounts be sold, resulting in the sale of 3,413 Rights.

(e) Among the Invested Participants, 594 did not respond.[9] In accordance with the Plan and Trust Agreement as amended, the Rights allocated to the Accounts of these Invested Participants (who were not section 16(b) Participants) were sold, resulting in the sale of 12,182 Rights; and the Rights allocated to the Accounts of these Invested Participants who were section 16(b) Participants were allowed to lapse, resulting in the lapse of 1,110 Rights.

(f) A total of 346,999 Additional Shares were issued through the Additional Subscription Privilege, including 800 shares, or about .2305 percent of the total, acquired by the Plan on behalf of 24 Invested Participants who elected to exercise the Additional Subscription Privilege.

(g) An additional 313,528 Additional Shares had been requested, but were not acquired, through the Additional Subscription Privilege, requiring the return of $7,838,200 to oversubscribing shareholders. The Plan subscribed for 800 Additional Shares under the Additional Subscription Privilege and received all 800 Additional Shares. Therefore, no amounts were required to be returned to the Plan.

(h) The Employer represents that all elections filed by Invested Participants with respect to the Offering were observed by Coopers & Lybrand, the Plan's third party administrator, and executed by Merrill Lynch, Pierce, Fenner & Smith Incorporated, the Plan's broker, and that all Invested Participants were notified adequately in advance of the termination date of the Offering of the procedure for making elections with respect to Rights attributable to their Accounts. Accordingly, the Employer represents that all actions taken on behalf of the Plan relating to the Offering, with respect to the Accounts, were pursuant to express participant directions or express default provisions of the Plan and Trust Agreement. The Employer represents that the procedures for default were fully disclosed in the election form and explanatory materials sent to Invested Participants, and were consistent with the participant directed nature of investments under the Plan.

[9] The results reported above indicate a total of 779 Invested Participants, although there were only 773 Invested Participants as of the Record Date of the Offering. Because certain Invested Participants directed that some of their Rights be exercised and that some be sold, those Invested Participants were counted twice.

9. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons: (a) The Plan's acquisition of the Rights resulted from an independent act of the Employer; (b) With respect to all aspects of the Offering, all holders of the Common Stock were treated in the same manner, including the Plan; (c) All decisions with respect to the Plan's acquisition, holding and control of the Rights were made by the individual Invested Participants whose Accounts held interests in the Stock Fund, except for those Participants who failed to file timely and valid election forms, in which case the Rights were sold; and (d) The acquisition and holding of Rights by the Plan affected 773 of the Plan's 810 participants whose Accounts held only about 1.04% of the Common Stock outstanding as of the Record Date of the Offering.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Meridian Trust Company Employee Benefit Equity Fund and Fixed Income Fund (the Funds) Located in Malvern, PA

[Application Nos. D–9447 and D–9448]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, effective April 30, 1992, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sale for cash of certain notes (the Notes) from the Funds to Meridian Asset Management, Inc. (Meridian), a party in interest with respect to the Funds, provided that the following conditions were met at the time of the sale:

1. The terms of the sale were at least as favorable as those the Funds could have obtained in an arm's-length transaction with an unrelated party;

2. Meridian paid the unpaid principal balance plus accrued interest on the Notes as of the time of sale;

3. The fair market value of the Notes was determined by a qualified independent appraiser to be less than the unpaid principal balance plus accrued interest;

4. The Funds received all cash as a result of the transaction; and

5. The Funds paid no fees or commissions in regard to the sale.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of April 30, 1992.

Summary of Facts and Representations

1. Meridian provides investment management and trust services to individuals, corporations and institutions. The sponsor of the Funds is Meridian Trust Company, a wholly-owned subsidiary of Meridian, which is a bank with trust powers organized under the laws of the Commonwealth of Pennsylvania. The Funds are collective trust funds in which pension plans invest. The Pennsylvania Department of Banking requires Pennsylvania banking institutions which maintain common and collective trust funds to administer such funds in accordance with regulations issued by the Office of the Comptroller of the Currency. However, the applicant represents that Meridian, the purchaser of the Notes, is not a bank and is not subject to regulation by the Office of the Comptroller of the Currency. As of December 31, 1991, the Equity Fund had total net assets of $218,891,767 while those of the Fixed Income Fund equaled $127,863,109.

2. On September 13, 1989, the Funds purchased the Notes for a total of $3,959,100 on the recommendation of K. Lawrence Neill (Neill), an employee at that time of Meridian Investment Company, a wholly-owned subsidiary of Meridian, and a fiduciary with respect to the Funds. The Notes consist of two notes issued by Safe Harbor Marina, Inc. (Safe Harbor) in the principal amounts of $2,300,000 placed with the Equity Fund and $1,659,100 placed with the Fixed Income Fund. The Notes provided for payment of principal and interest twice yearly for a term of 10 years at an interest rate of 12 percent per annum. The proceeds of the Notes were to be used to help fund the construction of a marina and related facilities on Lake Erie in Erie County, Pennsylvania.[10] The applicant represents that there is no relationship between Meridian (or any of its affiliates) and Safe Harbor.

3. The Safe Harbor project did not meet its original opening date for a number of reasons. A payment due on the Notes in October 1990 was not made

[10] The Department expresses no opinion as to whether fiduciaries with respect to the Funds violated any of the fiduciary responsibility provisions of part 4 of title I of the Act in investing in the Notes. Section 404(a)(1) of the Act requires, among other things, that fiduciaries must act prudently and solely in the interest of plan participants and beneficiaries.

and, under their terms, the Notes then went into default. Meridian subsequently arranged for an independent inspection of the Safe Harbor project in order to determine what actions, if any, it should take to protect the principal and interest due on the Notes. Eventually a payment of $50,000 from Safe Harbor to Neill (presumably in exchange for his recommendation of the investment) and the existence of fiscal irregularities were discovered. In April 1993 Neill pleaded guilty to one count of receiving money to influence the business of a financial institution.

4. The Notes are unrated and, according to the applicant, no market exists for them. No principal or interest payments have been made on the Notes since 1990. The Notes have been restructured several times and the issuer remains financially troubled. On April 30, 1992, Meridian purchased the Notes from the Funds for the total purchase price of $4,794,184 in cash, consisting of the then unpaid principal amount of the Notes plus the accrued but unpaid interest at the rate specified in the Notes. Of the total purchase price, $2,785,134 was paid to the Equity Fund and $2,009,050 was paid to the Fixed Income Fund. The applicant states that the Notes were in default at the time of purchase. The Funds paid no fees in connection with the sale of the Notes to Meridian.

5. The applicant obtained a statement dated August 16, 1993, from Gabriel F. Nagy (Nagy) of Keeley Management Company (Keeley) located in Radnor, Pennsylvania, concerning the sale of the Notes by the Funds to Meridian. Nagy stated that Keeley is an investment banking firm regularly engaged in the valuation of businesses and significant interests therein. According to Nagy, Keeley is not in any way connected with Meridian or any of its affiliates. Keeley analyzed the prices at which defaulted corporate debt securities were trading on or around April 30, 1992. Sixteen publicly traded bond issues were identified with a maturity date of 1998 or 1999, approximately the same as that of the Notes.

Placing emphasis on bonds which were in default but where bankruptcy proceedings were not noted, Keeley concluded that the Notes had a fair market value of no more than 50 percent of their aggregate outstanding principal value as of the time of purchase of the Notes by Meridian. In a letter dated November 11, 1993, Keeley indicated that the fair market value of notes of this kind, which have been in default for some time with no reasonable prospect of cure, is always less than the unpaid principal balance plus accrued unpaid interest on the notes.

6. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because: (1) Meridian paid the unpaid principal amount plus accrued interest for the Notes; (2) an appraiser independent of Meridian and its affiliates has determined that this amount was well in excess of the fair market value of the Notes; (3) the Notes were in default at the time of purchase by Meridian; (4) the purchase removed from the Funds debt obligations on which no principal or interest has been paid since 1990; and (5) the Funds received all cash as a result of the transaction.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 10th day of March 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–6014 Filed 3–15–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–24; Exemption Application No. D–9561, et al.]

Grant of Individual Exemptions; Jacobs Corporation Profit Sharing Plan and Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of

the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Jacobs Corporation Profit Sharing Plan and Trust (the Plan) Located in Harlan, IA

[Prohibited Transaction Exemption No. 94–24; Application No. D–9561]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of certain assets of the Plan (the Assets), to occur over two (2) consecutive years, by the Plan to the Jacobs Corporation (the Employer), a party in interest with respect to the Plan; provided that: (1) The aggregate purchase price paid by the Employer for all of the Assets is no less than $683,384; (2) the purchase price paid by the Employer in each of the two consecutive years will be at least $341,692; (3) the purchase price paid by the Employer in each of the two consecutive years upon execution of the sale of such Assets is not less than the fair market value of such Assets on the date of each sale; (4) the terms of each of the sales are no less favorable to the Plan than those negotiated in similar circumstances with unrelated third parties; and (5) the Plan will incur no fees, commissions, or expenses as a result of either of the sales.

Temporary Nature of Exemption

The exemption is temporary and is effective on the date of publication of the grant of this exemption in the **Federal Register** and will expire upon the earlier to occur of the date which is two years from the grant of this exemption or the date when the Plan no longer owns any of the Assets which are the subject of this exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 18, 1994, at 59 FR 2625.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Bangs, McCullen, Butler, Foye & Simmons Employees' Retirement Plan (the Plan) Located in Rapid City, SD

[Prohibited Transaction Exemption 94–25; Exemption Application No. D–9598]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 1, 1994, to the lease by the Plan (the Lease) of certain improved real property located in Rapid City, South Dakota (the Property) to Bangs, McCullen, Butler, Foye & Simmons (the Employer), the sponsor of the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Lease is a triple net lease under which the Employer is obligated for all costs of maintenance and repair, and all taxes, related to the Property;

(C) The interests of the Plan for all purposes under the Lease are represented by an independent fiduciary, Norwest Bank South Dakota, N.A.; and

(D) The rent paid by the Employer under the Lease is no less than the fair market rental value of the Property.

EFFECTIVE DATE: This exemption is effective as of January 1, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 18, 1994 at 59 FR 2627.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Donohoe Restated Profit Sharing Plan and Trust (the Plan) Located in Washington, DC

[Prohibited Transaction Exemption 94–26; Exemption Application No. D–9442]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, effective December 28, 1993, shall not apply to the cash sale by the Plan of shares of common stock (the Shares) of the Federal Center Plaza Corporation (FCPC) to FCPC; provided that: (1) As the result of the sale, the Plan received in cash the greater of $25.00 per share or the fair market value of the Shares of FCPC, as determined by an independent, qualified appraiser, as of December 28, 1993, the date of the sale; (2) the Plan paid no commissions or fees in regard to the transaction; and (3) the terms of the sale were no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

EFFECTIVE DATE: This exemption is effective on December 28, 1993.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register**. All comments and requests for hearing were due by December 27, 1993.

During the comment period, the Department received no requests for a hearing. However, the Department did receive a comment letter from the applicant, dated December 27, 1993. In its letter the applicant informed the Department that prior to receiving a granted exemption, the trustees of the Plan (the Trustees) intended on December 28, 1993, to sell to FCPC the Shares owned by the Plan. It was represented that the Trustees proposed to enter the transaction on that date, because FCPC planned to elect on January 1, 1994, to become a subchapter S Corporation under section 1361 of the Code. It was represented that FCPC will elect subchapter S Corporation status in order to reduce its administrative expenses, in the hope that by doing so

it can continue in business without taking the step of discharging employees.

In its December 27 letter the applicant represented that the Plan would receive from the sale of the Shares to FCPC sales proceeds in cash in an amount equal to the greater of $25.00 per share or the fair market value of the Shares, as of the date of the sale, as determined by an independent appraiser. In this regard, an independent, qualified appraiser, Arthur Andersen & Co. SC (Arthur . Andersen), prepared an appraisal report, dated February 9, 1994. In its report Arthur Andersen estimated that, as of December 28, 1993, the fair market value of the Shares of FCPC was $19.00 per share.

After giving full consideration to the entire record, including the written comment from the applicant, the Department has decided to grant the exemption retroactively. In this regard, the comment by the applicant and the appraisal report of Arthur Andersen submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 24, 1993, at 58 FR 62142.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Linton Industries, Inc. Retirement Plan (the Plan) Located in Edmonds, WA

[Prohibited Transaction Exemption 94–27; Exemption Application No. D–9496]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan (the New Loan) of $485,000 from the Plan to Linton Industries, Inc. (the Employer), a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (a) The terms of the New Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the New Loan will not exceed twenty-five percent of the assets of the Plan at any time during the duration of the New Loan; (c) the New Loan is secured by a first lien interest on certain equipment (the Equipment), which has been appraised by a qualified, independent appraiser to ensure that the fair market value of the Equipment is at least 200 percent of the amount of the New Loan; (d) the fair market value of the Equipment remains at least equal to 200 percent of the outstanding balance of the New Loan throughout the duration of the New Loan; (e) an independent, qualified fiduciary determines on behalf of the Plan that the New Loan is in the best interests of the Plan and protective of the Plan and its participants and beneficiaries; and (f) the independent, qualified fiduciary monitors compliance by the Employer with the terms and conditions of the New Loan and the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Equipment in the event of default.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 18, 1994 at 59 FR 2624.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 10th day of March, 1994.

Ivan Strasfeld,

Director of Exemption Determinations; Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–6015 Filed 3–15–94; 8:45 am]

BILLING CODE 4510–29–P

UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 18, 1994, through March 4, 1994. The last

biweekly notice was published on March 2, 1994 (59 FR 9999).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below

By April 15, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention:

Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (**Project Director**): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: January 20, 1994

Description of amendment requests: The proposed amendment would change the departure from nucleate boiling ratio (DNBR) in Safety Limits, Section 2.1.1.1, and the associated Bases, as well as the DNBR - Low Trip Setpoint in Table 2.2-1, and the associated Bases, from a value of 1.24 to 1.30. In addition, the amendment would add a methodology supplement entitled,≥System 80$^{GTIT™}$Inlet Flow Distribution," to the list of methods used to determine the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evoluated.

The purpose of the proposed TS amendment is to provide a revised DNBR Safety Limit and Low DNBR Trip Setpoint to ensure that no anticipated operational occurrence or postulated accident will result in core conditions exceeding DNBR Safety Limit.

The change in the DNBR Safety Limit from 1.24 to 1.30 can be accommodated directly by increasing the limit (including the DNBR Trip Setpoint) or by an increase in the DNBR overall uncertainty factors for core operating limit supervisory system (COLSS) (EPOL2 and EPOL4) and core protection calculator (CPC) (BERR1). Using the 1.24 DNBR Safety Limit will result in larger uncertainty factors, and conversely using the increased DNBR Safety Limit of 1.30 will result in lower uncertainty factors. Therefore, plant operation for COLSS and CPC are not significantly affected by the choice of the DNBR Safety Limit and the Trip Setpoint as long as the corresponding overall uncertainty factors are calculated and implemented. PVNGS will implement the 1.30 DNBR Safety Limit and its corresponding overall uncertainty factors in the reload safety analysis for Unit 3 Cycle 5 and in subsequent reload safety analyses for Units 1 and 2.

The proposed amendment changes only the DNBR Safety Limit and associated Trip Setpoint, and does not in any way impact the operation of the plant. Safety and setpoint analyses will be performed consistent with the increased DNBR limit of 1.30. The core power distribution during all phases of normal and anticipated operational occurrences will remain bounded by the initial conditions assumed in Chapter 15 of the PVNGS Updated Safety Analysis Report (UFSAR). Furthermore, the UFSAR Chapter 15 analysis remains bounding because the margins of safety will be maintained. Therefore, the proposed change to Sections 2.1.1.1 and 2.2.1 (Table 2.2-1) will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to Section 6.9.1.10 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Also, the proposed change does not alter the conditions or assumptions in any of the UFSAR accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed change. Therefore, it can be concluded that the proposed change to Section 6.9.1.10 will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 -- Create the possibility of a new or different kind of accident from ony occident previously evaluated.

The proposed amendment is limited to changing the DNBR Safety Limit and Low DNBR Trip Setpoint and does not involve any physical change to plant systems or to the COLSS and the CPC algorithms. These changes will not affect any safety-related equipment used in the mitigation of anticipated operational occurrences or design basis accidents. Therefore, this change to Section 2.1.1.1 and 2.2.1 (Table 2.2-1) will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Section 6.9.1.10 does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed change. Therefore, it can be concluded that the proposed change to Section 6.9.1.10 will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 -- Involve a significant reduction in a margin of sofety.

The DNBR Safety Limit specified in TS 2.1.1.1 and the Low DNBR Trip Setpoint specified in TS 2.2.1 (Table 2.2-1) ensure that operation of the reactor is prevented from exceeding the DNBR Safety Limit during normal operation and design basis anticipated operational occurrences. Therefore, operating within the increased DNBR Safety Limit will ensure that no anticipated operational occurrence or postulated accident will result in core conditions exceeding the specified DNBR Safety Limit. The UFSAR Chapter 15 analysis remains bounding because the margins of safety will be maintained. Additionally, the COLSS and the CPC overall uncertainty factors will be calculated and implemented consistent with the increased DNBR Safety Limit of 1.30. Therefore, this change to Section 2.1.1.1 and 2.2.1 (Table 2.2-1) will not result in a significant reduction in a margin of safety.

The proposed change to Section 6.9.1.10 does not involve a significant reduction in a margin of safety. The proposed change is administrative in nature and does not adversely impact the plant's ability to meet applicable regulatory requirements. Therefore, it can be concluded that the proposed change to Section 6.9.1.10 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: January 9, 1994

Description of amendment request: The proposed amendment would make changes to the Technical Specifications and License. These changes consist of revised wording for the license, clarify wording to aid operators in selecting the correct pressure/temperature curve during startup and shutdown operations, and removal of certain obsolete mechanical snubber acceptance criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The first proposed change will modify License DPR-35 to eliminate the need to issue a new page 3 to identify the latest amendment number. The second change will provide the correction of an error of omitting the reference to the subcritical mode of operation, in relation to the pressure/temperature curves. The third change will remove the unnecessary mechanical snubber functional test acceptance criterion to determine if drag force has increased more than 50% since the last functional test.

Modification of License DPR-35 for Pilgrim Nuclear Power Station to remove the need to update page 3 whenever a new amendment is approved will reduce an administrative burden. This license change also precludes a possible administrative error if the correct reference is somehow missed. This change does not affect plant operation or design and is considered an administrative change and as such does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The second change corrects an error of omission made in an earlier amendment by inserting a reference to the subcritical reactor operation phase. This proposal will enhance the procedure changes and training already accomplished as short term corrective actions. This change does not affect plant operation or design and is considered an administrative change and therefore does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The third change removes an acceptance criterion for mechanical snubber testing not required by the ASME Boiler and Pressure Vessel Code, Section XI, Subsection IWF nor recommended by the vendor for mechanical snubbers in use at Pilgrim.

This change will not result in any physical modification to Pilgrim. The mechanical snubbers will continue to be tested in accordance with existing plant procedures which reference the ASME Code Section XI, Subsection IWF. Therefore, this is considered an administrative change and as such, operation of Pilgrim will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident than previously evaluated because they are administrative in nature and require no physical alterations of plant configuration or changes to setpoints or operating parameters.

3. The operation of Pilgrim in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Because these changes do not alter plant operation or design and are considered administrative in nature, they do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: April 13, 1993

Description of amendments request: The proposed amendments would revise design features information pertaining to the elevation at which the spent fuel pool is designed to prevent inadvertent draining. The proposed amendment would revise this elevation from 116 feet 4 inches to 115 feet 11 inches based on the actual spent fuel pool design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current value in Specification 5.6.2 is incorrect. No basis can be determined for including this value in Specification 5.6.2 other than incorrectly characterizing the normal fuel pool water level as the design level to be maintained to prevent inadvertent draining of the fuel pool. This value was incorrectly incorporated into the initial standard Brunswick Technical Specifications, Water Level- Spent Fuel Storage Pool.

The 115' 11" elevation is equal to 20' 10-7/8" above the top of the spent fuel rods seated in the storage racks. This level is still in excess of the minimum level required (20' 6") by Technical Specification 3.9.9.

The accident discussed in UFSAR [Updated Final Safety Analysis Report] Section 9.1.2.3.2.4.2, Loss of Spent Fuel Pool Cooling, is not impacted by this change since the spent fuel pool safety functions are not impacted and Technical Specification minimum fuel pool levels (Specification 3.9.9) are not changed. As such, the proposed amendments do not involve a significant increase in the probability of an accident previously evaluated.

The radiological consequences of this accident are discussed in UFSAR Section 9.1.2.3.2.5. This analysis assumes spent fuel pool boiling. In addition, the facilities description of the spent fuel storage pool (Section 9.1.2.2.1), states that the surface of the water will be maintained at Elevation 116.3 ft, which is the normal water level of the pool. Therefore, the (lower) designed level to prevent inadvertent pool draining is not relevant within this analysis. As such, the proposed amendments do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request corrects a mischaracterization of the design features and does not involve a change in fuel pool operations. Specification 5.6.2 states that the fuel pool is designed to prevent inadvertent draining of the pool below elevation 116'4". However, it is possible that the pool could drain below this level by draining through piping connected to the pool coupled with no flow into the pool. It is not possible, however, with the fuel pool gates installed, that the fuel pool could be inadvertently drained below the bottom of the pool overflows to the skimmer surge tanks. The elevation at the bottom of the overflows to the skimmer surge tanks is 115'11". Therefore, this is the correct value to cite in

the design features section of Technical Specifications.

The proposed 115'11" elevation will not result in new drain pathways, nor will the minimum fuel pool water level required by the Technical Specifications be impacted by this change. Therefore, the proposed amendments do not create the possibility of a new or different type of accident from any accident previously evaluated.

3 The proposed amendments do not involve a significant reduction in the margin of safety

The proposed amendments do not change safety limits, setpoints, or plant operations. The plant is actually designed to prevent inadvertent draining of the fuel pool below elevation 115'11" as discussed above. This change is not an actual design change; it is a design clarification correcting the level at which inadvertent draining of the spent fuel pool is prevented. As such, the proposed amendments do not involve a significant reduction in the margin of safety at Brunswick.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 14, 1994

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) in response to Generic Letter 93-08 issued by the NRC and dated December 29, 1993, by relocating the reactor trip system (RTS) and engineered safety feature activation system (EFAS) response time limits to the updated Final Safety Analysis Report (FSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident.

The proposed changes do not alter the conditions or assumptions in any accident previously evaluated.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. No new accident initiators or failure modes are created by relocating the RTS and ESFAS instrumentation response time limits.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature and will in no way affect the TS adequacy in ensuring the response times for the RTS and ESFAS instrumentation do not exceed the limits assumed in the accident analyses. The proposed changes will have no impact on the protective boundaries, safety limits, or margin of safety.

Therefore, the proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: July 22, 1993, as supplemented February 4, 1994

Description of amendment request: The proposed amendment would modify the Facility Operating License (OL) and Technical Specifications (TSs) to permit uprated power operation. The plant is currently licensed for operation at 3323 megawatts thermal (MWt), although many of the original analyses were performed at a design power level of 3467 MWt. The proposed changes would redefine rated thermal power to be 3467 MWt, which represents an approximately 4.3 percent increase over the currently licensed power level. Implementation of the power uprate would require minor modifications, such as, resetting of the low set safety relief setpoints, as well as the recalibration of plant instrumentation to reflect the uprated power. The proposed changes follow the generic guidelines for boiling water reactor power uprate described in General Electric Topical Report, NEDC-31897P-1, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," June 1991.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

• OL2C(1), TS 1.34 - Increase in Rated Thermal Power to 3467 MWt.

The changes in the OL and TS were evaluated and it was determined that the probability (frequency) of a DBA [design-basis accident] or other licensing event occurring is not a significant function of the power level because the design and regulatory criteria originally established for plant equipment (ASME [American Society of Mechanical Engineers] code, IEEE [Institute of Electrical and Electronics Engineers] standards, NEMA [National Electrical Manufacturers Association] standards, Regulatory Guide criteria, etc.) are still imposed for the uprated power level. Scram setpoints are established such that there will be no significant increase in scram frequency due to power uprate.

The consequences of hypothetical accidents which would occur from 102% of the uprated power, as opposed to that previously evaluated from ≤102% of the original power, are in all cases insignificant, since the accident evaluations from 102% of uprated power do not result in exceeding the NRC-approved acceptance limits. A spectrum of hypothetical accidents and transients has been investigated for uprated conditions and the bounding events have been shown to meet the same regulatory criteria to which they are currently licensed. In the area of core design, for example, the fuel operating limits such as Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Safety Limit Minimum Criteria Power Ratio (SLMCPR) are still met at the uprated power level.

The analysis of all limiting events (Section 9) [of General Electric Topical Report, NEDC-31994P, "Power Uprate Licensing Evaluation for Nine Mile Point Nuclear Power Station Unit 2," Revision 1, May 1993] and cycle specific reload analyses will show plant transients meet the criteria accepted by the NRC as specified in NEDO-24011, GESTAR II. Challenges to fuel or ECCS [emergency core cooling system] performance have been evaluated (Section 9.2) [of NEDC-31994P] and shown to still meet the criteria of 10CFR50.46 using the methodology defined by Appendix K [Regulatory Guide 1.70, USAR [Updated Safety Analysis Report] Section 6.3). Challenges to the containment have been evaluated for uprated power

(Section 4.1) [of NEDC-31994P] and still meet 10CFR[Part]50 Appendix A Criterion 38, Long Term Cooling and Criterion 50, Containment. Radiological Release events have been evaluated [Sections 8.4 and 8.5] [of NEDC-31994P] and shown to be a small fraction of the criteria of 10CFR[Part]100 (Regulatory Guide 1.70 USAR Chapter 15).

The results of these analyses as discussed above demonstrate that operation of [at] the power uprate level does not significantly increase the probability or consequences of any accident previously evaluated.

• OL2C(7) - Change in Allowable Feedwater Temperature

This change is made to maintain an equivalent 20°F allowable operating range of final feedwater temperature for uprated power (405 to 425°F) as compared to the presently licensed range (400 to 420°F). No change is made to the current method and criteria for operation of the feedwater heating systems. The limiting transient (Feedwater Controller Failure - Maximum Demand) has been evaluated at a feedwater temperature of 405°F (Section 9.1.3) [of NEDC-31994P] to demonstrate compliance with all current thermal limits criteria. Previous feedwater nozzle evaluations have shown that operation with the proposed feedwater temperature operating range is acceptable. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS Table 2.2.1-1 - Reactor Protection System Instrument Setpoints

The increases in steam dome high pressure scram instrument setpoints are made to ensure that there is no significant increase in the frequency of scrams due to operation at the higher pressure. The increase of the high pressure scram setpoint by the same amount as the increase in the planned operating pressure maintains the same level of trip avoidance for scram as originally provided. The high pressure scram is used as a backup to other scram signals. It has been shown that this role is still adequate for uprated operation with the revised setpoints (e.g., vessel overpressure protection). Since the backup protectionfunctions and the current margins to trip avoidance are maintained with the revised setpoints. there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS Bases Table B2.1.2-2 - Add footnote to applicability of table to uprated operation.

The parameters listed in TS Bases Table B2.1.2-1 come from the original statistical analysis performed for BWR4/5 core designs (including NMP2) [Nine Mile Point Nuclear Station, Unit 2]. As discussed in Section 3.2 of LTR2 (Reference 11-1) [General Electric Topical Report NEDC-31984P, "Generic Evaluation of General Electric Boiling Water Reactor Power Uprate," July 1991], the uprated average bundle power is used to determine the applicability of the generic Safety Limit Minimum Critical Power Ratio (SLMCPR) basis for each plant. The average bundle power for NMP2 after power uprate is 4.538 MWt per bundle. This value is acceptable for application of the generic SLMCR statistical analysis to uprated NMP2. The generic analysis is documented through NEDC-24011-P-A (GESTAR II) and NEDC-31152P (GE Fuel Bundle Design). Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS 4.1.5.c and TS 4.1.5.d2 - Increases in SLCS [standby liquid control system] Surveillance Test Pressure and SLCS pump discharge relief valve setpoint.

The standby liquid control system test pressure increase ensures continued ability of the system to pump the required amount of sodium pentaborate at the higher operating pressure associated with power uprate. This test pressure increase is consistent with the ATWS [anticipated transient without scram] analysis provided in Section 9.3 [of NEDC-31994P]. The higher pressure setpoint for the SLCS relief valve does not exceed the design capability of the SLCS components. Surveillance testing at the increased pressure will maintain the system's design capability for operation at uprated conditions. These changes therefore do not increase the probability or consequences of a previously evaluated accident.

• TS Table 3.3.1-1 - Note (i), footnote (**), Action 6 footnote (*), and Table 3.3.4.2-1 - footnote (**)

The setpoints for the bypass of T/G [turbine generator] trip scram and RPT [recirculation pump trip] at 30% of rated power are changed to 125.8 psig and 136.4 psig to be consistent with uprated power.

These changes reflect the redefinition of rated conditions. They are consistent with the approach discussed in Section F.4.2(c) of LTR1 (Reference 11-2) [General Electric Topical Report NEDC-31897P-1, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," June 1991]. There is no significant impact on the transient safety analyses which establish core thermal operating limit since T/G trips at this partial power setpoint are not limiting. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS Table 3.3.2-2 Item 1.C.3 - Increase in main steamline high flow isolation differential pressure setpoint and allowable value.

The main steamline high flow trip TS changes reflect the redefinition of rated steam flow during uprated power operation and the application of GE [General Electric Company] setpoint methodology. The current analytical basis of 140% of rated steam flow is maintained for uprated operation to ensure that an adequate trip avoidance margin is maintained (e.g., for disturbances caused by full closure testing of MSIVs [main steam isolation valves] or turbine inlet valves). The revised setpoints ensure that there is no effect on the probability of inadvertent isolation; they have no effect on the probability of occurrence of a main steamline break. The same isolation initiation function for the main steam line break accident is maintained (Section 5.1.2.5) [of NEDC-31994P]. Therefore these setpoint changes do not significantly increase the consequence of the main steamline break accident.

• TS Table 3.3.2-2 Item 1d - Increase the main steamline tunnel temperature setpoints.

These isolation setpoints are changed to reflect the slight increase (about 1°F) in the operating temperature expected for uprated operation. Margins between trip setpoints and operating temperature are maintained. The increases will avoid unnecessary trips. The revised trip setpoints were derived using the GE setpoint methodology (documented in NEDC-31336). The setpoints still perform their isolation function equivalent to current operation.

Therefore no significant increase in the probability or consequences of an accident previously evaluated results from these changes.

• TS Table 3.3.4.1-2 - Increases in the ATWS RPT reactor vessel high pressure trip and allowable setpoint.

The ATWS RPT high pressure setpoints are increased to correspond to the increase in the steam dome operating pressure due to power uprate. This increase maintains the current margin between the operating condition and the trip setpoint to avoid unnecessary trips. The capability of the system to adequately perform its ATWS function with the new setpoints is shown in Section 9.3 [of NEDC-31994P]. Therefore the change does not cause a significant increase in the probability or consequences of an accident previously evaluated.

• TS Figure 3.4.1.1-1 - The figure is revised to reflect new definition of rated thermal power in terms of megawatts thermal.

This change is made to be consistent with the new definition of rated thermal power. The current restrictions on operation within the restricted power/flow zone are unchanged. The basis for this change is described in Section 3.2 of LTR2 (Reference 11-1) [NEDC-31984P]. There is no significant change in the previously evaluated potential for initiation of core thermal hydraulic instability. Therefore, this TS change ensures that power uprate operation will not cause a significant increase in the probability of [or] consequences of an accident previously evaluated.

• TS 3.4.2 - Increase of spring setpoints for the two lowest set SRVs [safety relief valves].

The two low set SRV setpoints are increased to accommodate the change in operating pressure after power uprate. This increase in the SRV setpoints ensures that approximately the same difference is maintained between the RPV [reactor pressure vessel] pressure and the lowest SRV setpoint such that there is no increase in the number of unnecessary SRV actuations. The increase in the spring setpoints by the same amount as the increase planned for normal operation also maintains acceptable simmer margin for the SRVs. The SRVs are capable of operating at uprated temperatures and pressures as evaluated generically in Section 4.6 of LTR2 [NEDC-31984P]. As described in Sections 3.2 and 9.3.1 [of NEDC-31994P] a higher RPV peak pressure results due to uprate conditions but it is maintained well within the ASME Code allowable peak pressure of 1375 psig.

Therefore, no significant increase in the probability or consequences of an accident previously evaluated is caused by this change.

• TS 4.4.6.1.3-1 - Revision to the neutron fluence lead factor.

The increase in the lead factor from 0.41 to 0.46 reflects updated calculations for the

higher power level and projected fluence distributions. This calculation accounted for the locations of the NMP2 specimen capsules (at three locations on the vessel wall around the core beltline region), and the projected uprated equilibrium cycle spatial power distributions. Since the revised lead factor is consistent with the requirements for vessel surveillance, the change causes no significant increase in the probability or consequences or [of] an accident previously evaluated.

• TS 3.4.6.2 and TS 4.4.6.2 - Increase of reactor steam dome operating pressure limit.

This change to the dome operating pressure limit is consistent with and meets the current design criteria used for evaluation of steady state operating conditions and for the most limiting transient and accident events, i.e., vessel overpressure protection and a loss-of-coolant accident (Sections 3.2 and 4.3) [of NEDC-31994P]. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS 4.7.4b - Increase in RCIC [reactor core isolation cooling] Surveillance Test Pressure.

The increase in the RCIC surveillance test pressure requires system testing at the higher operating pressure with power uprate. The RCIC system has been evaluated and demonstrated to be capable of injecting its design flow rate at the higher reactor pressure associated with power uprate as discussed in Section 4.2 of LTR2 (Reference 1) [NEDC-31984P]. This evaluation applies to NMP2 as described in Section 3.8 [of NEDC-31994P]. Therefore, this TS change ensures that power uprate operation will not cause a significant increase in the probability or consequences of an accident previously evaluated.

• TS Bases 3/4.2 (References), and TS 6.9.1.9.b(1) (Administrative Control) - Revised the reference for the LOCA [loss-of-coolant accident] analysis methodology to the SAFER/GESTR-LOCA methodology report.

These changes are made to incorporate the power uprate LOCA licensing basis. Reference 1 of TS Bases 3/4.2 (References) and the report noted in TS 6.9.1.9.b(1) are changed to reflect the improved SAFER/GESTR-LOCA methodology used for the NMP2 loss-of-coolant accident analysis for power uprate. This methodology has been previously approved by the NRC. These changes are made for documentation consistency and there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS Bases Table B3.2.1-1 - Significant input parameters used in the LOCA analysis.

The changes in the plant parameters used in the uprated LOCA analysis are provided from the power uprate analysis (Reference 4-15, Section 4) [General Electric Report NEDC-31830P, "NMP2 SAFER/GESTR-LOCA Loss-of-Coolant Accident Analysis," Revision 1, November 1990]. The power and steam flow values are consistent with Regulatory Guide 1.49. The new analysis parameters will also be included in USAR Table 6.3-1 as uprate is implemented. Detailed information about application of the SAFER/GESTR methodology is provided in Reference 1 of TS Bases 3/4.2 (Reference 4-14, Section 4) [General Electric Report NEDE-23785-1-PA, "The GESTR/LOCA and SAFER Models for the Evaluation of the Loss of Coolant Accident," Revision 1, October 1984]. The LOCA analysis (Section 4.3) [of NEDC-31994P] shows that all required criteria are met for operation with the uprated parameters.

Footnote (*) is revised to provide the correct reference for the LOCA analysis parameters for NMP2 power uprate. Since the LOCA analysis for uprated operation meets all required criteria, these TS changes do not cause an increase in the probability or consequences of an accident previously evaluated.

• TS Bases B3/4.5.1 and B3/4.5.2 - Increase in required capability of the HPCS [high pressure core spray] pump and the corresponding differential pressure.

The increase in the differential pressure for HPCS pump flow accommodates the increase in SRV setpoint valves as discussed for changes to TS 3.4.2 earlier. This change maintains the currently designed functional capability of the HPCS system to provide coolant inventory during isolation conditions after a loss of feedwater flow transient (backup to RCIC) and during a main steam line break (outside containment) accident.

The small change in the HPCS pump flow (517 versus 516) [gpm] is made to be consistent with the value used in the NMP2 SAFER/GESTR analysis for a loss of coolant accident. This small change corrects the Technical Specification bases for this parameter.

Therefore, this TS change ensures that power uprate operation will not cause a significant increase in the probability or consequences of an accident previously evaluated.

• TS Bases B3/4.6.1.2, B3/4.6.1.5, and B3/4.6.2 - Maximum containment pressure for leakage testing.

The bases for the value currently in the TS for the maximum containment pressure are reworded to clarify that the maximum containment pressure after power uprate will be maintained below the current value used for containment leak rate testing. Section 4.1 [of NEDC-31994P] documents the containment analysis for power uprate and shows a peak DBA-LOCA calculated pressure of 36.8 psig (less than the current testing requirement of 39.75 psig). There is no impact on currently approved requirements and test procedures. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The Operating License changes in power level and allowable feedwater temperature, and the associated Technical Specification changes (all listed in Table 11-1) [of NEDC-31994P] will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Equipment that could be impacted by power uprate has been evaluated. No new operating mode, equipment lineup, accident scenario, or equipment failure mode has been identified. The full spectrum of accident considerations defined in Regulatory Guide 1.70 have been reviewed and no new or different kind of accident has been identified. Power uprate uses already developed technology and applies it within the capabilities of already existing plant equipment in accordance with presently existing regulatory criteria to include NRC approved codes, standards, and methods. GE has designed BWRs of higher power levels than the uprated power of any of the currently operating BWR fleet and no new power dependent accidents have been identified.

The Technical Specifications changes required to implement power uprate require minor changes to the configuration of the plant, and all the Technical Specification changes have been evaluated and are acceptable.

Will the change involve a significant reduction in a margin of safety?

• OL2C(1), TS 1.34 - Increase in Rated Thermal Power to 3467 MWt.

Power uprate will not involve a significant reduction in a margin of safety, since the licensing evaluations were performed either at plant conditions higher than the proposed uprate conditions, or used approved methodologies which incorporate appropriate allowances for uncertainties. As discussed throughout this report (e.g., Section 11.1) [of NEDC-31994P] and in Section 5 of Reference 11-2 [NEDC-31897P-1], the safety margins prescribed by the Code of Federal Regulations have been maintained by meeting the appropriate regulatory criteria. Similarly, the margins provided by the application of the American Society of Mechanical Engineers (ASME) design acceptance criteria where applicable have been maintained (e.g., see Section 3.2) [of NEDC-31994P]. Other margin-assuring acceptance criteria have also been maintained.

All limiting accident and transient analyses have been reperformed at uprated power operating conditions consistent with the requested Technical Specification changes. The NRC-approved SAFER/GESTR-LOCA methodology was used in the LOCA analysis. Additionally, Reference 11-2 [NEDC-31897P-1] addresses the BWR generic acceptability of analytical evaluations for the loss of feedwater transient, stability, core spray distribution, safety limit minimum critical power ratio, containment atmosphere combustibility, materials and coolant chemistry, and anticipated transients without scram (ATWS).

As discussed in Section 5.2.3 of Reference 11-2 [NEDC-31897P-1], offsite doses for the DBA/LOCA will increase proportionally to reactor power and can be compared on a consistent basis.

As evaluated in Sections 8.5 and 9.2 [of NEDC-31994P], the results remain a small fraction of the acceptance criteria of 10CFR[Part]100.

The radiological doses resulting from the DBA/LOCA and MSLB [main steam line break] accidents were initially analyzed at 3489 MWt (105% of 3323 MWt). For the power uprate program, the increase in the analyzed power level is only 1.3% (from 3489 to 3536 MWt) which provides the uncertainty factor (2%) required by Regulatory Guide 1.49.

It is concluded that there is no significant decrease in a margin of safety.

• OL2C(7) - Change in Allowable Feedwater Temperature

The increase in the lower limit of the allowable operating range of the final feedwater temperature for uprate power was evaluated by reanalyzing the Feedwater Controller Failure - Maximum Demand transient at a feedwater temperature of 405°F (Section 9.1.3) [of NEDC-31994P]. In addition, the reactor pressure vessel feedwater nozzle has been evaluated for the 20°F range of feedwater temperature. The results of these evaluations demonstrate that current fuel thermal limits criteria and ASME Code criteria are met. Therefore, there is no significant decrease in a margin of safety.

• TS Table 2.2.1-1 - Reactor Protection System Instrument Setpoints

The increases in the steam dome high pressure scram instrument setpoints for uprated power were evaluated by determining if the high pressure scram, which is used as a backup to other scram signals, provides adequate overpressure protection. The evaluation demonstrates that the backup protection function, with the revised setpoints, continues to provide adequate overpressure protection at uprated power conditions by meeting the applicable ASME Code criteria. It is concluded that there is no significant decrease in a margin of safety.

• TS Bases Table B2.1.2-2 - Add footnote to applicability of table to uprated operation

The nominal values of parameters used in the statistical analyses of the fuel cladding integrity safety limit were re-evaluated at power uprate conditions. This evaluation demonstrates that the average bundle power at uprated conditions for NMP2 is acceptable for application of the generic safety limit minimum critical power ratio statistical analysis. Therefore, it is concluded that there is no significant decrease in a margin of safety.

• TS 4.1.5.c and TS 4.1.5.d2 - Increase in SLCS Surveillance Test Pressure and SLCS pump discharge relief valve setpoint.

The SLCS surveillance test pressure was increased to provide periodic demonstration of the ability of the SLCS to provide the required amount of sodium pentaborate solution at the higher pressure associated with an ATWS event postulated to occur at power uprate conditions. At this increased SLCS discharge pressure, the system provides an adequate shutdown backup capability by having the ability to bring the isolated reactor from full power to a cold, Xenon-free shutdown condition, assuming that the withdrawn control rods remain fixed in the uprated power pattern.

For power uprate, the capability of the SLCS to respond with adequate margin to a postulated ATWS event was confirmed. The most limiting ATWS events evaluated for peak vessel pressure and peak suppression pool temperature were: (1) closure of all MSIVs and (2) inadvertent opening of a relief valve. The peak pressure for the MSIV closure event which included simulation of the higher relief setpoints and two relief valves out of service, demonstrates that the peak pressure, 1325 psig, remains below the ASME emergency overpressure protection criteria of approximately 1500 psig, which is applicable to an ATWS event. The reactor pressure is controlled by the relief valves (after the initial peak) within the pressure specified in this revised Technical Specification. SLCS injection takes place during this period with the relief valves controlling pressure.

The peak suppression pool temperature for the inadvertent opening of a relief valve was demonstrated to remain below the ATWS peak pool temperature criteria of 190° for a Mark II containment design, which is applicable to NMP2. Peak containment pressure was well below the 45 psig containment design pressure. For this event, SLCS injection will be at vessel pressures bounded by the revised Technical Specification. The higher pressure setpoint of the SLCS pump discharge relief valve provides adequate overpressure protection of the SLCS pressure boundary by meeting the applicable ASME Code criteria (equal to or less than the system piping design pressure).

In summary, peak vessel pressure is below ASME code criteria, and suppression pool temperature is below the ATWS peak pool temperature criterion for Mark II containment design, peak containment pressure is well below the containment design pressure, the SLCS injection pressure during the bounding events is within the new Technical Specification testing requirement, and the SLCS pressure boundary is maintained in compliance with ASME Code criteria. Therefore, it is concluded that there is no significant decrease in a margin to safety.

• TS Table 3.3.1-1 - Note (i), footnote (**), Action 6, footnote (*), and Table 3.3.4.2-1 footnote (**)

The increase in the setpoints for the bypass of T/G trip scram and RPT at 30% power are made to be consistent with uprated power. These increased setpoints do not significantly reduce a margin of safety since the T/G trips at this partial power setpoint continue to be non-limiting events.

• TS Table 3.3.2-2 Item 1.c.3 - Increase in main steam line high flow differential pressure setpoint and allowable valve.

The increase in the main steam line high flow differential pressure setpoint and allowable value reflect the redefinition of rated conditions. The increased setpoint will maintain the same inadvertent trip avoidance margin, thereby avoiding any increase in the frequency of occurrence of isolation events. The closure of the MSIV remains assured during the limiting event (the steam line break accident). The break flow rate (controlled by the flow restrictor) will be about 190% (Section 3.5) [of NEDC-31994P], so the setpoint at less than 140% will sense the accident as effectively as for current operation. It is concluded that this change does not result in a significant decrease in a margin of safety.

TS• Table 3.3.2-2 Item 1.d - Increase in main steam line tunnel temperature setpoints.

These isolation setpoints are changed to reflect the slight increase (about 1°F) in the steam tunnel operating temperature expected for uprated operation. The increase in these setpoints ensures adequate inadvertent trip avoidance. The analytical upper limits for these setpoints are not changed so that their safety functions are not impacted by the Technical Specification changes. For example, the instruments will act at the same setpoints assumed in previous analysis for a main steamline break, ensuring that offsite radiological doses remain a small fraction of 10CFR[Part]100 criteria and within GDC19 criteria for control room doses. Therefore, there is no significant decrease in a margin of safety.

• TS Table 3.3.4.1-2 - Increases in the ATWS RPT reactor vessel high pressure trip and allowable setpoints

The purpose of the high pressure RPT is to reduce reactor power level during a postulated pressurization transient with scram assumed to fail (ATWS). The physical phenomenon involved is that the void reactivity feedback from a pressurization transient adds positive reactivity to the reactor system. However, the high pressure RPT system trips both recirculation pumps to the low speed condition, thereby increasing core void fraction and creating negative reactivity to reduce the power transient. This enables the safety/relief valves to maintain peak pressure within the ASME overpressure emergency limit for the bounding ATWS case (Section 9.3.1) [of NEDC-31994P].

For power uprate, the capability of the SLCS to respond to a postulated ATWS event with adequate margin was confirmed (Section 9.3.1) [of NEDC-31994P]. By reducing reactor power until the SLCS can be injected to achieve full shutdown, the RPT also reduces suppression pool temperature for isolation cases (also shown to be acceptable for power uprate conditions in Section 9.3.1) [of NEDC-31994P]. Therefore, it is concluded that there is no significant decrease in a margin of safety.

• TS Figure 3.4.1.1-1 - The figure is revised to reflect the new definition of rated thermal power in terms of megawatts thermal.

This change is made to be consistent with the new definition of rated thermal power. As described in Section 3.2 of LTR2 (Reference 11-1) [NEDC-31984], the change to the power flow restricted zone is made to maintain the same operating constraints and stability margin that were established for the current power level. This change avoids any increase in the possibility of occurrence or any increase in the potential effects of power oscillations. Therefore, there is no significant decrease in a margin of safety.

• TS 3.4.2 - Increase of spring setpoints for the two lowest set SRVs.

The two low set SRV setpoints are increased to accommodate the change in operating pressure after power uprate. This change maintains a simmer margin of greater than 120 psig. Power uprate analysis shows that the revised SRVs still maintain the peak RPV pressure within the ASME Code Upset limit of 1375 psig for the limiting pressurization event (MSIV closure when credit is only taken for the backup high neutron flux scram) and provide adequate protection for postulated ATWS events. See Sections 3.2 and 9.3.1 [of NEDC-31994P] for further discussion. Therefore, it is concluded that there is no significant decrease in a margin of safety.

• TS 4.4.6.1.3-1 - Revision of the neutron fluence lead factor.

The increase in the lead factor includes consideration of the higher power level and projected spatial power distributions for an uprated equilibrium cycle. The evaluation at uprated conditions utilized the same calculational approach as performed for the current neutron fluence lead factor, but using more precise input parameters for uprated conditions. Therefore, it is concluded that there is no significant decrease in a margin of safety.

• TS 3.4.6.2 and TS 4.4.6.2 - Increase of reactor steam dome operating pressure limit.

The change to the dome operating pressure limit is made to be consistent with the new operating pressure for uprated thermal power. This change is used as a direct initial condition analysis input or sensitivity study parameter in the evaluation of steady state operating conditions and for the most limiting transients and accident events, i.e., vessel overpressure protection and LOCA. With this revised limit, peak vessel pressure remains below ASME Code criteria, and LOCA fuel performance satisfies the requirements of 10CFR50.46 and 10CFR[Part]50 Appendix K. Therefore, there is no significant decrease in a margin of safety.

• TS 4.7.4b - Increase in RCIC Surveillance Test Pressure.

The RCIC surveillance test pressure was increased to provide periodic demonstration of the ability of RCIC system to perform consistent with the requirements of the analyses at the higher operating pressure associated with power uprate conditions. An evaluation of the RCIC system confirmed its ability to operate at slightly higher turbine speed and provide its design flow rate at power uprate conditions. RCIC system performance will be confirmed during the initial power ascension to uprated conditions (and periodically thereafter per the Technical Specification). Therefore, it is concluded that there is no significant decrease in a margin of safety.

• TS Bases 3/4.2 (References) and TS 6.9.1.9.b (1) (Administrative Control) - Revised the references for the LOCA analysis methodology to the SAFER/GESTR-LOCA methodology report.

These changes are made to incorporate the power uprate LOCA licensing basis. Since SAFER/GESTR-LOCA methodology has been previously approved by the NRC and is acceptable for use for NMP2, it is concluded this change does not significantly decrease a margin of safety.

• TS Bases Table B3.2.1-1 - Significant input parameters used in the LOCA analyses.

The changes in the plant parameters reflect the power uprate condition. These changes have been reflected as input parameters in the LOCA analyses consistent with Regulatory Guide 1.49. Since the LOCA analysis demonstrates that 10CFR50.46 and 10CFR[Part]50 Appendix K criteria are met for operation with the uprated parameters, it is concluded that there is no significant decrease in a margin of safety.

• TS Bases B3/4.5.1 and B3/4.5.2 - Increase in required capability of the HPCS pump and the corresponding differential pressure.

The increase in differential pressure accommodates the increase in SRV setpoint values previously discussed to TS 3.4.2. The increased differential pressure ensures there is sufficient HPCS flow, assuming the two lowest setpoint SRVs are out of service, and the commencement of flow as reflected in the analysis of isolation events. The increase in HPCS pump flow is reflected in the LOCA analyses (516 to 517 gpm). This small change corrects the Technical Specification bases for this parameter. The revised parameters for the HPCS pump differential pressure and flow are reflected as inputs to the LOCA analyses and analyses of isolation events. Since the LOCA analysis meets 10CFR50.46 criteria and 10CFR[Part]50 Appendix K criteria, and the isolation events meet all required criteria (e.g. top of fuel remains covered for the loss of feedwater transient) it is concluded that there is no significant decrease in a margin of safety.

• TS Bases B3/4.6.1.2, B3/4.6.1.5 and B3/4.6.2 - Maximum containment pressure for leakage testing.

The bases for the value currently in the TS for the maximum containment pressure are reworded to clarify that the maximum containment pressure for power uprate has been calculated to remain below the current value used for containment leak rate testing. Therefore, it is concluded that there is no significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: January 10, 1994

Description of amendment request: The proposed amendment would relocate the seismic monitoring instrumentation Limiting Condition for Operation, Surveillance Requirements and associated tables and Bases contained in TS sections 3.3.7.2 and 4.3.7.2 to the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the seismic monitoring instrumentation system is to monitor the magnitude and effect of a seismic event only, and can not initiate or mitigate an accident previously evaluated. Furthermore, the proposed TS changes to relocate the seismic monitoring instrumentation requirements from TS to the UFSAR are in accordance with the criteria for determining those requirements that should remain in the TS as defined by the NRC in its final policy statement, "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors," dated July 22, 1993. The seismic monitoring instrumentation LCO, SRs, and associated tables and Bases proposed for relocation from TS to the LGS UFSAR will continue to be implemented by administrative controls that will satisfy the applicable requirements of TS section 6 "Administrative Controls." Those requirements include a review of changes to plant systems and equipment and to the applicable administrative controls in accordance with the provisions of 10CFR50.59.

Criterion 2 of the July 22, 1993 NRC final policy statement states, "A process variable, design feature, or operating restriction that is an initial condition of a Design Basis Accident or Transient Analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier." The seismic monitoring instrumentation system is not a system that monitors a process variable that is an initial condition for accident or transient analyses. The seismic monitoring instrumentation is also not a design feature or an operating restriction that is an initial condition of a Design Basis Accident or transient analyses since it only provides information regarding the magnitude of and the plant equipment response to a Design Basis earthquake. Therefore, the current LGS seismic monitoring instrumentation TS requirements do not meet Criterion 2 of the July 22, 1993 NRC final policy statement.

Criterion 3 of the July 22, 1993 NRC final policy statement states, "A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a Design Basis Accident or Transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier." The LGS seismic monitoring instrumentation system does not provide a function or actuate in order to mitigate the consequences of a Design Basis Accident or transient. Therefore, the current LGS seismic monitoring instrumentation TS requirements do not meet Criterion 3 of the July 22, 1993 NRC final policy statement.

Criterion 4 of the July 22, 1993 NRC final policy statement states, "A structure, system or component which operating experience or probabilistic safety assessment has shown to be significant to public health and safety." Operating experience has shown that the LGS seismic monitoring instrumentation system

has no impact on public health and safety as defined by the NRC final policy statement. Furthermore, LGS specific probabilistic risk assessment (PRA) does not credit the seismic monitoring instrumentation system as a significant factor in the plant response to an accident. Therefore, the current LGS seismic monitoring instrumentation TS requirements do not meet Criterion 4 of the July 22, 1993 NRC final policy statement for determining those requirements that should remain in TS. This conclusion is consistent with the function of the seismic monitoring instrumentation system stated above.

These proposed TS changes will maintain the current operation, maintenance, testing, and system operability controls of the seismic monitoring instrumentation system. Furthermore, any further changes to the seismic monitoring instrumentation system will be evaluated for the effect of the those changes on system reliability as required by 10CFR50.59. The seismic monitoring instrumentation system performance will not decrease due to these proposed TS changes and the system will continue to be administratively controlled in accordance with TS Section 6, including the requirements of 10CFR50.59, thereby precluding a future decrease in its performance.

In accordance with the current TS Section 3.3.7.2, with the seismic monitoring instrumentation inoperable, the plant would not be required to shut down and the provisions of TS Section 3.0.3 (i.e., plant shutdown) would not be applicable. Therefore, the inoperability of this system and therefore the consequences of an accident while this system is inoperable, was previously evaluated as not significant enough to require a change to the plant operating condition.

Since the seismic monitoring instrumentation system does not monitor a process variable that is an initial condition for an accident or transient analyses, or actuates any accident mitigation feature, and since the operation, maintenance, testing, and modification of the seismic monitoring instrumentation system will continue to be administratively controlled, including the requirements of 10CFR50.59; therefore, maintaining the reliability of the system, the proposed TS changes will not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The function of the seismic monitoring instrumentation system is to monitor the magnitude and effect of a seismic event only. The proposed TS changes to relocate the seismic monitoring instruments requirements from TS to the UFSAR are in accordance with the criteria for determining those requirements that should remain in the TS as defined by the NRC in its final policy statement, dated July 22, 1993. The seismic monitoring instrumentation system does not monitor a process variable that is an initial condition for an accident or transient analyses.

The seismic monitoring instrumentation is also not a design feature or an operating restriction that is an initial condition of a Design Basis Accident or transient analyses since it only provides information regarding the magnitude of and the plant equipment response to a Design Basis earthquake.

These proposed TS changes to relocate the TS requirements to the UFSAR will not alter the operation of the plant, or the manner in which the seismic monitoring instrumentation system will perform its function, and any future changes will continue to be administratively controlled in accordance with TS

Section 6, including the requirements of 10CFR50.59.

These proposed TS changes will not impose new conditions nor result in new types of equipment which will result in different types of malfunctions of equipment important to safety than any type previously evaluated.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

These proposed TS changes to relocate the seismic monitoring instrumentation requirements from TS to the UFSAR are in accordance with the criteria for determining those requirements that should remain in the TS as defined by the NRC in final policy statement, dated July 22, 1993.

Criterion 1 of the NRC final policy statement states,≥Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary." The NRC final policy statement explains that "...This criterion is intended to ensure that Technical Specifications control those instruments specifically installed to detect excessive reactor coolant leakage. This criterion should not, however, be interpreted to include instrumentation to detect precursors to reactor coolant pressure boundary leakage or instrumentation to identify the source of actual leakage (e.g., loose parts monitor, seismic instrumentation, valve position indicators)." Based on the above NRC guidance, the LGS UFSAR, and TS Bases 3.3.7.2, the seismic monitoring instumentation does not detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary. Therefore, the current LGS seismic monitoring instrumentation TS requirements do not meet Criterion 1. Furthermore, operating experience has shown that the LGS seismic instrumentation system has no impact on public health and safety as defined by the NRC final policy statement. In addition, the LGS specific PRA does not credit the seismic monitoring instrumentation system as a significant factor in the plant response to accidents.

The seismic monitoring instrumentation LCO, SRs, and associated tables and Bases proposed for relocation to the LGS UFSAR will continue to be implemented by administrative controls that will satisfy the applicable requirements of TS section 6 "Administrative Controls." Those requirements include a review of future changes to the system and applicable administrative controls in accordance with the provisions of 10CFR50.59.

Accordingly, based on the above discussion of NRC specific guidance, operating experience, and continued imposition of administrative controls, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: December 13, 1993, as supplemented February 2, 1994

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to allow for the use and subsequent storage of fuel with an initial enrichment of 5.0 w/o [weight percent] Uranium 235. The TS currently allow the use of fuel with a maximum enrichment of 4.25 w/o Uranium 235. The proposed amendment would also revise the restrictions on fuel storage in regions 1 and 2 of the spent fuel pool to ensure that the design basis for preventing criticality is maintained in the event of absorber panel shrinkage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no increase in the probability of an accident because the physical characteristics of a fuel assembly are not changed when fuel enrichment is increased. Fuel assembly movement will continue to be controlled by approved fuel handling procedures.

There is no increase in the consequences of an accident because fuel cycle designs will

continue to be analyzed with NRC-approved codes and methods to ensure the design bases for VCSNS [Virgil C. Summer Nuclear Station] are satisfied. The double contingency principle of ANSI/ANS 8.1-1983 can be applied to any postulated accident in the spent fuel pool which could cause reactivity to increase beyond the analyzed conditions. As shown in Attachment IV, the level of boron in the VCSNS spent fuel pool is sufficient to maintain Keff [effective neutron multiplication factor] less than or equal to 0.95. There is no postulated accident which could cause reactivity to increase beyond the analyzed conditions in the new fuel rack.

The radiological consequence analyses [...] performed to support the installation of replacement steam generators at VCSNS included the development of source terms which bound fuel enrichments up to 5.0 w/o U235 [Uranium 235] and average discharge burnups up to 65,730 MWD/MTU [megawatt days per metric ton uranium], which bounds the currently licensed burnup for fuel at VCSNS. These source terms were used to calculate offsite doses for accidents that are postulated to result in the release of fission products to the environment, including the fuel handling accident. In all cases, the dose results are within 10CFR100 limits.

2. The change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification changes do not involve any physical changes to the plant or any changes to the method in which the plant is operated. They do not affect the performance or qualification of safety related equipment. Therefore the possibility of a different type of accident or malfunction than previously considered is not created.

3. The change does not involve a significant reduction in a margin of safety.

Criticality analyses [...] have been performed for the spent fuel pool to allow for storage of fuel assemblies with enrichments up to 5.0 without U-235. The proposed Technical specification changes include those necessary to maintain Keff less than or equal to 0.95, including conservative allowances for uncertainties and biases, when the pool is flooded with unborated water.

The new fuel racks have been previously analyzed [...] for storage of fuel assemblies with enrichments up to 5.0 w/o U-235. For the flooded condition Keff does not exceed 0.95 including conservative allowances for uncertainties and biases. For the normally dry condition Keff does not exceed 0.98 for the low density optimum moderation condition. However, the proposed Technical Specification changes require fuel assemblies with enrichment above 4.0 w/o U-235 to contain integral fuel burnable absorbers such that the maximum reference fuel [infinite neutron multiplication factor] is less than or equal to 1.460 in unborated water at 68°F due to restrictions on spent fuel storage.

Since the proposed changes ensure that the design basis for preventing criticality in the fuel storage areas is preserved and since fuel cycle designs will continue to be analyzed with NRC-approved codes and methods to ensure the design bases for VCSNS are satisfied, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: S. Singh Bajwa

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: February 16, 1994

Description of amendments request: The proposed amendment will change the Technical Specifications to modify the description of fuel and control rod assemblies in TS 5.3.1, Fuel Assemblies. The change to the fuel assembly description will permit the limited substitution of zirconium alloy, zircaloy-4, ZIRLO™, or stainless steel filler rods for fuel rods in accordance with the NRC-approved applications of fuel rod configurations that have been analyzed with NRC-approved methods. This change will allow timely removal of fuel rods that are found to be a probable source of future leakage. The change will make provisions for the loading of lead test assemblies into the reactor without requiring a specific TS change. This amendment also allows the use of ZIRLO™ clad fuel as lead test assemblies. The specific descriptions of the fuel and control rod assemblies contained in the TS which are restrictive due to the unnecessary details are being deleted. The change will also make line item improvements in the Technical Specifications in accordance with Generic Letter 90-02, Supplement 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to the Technical Specifications allowing reconstitution will not involve a significant increase in the probability or consequences of an accident previously evaluated because it will not result in a change to any of the process variables that might initiate an accident or affect the radiological release for an accident. The operating limits will not be changed and the analysis methods to demonstrate operation within the limits will remain in accordance with NRC-approved methodology. Other than the changes to the fuel assemblies, there are no physical changes to the plant associated with this Technical Specification change. The consequences of an accident previously evaluated will not be increased because the safety analysis to be performed for each cycle will continue to demonstrate compliance with all fuel safety design bases. The ability to remove potentially leaking fuel rods should result in a reduction in the radiological consequences of any transients or accidents.

The probability or consequences of an accident previously evaluated are not significantly increased with the use of ZIRLO™ cladding. The VANTAGE 5 fuel assemblies containing ZIRLO™ clad fuel rods meet the same fuel assembly and fuel rod design bases as other VANTAGE 5 fuel assemblies. In addition, the 10 CFR 50.46 criteria will be applied to the ZIRLO™ clad fuel rods. The use of these fuel assemblies will not result in a change to the proposed Farley VANTAGE 5 reload design and safety analysis limits. Since the original design criteria are being met, the ZIRLO™ clad fuel rods will not be an initiator for any new accident. The ZIRLO™ clad material is similar in chemical composition and has similar physical and mechanical properties as that of zircaloy-4. Thus, the cladding integrity is maintained and the structural integrity of the fuel assembly is not affected. The ZIRLO™ clad fuel rod improves corrosion performance and dimensional stability. No concerns have been identified with respect to the use of an assembly containing a combination of both zircaloy-4 and selected ZIRLO™ clad fuel rods. Since the dose predications in the Farley safety analyses are not sensitive to the fuel rod cladding material used, the radiological consequences of accidents previously evaluated in the Farley safety analysis remain valid. Therefore the probability or consequences of an accident previously evaluated are not significantly increased.

The proposed removal of detailed descriptions of fuel and control rod assemblies will not involve a significant increase in the probability or consequences of an accident previously evaluated because it will not result in a change to any of the process variables that might initiate an accident. The operating limits will not be changed and the analysis methods to demonstrate operation within the limits will remain in accordance with NRC-approved methodology. The consequences of an accident previously evaluated will not be increased because the safety analyses to be performed for each cycle will continue to demonstrate compliance with all fuel safety design bases.

2. This change to the Technical Specifications allowing reconstitution will not create the possibility of a new or different kind of accident from any accident

previously evaluated because it will only affect the assembly configuration and will be limited to NRC-approved applications of fuel rod configurations. The other aspects of plant design, operation, limitations and responses to events will remain unchanged.

The possibility for a new or different kind of accident from any accident previously evaluated is not created by the use of ZIRLO™ cladding since the VANTAGE 5 fuel assemblies containing ZIRLO™ clad fuel rods will satisfy the same design bases as that used for other VANTAGE 5 fuel assemblies. All design and performance criteria will continue to be met and no new single failure mechanisms have been defined. In addition, the use of these fuel assemblies does not involve any alterations to plant equipment or procedures that would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident previously evaluated is not created.

The removal of detailed descriptions of fuel and control rod assemblies will not create the possibility of a new or different kind of accident from any accident previously evaluated because they will be limited to NRC-approved applications of fuel rod configurations. The other aspects of plant design, operation, limitations and responses to events will remain unchanged.

3. The use of zirconium alloy, zircaloy-4, ZIRLO™, or stainless steel filler rods in fuel assemblies will not involve a significant reduction in a margin of safety because analyses using NRC-approved methods will be performed for each configuration to demonstrate continued operation within the limits that assure acceptable plant response to accidents and transients. These analyses will be performed using NRC-approved methods that have been approved for application to the fuel configuration.

The margin of safety is not significantly reduced by the use of ZIRLO™ clad [sic] since the VANTAGE 5 fuel assemblies containing ZIRLO™ clad fuel rods do not change the proposed Farley VANTAGE 5 reload design and safety analysis limits. The use of these fuel assemblies will take into consideration the normal core operating conditions allowed for in the Technical Specifications. For each cycle reload core, the fuel assemblies will be evaluated using NRC Staff-approved reload design methods. This will include consideration of the core physics analysis peaking factors and core average linear heat rate effects. Therefore, the margin of safety as defined in the bases to the Farley Technical Specifications and VANTAGE 5 Licensing Amendment Request is not significantly reduced.

The removal of detailed descriptions of fuel assemblies will not involve a significant reduction in a margin of safety because analyses using NRC-approved methods will be performed for each configuration to demonstrate continued operation within the limits that assure acceptable plant response to accidents and transients. These analyses will be performed using NRC-approved methods that have been approved for application to the fuel configuration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 7, 1994 TS 93-19

Description of amendment request: The proposed change would revise Technical Specification 5.3.1 to allow the substitution of filler rods for fuel rods in fuel assemblies. This would permit the timely removal of fuel rods that are found to be leaking or are determined to be the probable source of future leaks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The substitution of filler rods will be justified using NRC-approved methodology. This methodology will demonstrate that the existing design limits and safety analyses criteria are met. Therefore, the proposed change does not increase the consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change involves the substitution of filler rods for fuel rods. This substitution requires the utilization of NRC-approved methodology. This methodology will ensure that the specific analyses will not cause any new or different kind of accident from that previously analyzed.

3. Involve a significant reduction in a margin of safety.

The substitution of filler rods for fuel rods would result in less active fuel in the core. Therefore, the amounts of radiological effluents that may be released offsite would not increase. The NRC-approved methodology by which any reanalyses would be performed already accounts for the affects on grid strength or the mass, stiffness, and fundamental frequency of the fuel assembly during seismic and loss-of-cooling accident conditions. Thus, the margin of safety is not reduced when substituting filler rods for fuel rods.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah NuclearPlant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 7, 1994 TS 93-11

Description of amendment request: The proposed change would revise Surveillance Requirement (SR) 4.7.9.i, "Snubber Service Life Program," to replace the present wording that describes the service life hydraulic snubber monitoring and evaluation program with that from the Westinghouse Electric Corporation Standard Technical Specifications, Revision 4a. This would eliminate the need to perform an engineering evaluation for drag-force increases of 50 percent or greater of the previously measured value and substitute a requirement to establish a monitoring program. This program would require that a maximum service life for the snubber components be determined and the monitoring program be established to ensure that the maximum service life is not exceeded based on test results and failure history. A proposed change to SR 4.7.9.c would remove the wording that is inconsistent with Generic Letter 90-09 by removing the term "if applicable" for performance of an as-found functional test and the requirement related to tests of hydraulic snubbers that have uncovered fluid ports.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA proposes to delete the current TS requirements to perform an evaluation of snubber test data when there is a greater than 50 percent increase in drag force for mechanical snubbers. The 50 percent evaluation requirement is considered unnecessary where snubbers have small drag forces during their previous test. During subsequent testing, small increases in drag forces (when compared with the rated load of the snubber) may exceed 50 percent of the previous test value. The relative change in drag force is small when compared with the overall rating of the snubber; however, under the current TS, an engineering evaluation for impending failure will still be required. Eliminating the current evaluation requirement from SQN's TSs will reduce the burden associated with performing unnecessary evaluations. The proposed change is consistent with the standard TS (Revision 4a), and a Snubber Service Life Program continues to exist at SQN. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

In addition, the testing language associated with Visual Inspection Performance and Evaluation has been deleted to provide consistency with Generic Letter 90-09. It should be noted that SQN tests its hydraulic snubbers in either direction as necessary. This is more conservative than the present TS requirement; therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The two proposed changes involve deleting a requirement to perform unnecessary analyses and a potentially nonconservative testing requirement. These changes do not alter any plant operation, maintenance requirements, or system design or function. Therefore, a new or different kind of accident is not created by this proposed change.

3. Involve a significant reduction in a margin of safety.

The proposed changes to the visual inspection and the service life section will not modify the plant or revise its mode of operation or the present safety analysis. The trending criteria to be utilized provide adequate assurance that snubber impending failure will be predicted in a timely manner. The deleted sections will not change the requirement to test and trend data for snubbers to predict failure; therefore, there is not a reduction in any margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 8, 1994 TS 93-14

Description of amendment request: The proposed change would revise the setpoints in Technical Specification Table 3.3-4, "Engineered Safety Feature Actuation System Instrumentation," for the pressure switches used to control switchover of the motor-driven Auxiliary Feedwater pump suction from the normal condensate storage tank supply to the essential raw cooling water supply. The setpoints would be changed from the present trip setpoint of 2 psig and allowable value of 1 psig, to new values of 3.21 psig and 2.44 psig, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The auxiliary feedwater (AFW) system is designed to mitigate the effects of the design basis accidents and anticipated operational transients listed below:

A. Loss of normal feedwater

B. Loss of offsite power to station auxiliaries

C. Accidental depressurization in the main steam system

D. Rupture of a main steam line

E. Major rupture of a main feedwater pipe

F. Steam generator tube rupture

G. Small break loss of coolant accident

The AFW system only provides mitigation of the events listed above and cannot initiate design-basis accident. Therefore, the proposed change in the low-pressure setpoint of the motor-driven AFW pump supply line will not result in an increase in the probability of a previously analyzed accident. In addition, the proposed change does not affect the overall water supply to the AFW system. Instead, the proposed change results in a transfer from the condensate storage tanks (CST) to the essential raw cooling water system at a slightly higher CST water level, thus enhancing the continuous supply of water. Therefore, this change will not result in an increase in the consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As discussed previously, the AFW system provides only mitigation functions. In addition, the proposed change does not affect the overall function and operation of the AFW system or its associated water supplies. Instead, this change will provide additional assurance of the proper operation of the AFW system. Therefore, the proposed revision of the low-pressure setpoint of the motor-driven AFW pump supply line will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The TS bases for the AFW system require that AFW be available to ensure that the reactor coolant system (RCS) can be cooled down to less than 350 degrees Fahrenheit from normal operating conditions in the event of a total loss of offsite power. In addition, the TS bases for the CST require that a minimum water volume be available to maintain the RCS at hot standby condition for two hours with steam discharge to the atmosphere concurrent with a total loss of offsite power.

The proposed TS revision does not affect the overall operation of either the AFW system or the CST. The proposed setpoint revision does slightly reduce the usable volume of water in the CST. However, sufficient margin remains to ensure compliance with the bases of the SQN TSs.

Therefore, the proposed changes to the SQN TSs do not involve a reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 8, 1994 TS 93-14

Description of amendment request: The proposed change would revise the

setpoints in Technical Specification Table 3.3-4, "Engineered Safety Feature Actuation System Instrumentation," for the pressure switches used to control switchover of the motor-driven Auxiliary Feedwater pump suction from the normal condensate storage tank supply to the essential raw cooling water supply. The setpoints would be changed from the present trip setpoint of 2 psig and allowable value of 1 psig, to new values of 3.21 psig and 2.44 psig, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The auxiliary feedwater (AFW) system is designed to mitigate the effects of the design basis accidents and anticipated operational transients listed below:

A. Loss of normal feedwater

B. Loss of offsite power to station auxiliaries

C. Accidental depressurization in the main steam system

D. Rupture of a main steam line

E. Major rupture of a main feedwater pipe

F. Steam generator tube rupture

G. Small break loss of coolant accident

The AFW system only provides mitigation of the events listed above and cannot initiate design-basis accident. Therefore, the proposed change in the low pressure setpoint of the motor-driven AFW pump supply line will not result in an increase in the probability of a previously analyzed accident. In addition, the proposed change does not affect the overall water supply to the AFW system. Instead, the proposed change results in a transfer from the condensate storage tanks (CST) to the essential raw cooling water system at a slightly higher CST water level, thus enhancing the continuous supply of water. Therefore, this change will not result in an increase in the consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As discussed previously, the AFW system provides only mitigation functions. In addition, the proposed change does not affect the overall function and operation of the AFW system or its associated water supplies. Instead, this change will provide additional assurance of the proper operation of the AFW system. Therefore, the proposed revision of the low-pressure setpoint of the motor-driven AFW pump supply line will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The TS bases for the AFW system require that AFW be available to ensure that the reactor coolant system (RCS) can be cooled down to less than 350 degrees Fahrenheit from normal operating conditions in the event of a total loss of offsite power. In addition, the TS bases for the CST require that a minimum water volume be available to maintain the RCS at hot standby condition for two hours with steam discharge to the atmosphere concurrent with a total loss of offsite power.

The proposed TS revision does not affect the overall operation of either the AFW system or the CST. The proposed setpoint revision does slightly reduce the usable volume of water in the CST. However, sufficient margin remains to ensure compliance with the bases of the SQN TSs.

Therefore, the proposed changes to the SQN TSs do not involve a reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 9, 1994 TS 93-21

Description of amendment request: The proposed change would revise Technical Specification Table 3.3-11, "Fire Detection Instruments," by adding one detector to Fire Zones 184, 185, 186, and 187 for each Unit. These fire zones are located in the 6.9 kv shutdown board room corridors in the auxiliary building.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). The operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1.Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the fire detection instrumentation adds two additional cross-zone detectors in each of the Units 1 and 2 6900-volt shutdown board room corridors on Elevation 734 of the auxiliary building. The additional fire detection instrumentation provides additional assurance that the fire

1detection instrumentation will operate as required in the event of a fire. However, neither the fire detection instrumentation nor the equipment associated with this instrumentation is considered to be the source of an accident. In addition, this equipment is not taken credit for in the safety analysis. Therefore, there is no increase in the probability or consequences of a previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The fire detection and/or suppression functions affected by this change enhance fire mitigation functions only and do not result in a change in plant functions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any preciously analyzed.

3. Involve a significant reduction in a margin of safety.

The equipment functions affected by the proposed changes are not assumed for any accident in the SQN safety analysis and are not an input to the TS margin of safety. Therefore, the proposed change will not result in a reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 31, 1994

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.1.1.2 to permit the reduction of boron concentration of water within the reactor coolant system (RCS), subject to certain restrictions, when the reactor is in Mode 5 and RCS flow is less than

2800 gpm. The proposed amendment is related to Amendment No. 176, which was issued by the NRC on December 8, 1992, and incorporated a similar revision for Mode 6 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:The Nuclear Regulatory Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazard exists due to a proposed amendment to an Operating License for a facility. A proposed amendment involves no significant hazards if operation of the facility in accordance with the proposed changes would: (1) Not involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Not create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Not involve a significant reduction in a margin of safety. Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are significantly affected by the proposed changes. The proposed change to Technical Specification (TS) 3/4.1.1.2 would revise an exception to make it applicable in Mode 5 as well as Mode 6. The revised exception would allow water of a lower boron concentration than the Reactor Coolant System (RCS) to be added to the RCS, with the flowrate of reactor coolant through the RCS less than 2800 gpm, provided that the water to be added meets the requirements of TS 3.1.1.1 (Mode 5) or TS 3.9.1 (Mode 6). TS 3.1.1.1 requires that in Mode 5, the boron concentration of the RCS be maintained such that the Shutdown Margin shall be less than or equal to one percent delta k/k. TS 3.9.1 requires that in Mode 6, the boron concentration of all filled portions of the RCS and the refueling canal shall be maintained uniform and sufficient to ensure that the more restrictive of two reactivity conditions is met. If the RCS meets these reactivity condition requirements, and water is added to the RCS that also meets the reactivity condition requirements of TS 3.1.1.1 or TS 3.9.1, then the RCS is assured to remain in compliance with the reactivity condition requirements. The possibility that the added water may be of lower boron concentration than the RCS, therefore, does not significantly increase the probability of an accident previously evaluated.

The proposed change to TS 3/4.9.8.1 makes TS 3/4.9.8.1 and TS 3/4.9.8.2 consistent with the current TS 3/4.1.1.2, and is considered to be administrative in nature.

The proposed changes to TS Bases 3/4.1.1.2 and TS Bases 3/4.9.8 are considered to be administrative in nature.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As discussed in item 1a. above, the proposed revision of the exception to TS 3/4.1.1.2 will not cause a condition that would result in the RCS not meeting the requirements of TS 3.1.1.1 or TS 3.9.1, as applicable. The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident. As also discussed in item 1a. above, the proposed changes to TS Bases 3/4.1.1.2, TS 3/4.9.8.1, and TS Bases 3.4.9.8 are considered to be administrative in nature.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators or assumption are introduced by the proposed changes. The proposed changes do not alter any accident scenarios. As discussed in item 1a. above, the proposed revision of the exception to TS 3/4.1.1.2 will not cause a condition that would result in the RCS not meeting the requirements of TS 3.1.1.1 or TS 3.9.1. The proposed changes to TS Bases 3/4.1.1.2, TS 3/4.9.8.1, and TS Bases 3/4.9.8 are considered to be administrative in nature. None of the proposed changes creates the possibility of a new kind of accident.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators or assumptions are introduced by the proposed changes. The proposed changes do not alter any accident scenarios. As discussed in item 1a. above, the proposed revision of the exception to TS 3/4.1.1.2 will not cause a condition that would result in the RCS not meeting the requirements of TS 3.1.1.1 or TS 3.9.1. The proposed changes to TS Bases 3/4.1.1.2, TS 3/4.9.8.1, and TS Bases 3/4.9.8 are considered to be administrative in nature. None of the proposed changes creates the possibility of a different kind of accident from any accident previously evaluated.

3. Not involve a significant reduction in the margin of safety because the proposed change to TS 3/4.1.1.2, as described above, will not cause a condition that would result in the RCS not meeting the requirements of TS 3.1.1.1 or TS 3.9.1. The margin of safety will be maintained by adhering to the limits specified in these TSs. The proposed changes to TS Bases 3/4.1.1.2, TS 3/4.9.8.1 and TS Bases 3/4.9.8 are considered to be administrative in nature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: July 14, 1993

Description of amendment request: The proposed amendment would modify Sections 3.6 and 4.6 of the Technical Specifications to add Reactor Coolant System leakage detection requirements to address Generic Letter 88-01, "NRC Position on Intergranular Stress Corrosion Cracking (IGSCC) in BWR Austenitic Stainless Steel Piping."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1.The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment would add a more conservative requirement into the plant Technical Specifications, in addition to those that presently exist. Hence, approval of this change will have no affect on any previously evaluated accident scenario.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical changes are being made to the plant and now new operating techniques or procedures are being proposed. The proposed amendment would add an additional Limiting Condition for Operation and an increased Surveillance Requirement to plant Technical Specifications. Hence, approval of this change will not create the possibility of a new or different kind of accident.

3. The proposed amendment will not involve a significant reduction in a margin of safety. The proposed change adds more restrictive requirements into the Technical Specifications. Hence, approval of this change would not reduce the margin of safety.GI21The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51FR7751). An example of an amendment that is considered not likely to involve a significant hazards consideration is Example (ii) which is an additional limitation, restriction or control not presently included in the Technical Specifications. This proposed amendment provides for an additional

Limiting Condition of Operation and an increased Surveillance Requirement in the plant Technical Specifications. Therefore, based on the above, it is determined this change does not constitute a significant hazards consideration as defined in 10CFR 50.92(c).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Locol Public Document Room locotion: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Units No. 1 and No. 2, Surry County, Virginia

Dote of omendment request: December 27, 1993

Description of omendment request: The proposed change would revise the Technical Specifications (TS) for the Surry Power Station, Units No. 1 and No. 2 (SPS-1&2). The proposed changes revise the review responsibilities of the Station Nuclear Safety and Operating Committee (SNSOC) and the Management Safety Review Committee (MSRC).

The SPS-1&2 TS address the organization and responsibilities of both the onsite and offsite review groups: SNSOC and MSRC, respectively. The responsibilities of the SNSOC include the review of new procedures and changes to procedures that affect nuclear safety. The MSRC review responsibilities include the review of safety evaluations and SNSOC meeting minutes and reports. The extent of these review activities would be revised by the proposed changes to ensure the two review groups are focusing on nuclear safety issues and not spending an unnecessary amount of time on activities of minimal safety significance. Specifically, the proposed changes would revise the review responsibilities of SNSOC regarding procedure changes. Rather than reviewing all procedure changes, SNSOC would only review procedure changes that require a safety evaluation. The proposed changes also would revise the review responsibilities of the MSRC. Rather than reviewing all of the safety evaluations and SNSOC meeting minutes and reports as presently required by the TS, the MSRC would only review a representative sample of these documents.

Basis for proposed no significant hazards considerotion determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[T]he elimination of the SNSOC review of procedure changes that do not require a safety evaluation, revising the wording for approval of procedure changes, and the modification of the MSRC's duties regarding their review of safety evaluations and SNSOC meeting minutes and reports will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. As administrative changes, the proposed Technical Specifications changes have no direct or indirect effect on accident precursors. No plant modifications are being implemented and operation of the plant is unchanged. SNSOC review of new procedures and procedure changes that require a safety evaluation ensures that activities that could affect nuclear safety are being properly reviewed. The MSRC's overview of representative samples of safety evaluations and SNSOC meeting minutes and reports based on performance ensures these programs are being properly implemented and nuclear safety is not being compromised; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated since physical modifications are not involved and systems and components will be operated as before the change. The proposed changes are wholly administrative in nature and have no impact on plant operations or accident considerations. These changes modify the scope of SNSOC review of procedure changes and MSRC's review functions concerning safety evaluations and SNSOC meeting minutes and reports. Procedure changes will continue to receive management review in accordance with administrative procedures, however, only changes that require a safety evaluation will require SNSOC approval. MSRC review of representative samples of safety evaluations and SNSOC meeting minutes and reports based on performance will continue to provide adequate assurance that nuclear safety is being properly considered; or

3. Involve a significant reduction in a margin of safety as defined in the basis of any Technical Specification since the responsibilities of the SNSOC and MSRC are not addressed by the existing Technical Specification Bases, nor are review requirements for procedures. The proposed changes are administrative in nature and have no impact on, nor were they considered in, existing UFSAR accident analyses. Safety significant procedure changes, i.e., changes that require a safety evaluation to be prepared, will continue to be reviewed by SNSOC, as will new procedures. Procedure changes still require cognizant management approval and preparation of an activity screening to determine whether or not the change impacts nuclear safety. This ensures activities important to nuclear safety are being appropriately reviewed. The effectiveness of the safety evaluation program, and the thoroughness of SNSOC meetings and reports will be assured through the MSRC's plant overview function which is based on observed performance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: December 6, 1993

Description of omendment request: The proposed amendment would modify the testing requirements for the Main Steam Relief Valves (MSRVs) in the Technical Specifications (TS). Specifically, the proposed amendment would allow deferral of MSRV Position Indication Channel Calibration, including the Channel Functional Test that is the focus of the request, for 24 hours after the plant reaches conditions that would allow the Channel Functional Test to be conducted under operating conditions (above 10% rated reactor power). In addition, the proposed change would extend the current deferral for two related TS, one for MSRVs and the other for Automatic Depressurization System (ADS) valves, from 12 hours to the proposed 24 hours after reaching conditions that would allow the Channel Functional Test to be conducted under operating conditions.

Bosis for proposed no significont hozords consideration determinotion: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff's evaluation of the licensee's analysis of the change that would defer Safety/Relief Valve Position Indicators Channel Calibration, specifically the Channel Functional Test, is presented below:

1. Does the omendment involve o significant increase in the probobility or

consequences of an accident previously evaluated?

No credit is taken for the MSRV position indication in the initiation or mitigation of any analyzed accident. The inoperability of valve position indication does not affect the manual or automatic actuation of the MSRVs. The analysis for inadvertent opening of an MSRV (FSAR Section 15.1.4) assumes that the alarm function of the MSRV discharge line temperature sensors and Reactor Pressure Vessel (RPV) level control systems provide the signals for manual and automatic system actuation, respectively. Therefore, because previously analyzed accidents are mitigated without the use of the MSRV position indication, this change that would allow temporary plant operation in modes 1 and 2 with inoperable MSRV position indication to allow testing does not increase the probability or consequences of a previously analyzed accident.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No new mode of operation of any equipment results from the delay of the Channel Functional surveillance. The valve position indication provides information for operator response to previously evaluated accidents, and does not provide any automatic system actuations that could initiate an accident or abnormal operating occurrence sequence. This change would not, therefore, create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

The margin of safety involved in this amendment is the time it takes to identify inadvertent MSRV operation to initiate either automatic or manual plant response. Since no credit is taken for MSRV position indication in the WNP-2 safety analyses for initiation of automatic or operator manual response, the lack of MSRV position indication for a 24 hour time period will not affect the analyzed time to identify inadvertent MSRV operation. The proposed change does not, therefore, affect the margin of safety.

The staff's evaluation of the licensee's analysis of the change that would allow an increase in the current deferral of Safety/Relief Valve and Automatic Depressurization System (ADS) valve testing of 12 hours to the proposed 24 hours is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change represents an additional 12 hours in which the operability of the MSRV position indication would not be verified, and could be inoperable. No credit is taken for the MSRV position indication in the initiation or mitigation of any analyzed accident. The inoperability of valve position indication does not affect the manual or automatic actuation of the MSRVs as discussed in the following: The analysis for inadvertent opening of an MSRV (FSAR Section 15.1.4) assumes the alarm function of the MSRV discharge line temperature sensors and RPV level control systems for manual and automatic system actuation, respectively. Thus, the inoperability of the MRSV position indication for an additional 12 hours would not affect the probability or consequences of an accident previously evaluated.

The proposed change represents an additional 12 hours in which the operability of the ADS valves, which are also the MSRVs, would not be verified, and could be inoperable. The cause of any potential inoperability would also be undetermined, and any unidentified failure mode affects the uncertainties assumed in the probability of inadvertent MSRV opening, which is an analyzed accident (FSAR Section 15.1.4). In the worst case, the probability of inadvertent MSRV opening would be increased due to an unidentified problem with the MSRVs. The additional 12 hours, considering plant operation for approximately 5800 hours of power operation each year (assuming 60 day annual refueling outage and 80% capacity factor for the remaining time), represents only an estimated 0.2% increase in time at power without verifying operability of the ADS valves, which contributes a very small increase in the probability of an inadvertent MSRV opening due to an undiscovered fault condition. Performing the surveillance testing using other possible methods, either removal of the MSRV position indication from the valve and testing separately, or testing in modes 3, 4, or 5 such that adequate steam back pressure does not exist, introduce other uncertainties and potential for valve damage that would, using engineering judgement, create a greater increase in probability of an inadvertent MSRV opening than the additional 12 hours would contribute. The proposed change would not, therefore, significantly increase the probability of an accident previously evaluated.

Regarding the potential effect on the consequences of an inadvertent MSRV opening, the accident analysis in FSAR Section 15.1.4 analyzes consequences assuming an MSRV sticks open. Thus, increasing the time that a potential malfunction of a valve may go undetected does not affect the consequences of an MSRV that is already considered open as assumed in the accident analysis. Consequently, the increase in time allowed for conducting the surveillance testing, and therefore the time that the operability of the ADS-related MSRV is not verified does not affect the consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No new or modified mode of operation of any structure, system, or component results from delaying verification of the status of operability of the MSRVs for an additional 12 hours. The proposed change does not, therefore, create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

The margin of safety involved in this proposed amendment is the time, established by the current TS, that operation in modes 1 and 2 is allowed with the operability of the MSRVs and associated ADS valves undetermined. The current TS allow 12 hours to conduct testing to verify operability of these valves. The proposed TS would extend that time to 24 hours. The additional 12 hours, considering plant operation for approximately 5800 hours of power operation each year (assuming 60-day annual refueling outage and 80% capacity factor for the remaining time), represents only an estimated 0.2% increase in time at power without verifying operability of the ADS valves, which the staff considers, by engineering judgement, as a very small reduction in the margin to safety affected by the proposed change. This change would, therefore, not involve a significant reduction in the margin of safety provided by the current TS.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: M. H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: January 26, 1994

Description of amendment request: The proposed amendments would change Technical Specification Section 15.3.0, "General Considerations." This section specifies the actions which should be taken for conditions not directly addressed in the action statements of the Technical Specifications. The changes would provide more operational flexibility. Changes to the applicable bases and editorial changes are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of this facility under the proposed Technical Specifications change will not create a significant increase in the probability or consequences of an accident previously evaluated. This proposed change will incorporate requirements contained in NUREG 1431, Revision 0, "Westinghouse Owner's Group Improved Technical Specifications," into the Point Beach Technical Specifications Section 15.3.0, "General Considerations." The proposed revisions will not remove any existing requirements. Several new requirements will be added. However, the proposed revisions will allow a longer period of time for the affected unit(s) to be placed in hot shutdown should one of the applicable Limiting Conditions for Operation not be met. This longer time limit is identical to the time limit specified in NUREG 1431, Revision 0, and permits the shutdown to proceed in a controlled and orderly manner that is well within the capabilities of the unit(s), assuming that only the minimum required equipment is operable. This reduces thermal stresses on components of the Reactor Coolant System and the potential for a plant transient that could challenge plant safety systems. The amount of time to reach cold shutdown would decrease from 48 hours to 37 hours. The slightly longer time to reach hot shutdown is more than offset by the shorter time to cold shutdown, thereby reducing the total amount of time a unit may be operated in a condition in which a system or component required to mitigate the consequences of an accident is unavailable, or that is otherwise prohibited by the specifications.

Should a shutdown of both units be required, 15.3.0.A and 15.3.0.B allow an orderly and sequential shutdown of each unit to take place. This ensures that the plant operators are not overloaded during the shutdown process and allows the units shutdowns to proceed in a controlled and orderly manner. The revised specifications will clarify the requirements, enhancing the effectiveness of the Point Beach Technical Specifications. There is no physical change to the facility, its systems, or its operation. Thus, an increased probability or consequences of an accident previously evaluated cannot occur.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change will incorporate requirements contained in NUREG 1431, Revision 0, "Westinghouse Owner's Group Improved Standard Technical Specifications," into the Point Beach Technical Specifications Section 15.3.0, "General Considerations." The proposed revisions will not remove any existing requirements. Several new requirements will be added.

However, the proposed revisions will allow a longer period of time for the affected unit(s) to be placed in hot shutdown should one of the applicable Limiting Conditions for Operation not be met. This longer time limit is identical to the time limit specified in NUREG 1431, Revision 0, and permits the shutdown to proceed in a controlled and orderly manner that is well within the capabilities of the unit(s), assuming that only the minimum required equipment is operable. This reduces thermal stresses on components of the Reactor Coolant System and the potential for a plant transient that could challenge plant safety systems. The amount of time to reach cold shutdown would decrease from 48 hours to 37 hours. The slightly longer time to reach hot shutdown is more than offset by the shorter time to cold shutdown, thereby reducing the total amount of time a unit may be operated in a condition in which a system or component required to mitigate the consequences of an accident is unavailable, or that is otherwise prohibited by the specifications.

Should a shutdown of both units be required, 15.3.0.A and 15.3.0.B allow an orderly and sequential shutdown of each unit to take place. This ensures that the plant operators are not overloaded during the shutdown process and allows the units shutdowns to proceed in a controlled and orderly manner. The revised specifications will clarify the existing specifications and will add some additional requirements, enhancing the effectiveness of the Point Beach Technical Specifications. There is no physical change to the facility, its systems, or its operation. Thus, a new or different kind of accident cannot occur.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety. This proposed change will incorporate requirements contained in NUREG 1431, Revision 0, "Westinghouse Owner's Group Improved Standard Technical Specifications," into the Point Beach Technical Specifications Section 15.3.0, "General Considerations." The proposed revisions will not remove any existing requirements. Several new requirements will be added.

However, the proposed revisions will allow a longer period of time for the affected unit(s) to be placed in hot shutdown should one of the applicable Limiting Conditions for Operation not be met. This longer time limit is identical to the time limit specified in NUREG 1431, Revision 0, and permits the shutdown to proceed in a controlled and orderly manner that is well within the capabilities of the unit(s), assuming that only the minimum required equipment is operable. This reduces thermal stresses on components of the Reactor Coolant System and the potential for a plant transient that could challenge plant safety systems. The amount of time to reach cold shutdown would decrease from 48 hours to 37 hours. The slightly longer time to reach hot shutdown is more than offset by the shorter time to cold shutdown, thereby reducing the total amount of time a unit may be operated in a condition in which a system or component required to mitigate the consequences of an accident is unavailable, or that is otherwise prohibited by the specifications.

Should a shutdown of both units be required, 15.3.0.A and 15.3.0.B allow an orderly and sequential shutdown of each unit to take place. This ensures that the plant operators are not overloaded during the shutdown process and allows the units shutdowns to proceed in a controlled and orderly manner. The revised specifications will clarify the existing specifications and will add some additional requirements, enhancing the effectiveness of the Point Beach Technical Specifications. There is no physical change to the facility, its systems, or its operation. Thus, a significant reduction in a margin of safety cannot occur.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual

notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 4, 1993

Description of amendments request: The proposed amendments would allow the removal of an orifice plate in the containment vent/purge line to allow greater flow through the line. The restoration of full flow capability will result in less time required to vent the containment. A reanalysis of the maximum hypothetical accident, as currently described in the Updated Final Safety Analysis Report, was performed to support the requested amendments. The results of the reanalysis indicate that the consequences of the accident previously analyzed would be increased. Although the consequences result in an increase in the fission product release, the total doses are well within the limits of 10 CFR Part 100, "Factors to be considered when evaluating sites."Date of Publication of Individual Notice in **Federal Register:** February 25, 1994 (59 FR 9254)

Expiration date of individual notice: March 28, 1994

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Duke Power Company, Docket No. 50-414, Catawba Nuclear Station, Unit No. 2, York County, South Carolina

Date of amendment request: January 10, 1994

Description of amendment request: The proposed amendment would change the method of measuring the reactor coolant system flow rate (Technical Specification 2.0 and 3/4.2) during the 18-month surveillance for Catawba, Unit 2. Date of publication of individual notice in Federal Register: March 1, 1994 (59 FR 9785)

Expiration date of individual notice: March 31, 1994

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of application for amendment: February 7, 1994

Brief description of amendment request: The proposed amendment would allow an increase in reactor coolant temperature in order to support operation at the rated thermal power of 3565 megawatts thermal (MWt). The proposed amendment would change reactor protection system setpoints by increasing the nominal reactor coolant average temperature from 581.2°F to 586.5°F, changing the axial flux difference penalties and setpoint uncertainty allowances. The proposed amendment also increases the maximum indicated reactor coolant system average temperature from 585.0°F to 590.5°F.

Date of individual notice in **Federal Register:** February 15, 1994 (59 FR 7269)

Expiration date of individual notice: March 17, 1994

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: November 1, 1993, as supplemented on February 1, 1994

Brief description of amendment: The amendment revises the heatup and cooldown curves which will allow operation beyond the current 12 effective full-power years (EFPY) to approximately 13.8 EFPY. The increase in this EFPY will allow Unit 2 to operate until its next refueling outage (RFO-10) in accordance with the requirements of 10 CFR Part 50, Appendix G.

Date of issuance: March 1, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 162

Facility Operating License No. DPR-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 24, 1993 (58 FR 62150)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: August 27, 1993, as supplemented November 10, 1993 and February 1, 1994

Brief description of amendment: The amendment revises the Technical Specifications and allows elimination of the existing reactor coolant's resistance temperature detector (RTD) bypass manifold system and the substitution of a new design with RTDs mounted in thermowells that extend directly into the flow stream of the reactor coolant system.

Date of issuance: February 18, 1994
Effective date: February 18, 1994
Amendment No. 43

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48379)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: July 16, 1993, as supplemented February 17, 1994

Brief description of amendment: The amendment revises the Technical Specifications (TS) 3/4.2.1, Axial Flux Difference, 3/4.2.2, Heat Flux Hot Channel Factor (F_Q), deletes surveillance requirement 4.2.2.2 and 4.2.2.3, and changes 6.9.1.6, Core Operating Limit Report, and associated Bases related to the transition from nuclear fuel supplied by Westinghouse to nuclear fuel supplied by Siemens Power Corporation (SPC) beginning with Cycle No. 6.

Date of issuance: March 1, 1994
Effective date: March 1, 1994
Amendment No. 44

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41500)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: May 15, 1993, as supplemented February 17 and February 25, 1994

Brief description of amendment: The amendment modifies the SHNPP Operating License to provide for a one-time exemption from compliance with License Condition 2.C.(8) which requires periodic emergency diesel generator engine teardowns for component inspections.

Date of issuance: March 3, 1994
Effective date: March 3, 1994
Amendment No. 45

Facility Operating License No. NPF-63. Amendment revises the Operating License Condition 2.C.(8) as defined in Attachment 1 to Operating License NPF-63.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32378) The February 17, 1994, letter provided supplemental information and the February 25, 1994, letter modified the May 15, 1993, letter and requested a one-time exemption. Neither supplemental letter changed the initial proposed determination of no significant hazards consideration as published in the **Federal Register.**The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: July 16, 1993, as supplemented February 17, 1994

Brief description of amendment: The amendment revises the SHNPP Technical Specification to incorporate changes to reactor core safety limits, reactor trip system instrumentation setpoints, power distribution limits, and shutdown boron concentration control in support of the transition from nuclear fuel supplied by Westinghouse Electric Corporation to nuclear fuel supplied by Siemens Power Corporation and a reactor core safety average temperature reduction effort.

Date of issuance: March 3, 1994
Effective date: March 3, 1994
Amendment No. 46

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50966) The February 17, 1994, letter provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the FEDERAL REGISTER.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: August 13, 1993, as supplemented by letters dated September 15, 1993, September 16, 1993, December 17, 1993, January 19, 1994, February 11, 1994, and February 24, 1994.

Brief description of amendments: These amendments revise Technical Specification 3/4.4.5, "Steam Generators," to allow sleeving of defective steam generator tubes as an alternative to tube plugging. Two different methods of sleeving are approved for Byron and Braidwood stations: Westinghouse laser-welded tube sleeving and Babcock and Wilcox (B&W) kinetic-welded tube sleeving.

Date of issuance: March 4, 1994
Effective date: March 4, 1994
Amendment Nos.: 47, 47, 59, and 59

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57846) The additional information contained in the supplemental letters dated September 15, 1993, September 16, 1993, December 17, 1993, January 19, 1994, February 11, 1994, and February 24, 1994, served to clarify the amendments, were within the scope of the initial notice, and did not affect the

Commission's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 2, 1993, as supplemented by letters dated January 7, 1994, and February 10, 1994.

Brief description of amendments: The amendments revise the Byron and Braidwood Technical Specifications (TS) to allow replacement of the 125 volt DC Gould batteries with new 125 volt DC AT&T batteries and rephrase the specification for their design duty cycle. In addition, the amendments revise the crosstie loading limitations and crosstie breaker limitations. The associated TS Bases are also revised to include the purpose for the crosstie limitations and a discussion of the design duty cycle requirements.

Date of issuance: March 4, 1994

Effective date: March 4, 1994

Amendment Nos.: 59, 59, 47, and 47

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4936) The February 10, 1994, supplemental submittal did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 15, 1989, as supplemented September 16, 1992.

Brief description of amendments: The amendments revise Technical Specifications (TSs) 3.0.4, 4.0.3, and 4.0.4 to incorporate guidance provided by the NRC in Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements."

Date of issuance: February 24, 1994

Effective date: February 24, 1994

Amendment Nos.: 94 and 78

Amendment Nos.: 94 and 78

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 12, 1992 (57 FR 53785)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 24, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: January 28, 1994

Brief description of amendments: The amendments minimize unnecessary testing for certain instruments in the Reactor Protection System and the End-of Cycle Recirculation Pump Trip system for LaSalle County Station, Units 1 and 2 technical specifications.

Date of issuance: February 25, 1994

Effective date: February 25, 1994

Amendment Nos.: 95 and 79

Amendment Nos.: 95 and 79

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No (59 FR 6062 dated February 9, 1994). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 11, 1994, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated February 25, 1994.

Attorney to licensee: Michael I. Miller, Esquire; Sidley & Austin, One First National Plaza, Chicago, Illinois 60690.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: November 4, 1993

Brief description of amendments: The amendment revises the Technical Specifications surveillance frequency and acceptance criteria requirements for the steam generator safety valves.

Date of issuance: March 2, 1994

Effective date: March 2, 1994

Amendment Nos.: 154 and 142

Amendment Nos.: 154 and 142

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64605)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: May 24, 1993

Brief description of amendment: The amendment revises Technical Specification 4.6.2.1 to allow a one-time relief from the requirement to perform accelerated Type A integrated leak rate tests (ILRT) after two consecutive tests fail to meet the acceptance criteria. Concurrently, the Commission granted a one-time exemption from the requirement in 10 CFR Part 50, Appendix J, III.A.6.(b) to perform the Type A containment ILRTs on an accelerated frequency following failure of two previous Type A tests.

Date of issuance: February 22, 1994

Effective date: February 22, 1994, with full implementation within 45 days.

Amendment No.: 97

Amendment No.: 97

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43925)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1994 No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 19, 1993

Brief description of amendments: The amendments revise both the surveillance requirements of the Unit 1 Technical Specification (TS) 3.9.D and Unit 2 TS 3/4.8.2, "Electrical Power Monitoring for Reactor Protection System," to add time delays to the reactor protection system electrical power monitoring trips.

Date of issuance: February 24, 1994

Effective date: To be implemented within 60 days from the date of issuance.

Amendment Nos.: 191 and 130

Amendment Nos.: 191 and 130

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67846)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 24, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: November 9, 1993

Brief description of amendments: The amendments revise the Surveillance Requirements of Hatch Unit 1 Technical Specification (TS) Section 4.9, "Auxiliary Electrical Systems," and Hatch Unit 2 TS Section 4.8, "AC Sources - Operating," to change the requirements for diesel generator testing under hot initial conditions.

Date of issuance: February 24, 1994

Effective date: To be implemented within 60 days from the date of issuance.

Amendment Nos.: 192 and 131

Amendment Nos.: 192 and 131

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67846)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 24, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Energy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 8, 1993, as supplemented by letter dated February 3, 1994.

Brief description of amendment: The amendment revises the River Bend Station, Unit 1 technical specifications to permit extending certain surveillance intervals so that testing can be performed during the refueling outage scheduled to start April 16, 1994, rather than requiring an earlier shutdown solely to perform the testing.

Date of issuance: February 18, 1994

Effective date: February 18, 1994

Amendment No.: Amendment No. 72

Amendment No.: Amendment No. 72

Facility Operating License No. NPF-47: The amendment revised the technical specifications.

Date of initial notice in **Federal Register:** January 18, 1994 (59 FR 2630) The February 3, 1994, letter provided clarifying information and did not change the initial no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 1, 1990, as supplemented by letters dated November 27, 1990, June 5, 1991, November 3, 1992, November 11, 1992, August 16, 1993, October 22, 1993, November 5, 1993 (two letters), and November 29, 1993.

Brief description of amendments: The amendments consist of changes to the technical specifications (TS) to change the allowed outage times (AOTs) and/or surveillance test intervals (STIs) as a result of the South Texas probabilistic safety assessment (PSA) considered in conjunction with other information. Ten of the TS changes were based on changes to the core damage frequency as calculated using the PSA. Five additional TS changes to the AOTs and STIs were not specifically modeled in the PSA, but had little or no impact on risk.

Date of issuance: February 17, 1994

Effective date: February 17, 1994, to be implemented within 45 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 59; Unit 2 - Amendment No. 47

Facility Operating License Nos. NPF-76 and NPF-80: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 1990 (55 FR 10535) The supplemental letters provided additional clarifying information, were within the scope of the original application and did not change the original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: December 14, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) 3/4.8.2, "DC Sources," to delete two notes which

indicated that two 125-volt full capacity battery chargers were required when the Uninterruptible Power Supply was powered by its backup DC power supply. These notes applied to the Divisions I and II DC sources during operating and shutdown conditions. The amendment also revises TS 3/4.8.2 to increase the minimum allowable electrolyte temperature for the 125-volt batteries from 60 °F to 65 °F. In addition, the amendment makes administrative changes to TS 4/3.8.4, "Electrical Equipment Protective Devices," and the TS Bases.

Date of issuance: March 2, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 55

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2868) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 14, 1993

Brief description of amendment: The amendment modifies the Technical Specifications relating to the spent fuel pool (SFP) by removal of the cell blockers in Region C, thus increasing by 234 fuel assemblies the storage capacity of the SFP. To accommodate the reactivity requirements, the required burnup of fuel in Region C has been increased and neutron absorbing (poison) rodlets (pins) are required to be introduced in fuel assemblies not meeting the maximum burnup requirements for fuel assemblies without rodlets.

Date of issuance: March 1, 1994

Effective date: As of the date of issuance to be implemented within30 days.

Amendment No.: 172

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1993 (58 FR 42581) The submittals of November 30, 1993, December 1, 1993, and January 27, 1994, provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-313, DiabloCanyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 22, 1992 (Reference LAR 92-09)

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2. Specifically, TS Section 2.2, "Reactor Trip System InstrumentationSetpoints," would be revised to change the Overtemperature Delta-R reactor trip setpoint as a result of a non-conservativsm in the Westinghouse methodology used to calculate the f(delta I) penalty function.

Date of issuance: February 24, 1994

Effective date: During 6th refueling outage for Units 1 and 2, March andSeptember 1994, respectively

Amendment Nos.: 88 and 87

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7003)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1974.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County,California

Date of application for amendments: January 10, 1994, as supplemented February 3, 1994 (Reference LAR 94-01)

Brief description of amendments: The proposed amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to change TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," and TS 3/4.6.2.3, "Containment Cooling System." Specifically, TS 3/4.3.2, Table 3.3-3, "Engineered Safety Features Actuation System Instrumentation," and Table 4.3-2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements," are revised to include Mode 4 applicability requirements for the high-high containment pressure signal. In addition, TS 3/4.6.2.3 is revised to clarify acceptable containment fan cooling unit (CFCU) configurations that satisfy the safety analysis requirements and to clarify the minimum required component cooling water flow supplied to the CFCU cooling coils.

Date of issuance: March 2, 1994

Effective date: March 2, 1993

Amendment Nos.: 89 and 88

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1994 (59 FR 4121)The February 3, 1994 **Federal Register** submittal provided clarifying information and did not affect the no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 21, 1993

Brief description of amendment: The amendment revises the TS Surveillance Requirements and associated Bases for the emergency diesel generator (EDG) fuel oil transfer system and the EDG air starting compressors to clarify that testing of these systems/components can be conducted either concurrently or independently of the monthly EDG tests. The changes would also clarify the Bases for EDG fuel quality testing and make an editorial change.

Date of issuance: February 23, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 205

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36443)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 22, 1993

Brief description of amendment: The amendment adds Limiting Conditions for Operation and Surveillance Requirements to Tables 3.12.1, "Water Spray/Sprinkler Protected Areas," and 4.12.1, "Water Spray/Sprinkler System Tests," and clarifies the associated Bases to reflect the installation of a new full-area fire suppression system in the east and west cable tunnels. This new full-area fire suppression system was installed because the previous sprinkler system did not provide coverage to some cable trays and the sprinkler head orientation did not provide full coverage of the cable trays where it was installed. The amendment also corrects other portions of Tables 3.12.1 and 4.12.1 to ensure consistency with changes made to reflect the east and west cable tunnel modification.

Date of issuance: February 28, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 206

Amendment No.: 206

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 18, 1994 (59 FR 2634) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: August 30, 1993

Brief description of amendment: The amendment made the following changes:1. Revised Technical Specification (TS) TS Table 3.8.4.1-1 to delete Breaker No. 52-263022 which was disconnected and converted to spare status by a plant design change, and 2. Revised TS 3.11.2.7 to change radioactivity rate units and associated action statement reference from HOT STANDBY to read HOT SHUTDOWN, and changed the reference name of the Offgas Radioactivity Monitor.

Date of issuance: February 28, 1994

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 66

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50974)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: January 25, 1993

Brief description of amendment: The amendment revised the pressure-temperature limit curves for heatup, cooldown, hydrostatic tests and criticality from 10 effective full power years to 15 effective full power years.

Date of issuance: February 22, 1994

Effective date: February 22, 1994

Amendment No.: 129

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2871)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: January 19, 1993, and supplemented May 14, and December 22, 1993. The supplemental information submitted May 14, and December 22, 1993, did not affect the proposed no significant hazards consideration determination.

Brief description of amendment: This amendment modifies the nuclear organization of the Sacramento Municipal Utility District (SMUD) that will oversee the operation of Rancho Seco at least through the Custodial SAFSTOR phase of the decommissioning of Rancho Seco.

Date of issuance: February 23, 1994

Effective date: February 23, 1994

3Amendment No.: 121Facility Operating License (Possession Only) No. DPR-54: This amendment modifies the nuclear organization of SMUD that will oversee the operation at Rancho Seco at least through the Custodial SAFSTOR phase of decommissioning.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34092). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1994No significant hazards consideration comments received: No.

Local Public Document Room location: Central Library, Government Documents 828 I Street, Sacramento, California 95814.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: September 19, 1990 as supplemented on February 26, 1993

Brief description of amendment: The amendment revised Technical Specification (TS) 3.6.1.3 to specify actions in the event a containment air lock interlock mechanism becomes inoperable and to clarify the limitations on the use of an inoperable air lock. The associated bases were also revised per telecon of February 2, 1994.

Date of issuance: February 23, 1994

Effective date: February 23, 1994

Amendment No.: 56

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22479) The application for amendment was renoticed on April 14, 1993 (58 FR 19473). The telecon of February 2, 1994, just changed the Bases section of the TS and did not affect the initial proposed finding of no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 16, 1993, as supplemented November 15, 1993

Brief description of amendments: These amendments implement the revised 10 CFR Part 20, Standards for Protection Against Radiation

Date of issuance: February 17, 1994

Effective date: February 17, 1994

Amendment Nos.: 178 and 159

Amendment Nos.: 178 and 159

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43937)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1994 No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 18, 1993 and December 9, 1993

Brief description of amendments: The amendments revise the NA-1&2 TS which will allow plant personnel to effect repairs to the Rod Control System in an orderly manner while continuing to ensure that the control and shutdown banks are capable of performing their designed safety function.

Date of issuance: March 1, 1994

Effective date: March 1, 1994

Amendment Nos.: 79 and 160

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19492)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 1994No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: July 2, 1993, as supplemented December 10, 1993. The December 10, 1993 letter provided clarifying information within the scope of the original amendment application and did not change the staff's no significant hazards consideration determination.

Brief description of amendments: These amendments update the augmented inspection program for sensitized stainless steel to the newer Code requirements.

Date of issuance: February 18, 1994

Effective date: February 18, 1994

Amendment Nos.: 187 and 187

Amendment Nos.: 187 and 187

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46241) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf CreekGenerating Station, Coffey County, Kansas

Date of amendment request: February 7, 1994

Brief description of amendment: The changes allow an increase in reactor coolant temperature in order to support operation at the rated thermal power of 3565 megawatts thermal (MWt). The amendment changes reactor protection system overtemperature and overpower delta-temperature setpoints by increasing the nominal reactor coolant temperature from 581.2°F to 586.5°F, changing the axial flux difference penalties, and changing the setpoint uncertainty allowances. The amendment also increases the maximum indicated reactor coolant system average temperature of Technical Specification 3/4.2.5, DNB Parameters, from 585.°F to 590.5°F.

*Date of issuance:*March 3, 1994

Effective date: March 3, 1994, to be implemented within 30 days of issuance.

Amendment No.: Amendment No. 72

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 7269 dated February 15, 1994). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 17, 1994, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated March 3, 1994.Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 7th day March 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director of Reactor Projects - I/II

[Doc. 94-5971 Filed 03-15-94; 8:45 am]

BILLING CODE 7590-01-F

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee) for operation of the River Bend Station, Unit 1, (RBS) located in West Feliciana Parish, Louisiana.

The proposed amendment would revise the technical specifications in

accordance with the guidance provided by Generic Letter 93–08, "Relocation of Technical Specification Tables of instrument Response Time Limits." Generic Letter 93–08 recommends the removal and subsequent relocation of various technical specification tables which denote instrument and system response time limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes and subsequently relocates the details of Technical Specification Table 3.3.1–2, "Reactor Protection System Response Times," Table 3.3.2–3, "Isolation System Instrumentation Response Time," and Table 3.3.3–3, "Emergency Core Cooling System Response Times" consistent with the guidance provided by Generic Letter 93–08, dated December 29, 1993, entitled "Relocation of Technical Specification Tables of Instrument Response Time Limits." Generic Letter 93–08 recommends the removal and subsequent relocation of various Technical Specification tables which denote instrument and system response time limits. The response time limits and associated footnotes are proposed to be relocated to the RBS Updated Safety Analysis Report (USAR). This allows RBS to administratively control subsequent changes to the response time limits in accordance with 10 CFR 50.59. The procedures which contain the various response time limits are also subject to the change control provisions in the Administrative Controls section of the Technical Specifications. The proposed change only relocates the existing response time limits. The surveillance requirements and associated Actions are not affected and remain in the Technical Specifications. Relocating this information does not affect the initial conditions of a design basis accident or transient analysis. Since any subsequent changes to the USAR or procedures are evaluated in accordance with 10 CFR 50.59, no increase in the probability or consequences of an accident previously evaluated is allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any different operational or surveillance requirements. The change proposes to relocate these requirements to other plant documents whereby adequate control of information is maintained. No new failure modes are introduced. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change would not involve a reduction in the margin of safety.

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumption. The proposed change does not alter the scope of equipment currently required to be OPERABLE or subject to surveillance testing, nor does the proposed change affect any instrument setpoints or equipment safety functions. In addition, the values to be transposed from the Technical Specifications to the USAR are the same as the existing Technical Specifications. Since any future changes to these requirements in the USAR or procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety is allowed. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 15, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman

Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conferences scheduled in the proceeding, but such an amended petition may satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 3, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 10th day of March 1994.

For the Nuclear Regulatory Commission.

William D. Reckley,

Acting Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–6074 Filed 3–15–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York; James A. Fitzpatrick Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix J, to the Power Authority of the State of New York (the licensee) for the James A. FitzPatrick Nuclear Power Plant, located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

By letter dated January 11, 1994, the licensee requested a schedular exemption pursuant to 10 CFR 50.12(a) from the requirements of 10 CFR part 50, appendix J, section III.D.3. Specifically, the licensee requested one-time relief from the requirement to perform Type C tests (local leak-rate tests (LLRT)) at intervals of no greater than 2 years for the shutdown cooling isolation valves (10MOV–17 and 10MOV–18). This one-time only delay,

until the next refueling outage currently scheduled to begin in November 1994, was requested for the performance of these leakage tests. The licensee's request was necessitated by the extended 1991–1993 refueling outage and the length of the current operating cycle.

The Need for the Proposed Action

The schedular exemption is required to permit the licensee to operate the plant until the next refueling outage (Reload 11/Cycle 12), currently scheduled to begin in November 1994.

The shutdown cooling valves were previously tested during the last refueling outage (Reload 10/Cycle 11). This was an extended outage that began in November 1991 and ended in January 1993. The Type C tests on the subject valves were performed on May 30, 1992, for the outboard isolation valve (10MOV–17), and June 5, 1992, for the inboard isolation valve (10MOV–18). Subsequent delays in the outage resulted in these tests being performed significantly in advance of the start of the operating cycle (more than 7 months prior to the end of the outage). As a result, the 2 year test interval will be reached for these valves (May 30, 1994/ June 5, 1994) 6 to 7 months prior to the next scheduled refueling outage. The exemption would permit a deferral in the performance of Type C testing of the shutdown cooling isolation valves beyond the 2-year limiting interval until the next refueling outage.

The most effective means of removing reactor core decay heat is with the shutdown cooling mode of the residual heat removal (RHR) system. This requires both of the stated isolation valves to be in the open position. The shutdown cooling mode of the RHR system must be removed from service for approximately 24 hours to perform an LLRT (Type C) of its isolation valves. This is the time required to tag-out the system, drain the line, perform the test, refill the line, and return the system to service. To avoid overheating the reactor coolant system with the shutdown cooling mode inoperable, one of the following two conditions must exist:

1. The reactor needs to be shutdown for several months to permit sufficient reduction in decay heat levels for use of an alternate shutdown cooling method. The alternate cooling method with the highest heat removal capacity is the Reactor Water Cleanup system in the blowdown mode. However, the reactor must be shutdown for more than 3 months before this method can handle the decay heat load.

2. The plant needs to be in the refueling condition; i.e., reactor head removed, reactor cavity flooded up and connected to the spent fuel pool. This permits the removal of the normal shutdown cooling system from operation and testing of these valves.

A 3-week surveillance/maintenance outage is planned for spring 1994. However, the decay heat levels present during any outage less than several months precludes the use of the alternate cooling method without placing the plant in the refueling configuration. The exemption would preclude the need to place the plant in the refueling configuration prior to the next scheduled refueling outage. Without the exemption, the licensee would be required to remove the drywell and reactor heads and connect the reactor cavity to the spent fuel pool solely for the purpose of testing the shutdown cooling isolation valves. Placing the plant in the refueling configuration would significantly lengthen the spring 1994 outage and would require significant resources. Furthermore, placing the plant in the refueling configuration to accommodate testing of the isolation valves would increase occupational radiation exposures. For these reasons, the licensee has determined that compliance with the regulation would result in undue hardship and costs.

Environmental Impacts of the Proposed Action

The proposed schedular exemption would allow the licensee to continue to operate the plant from May 30, 1994, until the next refueling outage which is scheduled for November 1994. During that refueling outage, the Type C test on shutdown cooling system valves 10MOV–17 and 10MOV–18 would be performed in accordance with the requirements of 10 CFR part 50, appendix J. The remaining Type B penetrations and Type C tested valves have been or will be leak rate tested such that they will not exceed the 24-month frequency prior to the November 1994 refueling outage.

The operating configuration of the shutdown cooling isolation valves and the RHR system when the reactor coolant system is pressurized (greater than 75 psig) substantially minimizes the possibility of gross leakage through these valves. A high reactor pressure interlock, as well as plant operating procedures, assures that these isolation valves are closed whenever reactor pressure is above 75 psig. This protects the low pressure RHR system from overpressurization. The RHR system suction piping is designed for 450 psig. Gross leakage while the reactor is pressurized would be detected by high pressure on the RHR suction piping or an increase in suppression pool inventory. Consequently, the maintenance of normal operating status of the RHR system assures the absence of gross leakage through these valves.

These valves also receive an isolation signal in the event of a plant accident (reactor vessel low water level or high drywell pressure). This assures isolation of a potential leakage path from the reactor coolant system to the reactor building. For this path to exist, leakage through both isolation valves, and a breach of the RHR system piping would need to occur simultaneously. Since the isolation valves are maintained closed with the reactor pressurized, it is improbable the leakage through the valves will increase while the plant is operating. The redundant isolation valves provide two leakage barriers which limit the pathway leakage rate to that experienced by the valve with smallest leakage rate. For these reasons, the potential for significant leakage to the reactor building by way of the shutdown cooling line is minimal.

The penetration included in the licensee's schedular exemption request represents only 6.4 percent of the total "as left" leakage at the beginning of the current operating cycle. The total "as left" minimum path leakage for all penetrations was only 0.073 La and the total "as left" minimum path leakage for the penetration addressed in the proposed exemption was only 0.0046 La. The replacement of both isolation valves with valves of improved design provides added confidence that excessive leakage will not be experienced. The inboard valve 10MOV–18 was replaced during the 1985 refueling outage and has successfully passed three out of four Type C tests performed during refueling outages since its replacement. The outboard isolation valve 10MOV–17 was replaced with a similarly designed new valve during the last refueling outage (1992). The limited number of valve strokes these valves are subject to over any one operating cycle minimizes valve degradation due to wear. This provides reasonable assurance that the requested surveillance interval expansion will not result in the Type B and C leakage rate total exceeding the 0.6 La limit of 10 CFR part 50, appendix J. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed schedular exemption.

With regard to potential nonradiological impacts, the proposed schedular exemption only involves LLRT on containment isolation valves. The exemption does not affect

nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed schedular exemption.

Altenatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed schedular exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request. Such action would not reduce environmental impacts of the James A. FitzPatrick Nuclear Power Plant and would result in undue hardship on the licensee possibly including an unwarranted shutdown of the plant.

Alternative Use of Resources

The actions associated with the granting of the proposed schedular exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement for the James A. FitzPatrick Nuclear Power Plant," dated March 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed schedular exemption discussed above. The NRC staff contacted the State of New York Energy Office regarding the environmental impact of this proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed schedular exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for the schedular exemption dated January 11, 1994. This document is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 9th day of March 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–6075 Filed 3–15–94; 8:45 am]

BILLING CODE 7590–01–M

Public Service Electric and Gas Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

[Docket No. 50–354]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric and Gas Company (the licensee) for operation of the Hope Creek Generating Station located in Salem County, New Jersey.

The proposed amendment would add a new section, 3/4.10.8, "Inservice Leak and Hydrostatic Testing," and the Bases. The new section would allow Hope Creek to remain in OPERATIONAL CONDITION 4 with reactor coolant temperatures up to 212 °F to facilitate inservice leak and hydrostatic testing.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is present below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are requested to allow inservice leak and hydrostatic testing with the reactor in OPERATIONAL CONDITION 4 and the average reactor coolant temperature up to 212 °F. The change to allow inservice leak and hydrostatic testing in OPERATIONAL CONDITION 4 will not increase the probability or the consequences of an accident. The probability of a leak in the reactor coolant pressure boundary during inservice leak and hydrostatic testing is not increased by considering the reactor in OPERATIONAL CONDITION 4. The hydrostatic or inservice leak test is performed water solid or near water solid, all rods in, and temperatures ≤212 °F. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, secondary containment will be operable and capable of handling airborne radioactivity from leaks that could occur during the performance of hydrostatic or inservice leak testing. Requiring secondary containment to be operable will conservatively ensure that potential airborne radiation from leaks will be filtered through the Filtration, Recirculation and Ventilation System (FRVS), thereby limiting radiation releases to the environment. Therefore, the changes will not significantly increase the consequences of an accident.

In the event of a large primary system leak, the reactor vessel would rapidly depressurize, allowing the low pressure ECCS subsystems to operate. The capability of the subsystems that are required for OPERATIONAL CONDITION 4 would be adequate to keep the core flooded under this condition. Small system leaks would be detected by leakage inspections before significant inventory loss occurred. This is an integral part of the hydrostatic testing program. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Allowing the reactor to be considered in OPERATIONAL CONDITION 4 during inservice leak or hydrostatic testing, with reactor coolant temperature up to 212 °F, essentially provides an exception to OPERATIONAL CONDITION 3 requirements, including operability of primary containment and the full complement of redundant Emergency Core Cooling Systems. The hydrostatic or inservice leak test is performed water solid, or near water solid, all rods in, and temperatures ≤212 °F. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, secondary containment will be operable and capable of handling airborne radioactivity or leaks that could occur.

The inservice leak or hydrostatic test conditions remain unchanged. The potential for a system leak remains unchanged since the reactor coolant system is designed for temperatures exceeding 500 °F with similar pressures. There are no alterations of any plant systems that cope with the spectrum of accidents. The only difference is that a different subset of systems would be utilized for accident mitigation from those of OPERATIONAL CONDITION 3. Therefore, this will not create the possibility of a new

or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes allow inservice leak and hydrostatic testing to be performed with reactor coolant temperature up to 212 °F and the reactor in OPERATIONAL CONDITION 4. Since the reactor vessel head will be in place, secondary containment integrity will be maintained and all systems required in OPERATIONAL CONDITION 4 will be operable in accordance with the Technical Specifications, the proposed changes will not have any significant impact on any design bases accident or safety limit. They hydrostatic or inservice leak testing is performed water solid, or near water solid, all rods in, and temperatures ≤212 °F. The stored energy in the core is very low and the potential for failed fuel and a subsequent increase in coolant activity would be minimal. The RPV would rapidly depressurize in the event of a large primary system leak and the low pressure injection systems normally operable in OPERATIONAL CONDITION 4 would be adequate to keep the core flooded. This would ensure that the fuel would not exceed the 2200 °F peak clad temperature limit.

Moreover, requiring secondary containment, including isolation capability, to be operable will assure that potential airborne radiation can be filtered through the FRVS. This will assure that doses remain well within the limits of 10CFR100 guidelines. Small systems leaks would be detected by inspection before significant inventory loss has occurred. Therefore, this special test exception will not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 15, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to reply in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final

determination on the issue of no significant hazards consideration The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Charles L. Miller: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M.J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 4, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Pennsville Public Library, 190 S Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 10th day of March 1994.

For the Nuclear Regulatory Commission.

James C. Stone,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–6076 Filed 3–15–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Extension of SF 85, SF 85P, and SF 86; Submitted to OMB for Clearance

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 the reclearance of the three information collections described below for a period of one year, and solicits comments on them.

Standard Form 85, Questionnaire for Non-Sensitive Positions, is completed by appointees to Non-Sensitive duties with the Federal government. Information collected on this form is used by the Office of Personnel Management to initiate the background investigation required to determine basic suitability for Federal employment in accordance with 5 U.S.C. 3301, 3302, and E.O. 10577 (5 CFR Rule V). The number of respondents annually who are not Federal appointees is expected to be 10 with total reporting hours of 4.2.

Standard Form 85P, Questionnaire for Public Trust Positions, is completed by persons seeking placement in positions currently labeled "public trust" positions because of their enhanced responsibilities. Information collected on this form is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required to determine suitability for placement in public trust positions in accordance with 5 U.S.C. 3301, 3302, E.O. 10577 (5 CFR Rule V), and Office of Management and Budget Circular A–130, Management of Federal Information Resources, revised June 25, 1993, and its Appendix III, Security of Federal Automated Computer Systems, issued December 12, 1985. The number of respondents annually who are not Federal employees is expected to be 1500 with total reporting hours of 1500.

Standard Form 86, Questionnaire for Sensitive Positions (For National Security), is completed by persons performing, or seeking to perform, national security duties for the Federal government. This information collection also includes Standard Form 86A, Continuation Sheet for Questionnaires SF 86, SF 85P, and SF 85, which is used to provide formatted space to continue answers to questions. Information collected is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required to determine placement in national security positions in accordance with 42 U.S.C. 2165, 22 U.S.C. 2585, and E.O. 10450, Security Requirements for Government Employment, issued April 27, 1953. The number of respondents annually who are not Federal employees is expected to be 24,800 with total reporting hours of 37,200.

For copies of this proposal call C. Ronald Trueworthy on 703–908–8550.

DATES: Comments on this proposal should be received by April 15, 1994.

ADDRESSES: Send or deliver comments to—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.

Copies of comments sent to OMB may also be sent to: John J. Lafferty, Associate Director for Investigations, Office of Personnel Management, 1900 E Street, NW, room 5478, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Peter Garcia, 202–376–3800.

James B. King,

Director, U.S. Office of Personnel Management.

[FR Doc. 94–6044 Filed 3–15–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33750; File No. SR-Amex-94–02.]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Rescission of Rules 560 and 570 and Amendment of Rule 550, Commentary .02

March 10, 1994.

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 February 16, 1994, the American Stock Exchange, Inc.

("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to rescind Rule 560 which regulates special offerings and bids, rescind Rule 570 which regulates Exchange distributions and acquisitions and amend Commentary .02 to Rule 550 to delete its reference to Rules 560 and 570.

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 placed specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In April 1993, the Commission rescinded its Rule 10b–2, an early anti-fraud rule dating from 1937.[1] The rule's purpose was to prevent persons participating in the distribution of a security from stimulating the purchase of the security on an exchange by paying compensation to any person for soliciting such purchases. The rule permitted an exemption for "special offerings" with a "plan" filed with the Commission by an exchange.[2] The Exchange's plan is found in Amex Rules 560 and 570, which are on-Floor procedures for distributing or acquiring blocks of stock when the regular market cannot absorb or supply the selling or buying interest within a reasonable time and at a reasonable price.[3].

In rescinding Rule 10b–2, the Commission indicated that the Rule was no longer necessary, given the current capacity of the markets and the existence of other anti-fraud provisions of the federal securities laws (e.g., Rules 10b–5 and 10b–6);[4] and in fact, Amex Rules 560 and 570 have not been utilized for more than eleven years.[5] With the rescission of Commission Rule 10b–2, Amex Rules 560 and 570 have become obsolete. Further, the Securities Industry Automation Corporation ("SIAC") still reserves two "condition codes" to identify exchange acquisitions and exchange distributions on its high speed vendor line and low speed ticker, which it would like to utilize for other conditions. Accordingly, the Exchange is proposing to rescind Amex Rules 560 and 570 and amend Rule 550, Commentary .02 to delete its reference to these rules.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–02 and should be submitted by April 6, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6116 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993) (File No. S7–37–92) ("Rule 10b–2 Rescission Order").

[2] The Commission amended Rule 10b–2 in 1942 to permit an exemption for special offerings under a plan filed with the Commission by an exchange. See Securities Exchange Act Release No. 3146 (February 6, 1942).

[3] The Commission notes that Amex Rule 560 specifies a minimum share size of 1,000 with a value of $25,000. In today's market, 1,000 shares with a value of $25,000 is not a quantity of stock that cannot readily be absorbed in the regular auction market. In addition, Rule 560 predates Amex block trading rules, such as Amex Rule 24, which defines a block of stock as 10,000 shares or more.

[4] 17 CFR 240.10b–5 and 240.10b–6 (1993).

[5] The Commission stated in its order rescinding Rule 10b–2 that Rule 10b–2 was obsolete and that the activities with which the Rule was concerned were sufficiently addressed by the general antifraud and anti-manipulation provisions of the federal securities laws. See Rule 10b–2 Rescission Order, *supra* note 1, at 18146. In addition, the Commission noted that there have been no special offerings and exchange distributions of the Amex since 1982. *Id.* at 18145.

[6] The New York Stock Exchange has made similar changes to its analogous rules. See Securities Exchange Act Release No. 32822 (August 31, 1993), 58 FR 47484 (September 9, 1993).

[Release No. 34–33745; File No SR–CBOE–94–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trading Floor Booth Policy and Fee Changes

March 9, 1994.

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 February 2, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to set forth formally the Exchange's current policy regarding the rental of booths on the CBOE trading floor ("Policy"). The CBOE has included with the filing, for informational purposes, a copy of the CBOE Trading Floor Booth Rental Agreement ("Agreement"), which has been reformulated in conjunction with the formalization of this Policy. That Agreement sets forth the contractual terms, conditions, and restrictions governing rental and use of the booths. As part of its filing, the CBOE also proposes amending its current Fee Schedule as such pertains to Facility Fees for rental of Exchange trading floor booths.

The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to memorialize for distribution to the CBOE membership the Exchange's policy regarding the rental and use of booth space on the CBOE trading floor by member organizations. The rule change also is intended to amend the existing fee structure with respect to the rental of trading floor booths to reflect the Exchange's elimination of a practice called "joint leasing." The elimination of this practice is the only major change in current policy with respect to booth rental.

The CBOE currently has certain space located on its trading floor which it makes available for rental to qualified member organizations. These "booths" are located at various points on the floor adjacent to the trading "pits" or "crowds" where the actual CBOE trading activity takes place. They generally are used by member organizations to perform various functions in support of their CBOE trading activities. Over the years, the CBOE has developed certain policies and practices with regard to the rental and use of these trading floor booths by member organizations. The Exchange has determined that it would benefit both the CBOE and their membership to memorialize the Exchange's current policies for distribution to the members.

Although the Policy itself addresses several issues pertaining to booth rental, it deals primarily with eligibility. Specifically, it sets forth the four broad categories of member organizations that, in accordance with current policy, may rent booth space on the floor. These categories were formulated so as to accommodate member organizations having the greatest need of working space in close proximity to CBOE trading activity, and they encompass almost all major types of CBOE member organizations. Market-maker organizations, the only major category that would not obtain a booth under the Policy, customarily obtain boot space through their clearing firms. The Exchange's experience confirms that this practice has worked well.

The Policy also addresses the potential future need for the adoption of allocation and assignment guidelines with respect to booth space. The CBOE has no such guidelines in effect today and currently does not envision implementing any in the foreseeable future. In the event that demand for booth space at some point exceeds availability, the CBOE would establish allocation guidelines.[1] The CBOE thought it advisable to inform the membership of the possibility and to identify the general nature of the criteria upon which such guidelines would be based.

Finally, the Policy sets forth the requirement that all member organizations renting booths execute a "Trading Floor Booth Rental Agreement" which sets forth the contractual terms governing the rental and use of the booths by the member organization. Although the Exchange in the past has used a standard form agreement regarding booth rental, that agreement is brief and contains little detail regarding the nature of the contractual relationship between the parties. The revised Agreement specifically sets forth the details of the parties' contractual relationship regarding rental and use of the booths as they have been established by custom and usage in the past. Among other provisions, the Agreement includes specific provisions delineating the termination rights of both the member organization and the Exchange and establishes a formal procedure for adding booths to and deleting booths from the Agreement. Such booth changes, which are common, previously have been handled informally, ad hoc. The Agreement also imposes an obligation on the member to indemnify the Exchange for any claims, liabilities, or other losses the Exchange may incur as a result of the use of the booth by the member, and it spells out requirements respecting the member's use of the booths, such as those governing the installation of equipment, the conduct of business, and access of persons to the booths.

Apart from the addition of detail to the Agreement, the only principal change in current Exchange practice embodied in the Policy and the Agreement is the elimination of a practice called "joint leasing." Previously, the Exchange has permitted two different member organizations to occupy jointly a single trading floor booth and to share the costs associated therewith. The Exchange believed that joint leasing would make it easier (*i.e.*, less costly) for smaller member organizations to have access to multiple locations adjacent to the trading floor. In practice, however, joint leasing has been used by non-transaction producing members solely to reduce their booth fees and not to facilitate trading activity.

[1] Such guidelines would have to be filed with the Commission as a rule change and approved pursuant to section 19(b) of the Act.

Therefore, the Exchange has determined that joint leasing should be eliminated and replaced with a variable fee arrangement that will soften the economic impact on small member organizations that the elimination of joint leasing might otherwise have. Under the proposed fee change included in this filing, current booth fees have been reduced in two respects: First, the $1,250 per booth variable monthly fee has been eliminated for the second booth leased by a member organization. Second, the $1,250 per booth variable monthly fee on a member firm's third booth has been reduced by fifty percent (50%) to $625. The full variable fee will continue to be applicable to any booths leased by the firm beyond the third booth.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to codify Exchange policy and procedures with respect to the rental of trading floor booths by CBOE members in a manner that promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to and facilitating transactions in securities, and protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 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 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 CBOE. All submissions should refer to File No. SR–CBOE–94–03 and should be submitted by April 6, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6037 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33749; File No. SR–Phlx–92–30]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Accelerated Approval of Amendment to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Clearing Agents' Responsibility for Ensuring That Good Faith Margin Treatment Is Properly Granted

March 10, 1994.

I. Introduction

On December 21, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Options Floor Procedure Advice ("Advice") F–19 and new Commentary .14 to Phlx Rule 722 ("Commentary") to require that Phlx Clearing Members take reasonable steps to ensure that only positions in Phlx-listed options that qualify for good faith margin treatment are carried in the market functions account of a specialist or registered options trader/market maker ("ROT").[3] Notice of the proposal, including Amendment No. 1, appeared in the **Federal Register** on July 7, 1993.[4] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of the Proposal

The Phlx proposes to adopt new Advice F–19 and new Commentary .14 to Phlx Rule 722 to require that Phlx Clearing Members take reasonable steps to ensure that only positions in Phlx-listed options that qualify for good faith margin treatment are carried in the market functions accounts of specialists and ROTs. For purposes of the Advice and Commentary, "positions in Phlx-listed options" includes positions originating on another options exchange in an option that is also listed on the Phlx. The proposal provides that "reasonable steps" include the adoption and implementation of procedures designed to detect any pattern of activity that results in options that do not qualify for good faith margin treatment being carried in the specialist's or ROT's market functions account. The purpose of the proposed rule change is to ensure that good faith margin treatment is granted to positions held in a specialist's or ROT's market functions accounts only where appropriate.

The Phlx believes that these requirements should help ensure that

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[2] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] On March 25, 1993 the Phlx amended the rule change proposal to provide that the "reasonable steps" to ensure that only positions in Phlx-listed options that qualify for good faith margin treatment are carried in the market functions account of a specialist or market maker include "the adoption and implementation of procedures designed to detect any pattern of activity that results in options that do not qualify for good faith margin treatment being carried in a specialist's or market maker's market functions account." See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated March 25, 1993 ("Amendment No. 1"). On March 4, 1994 the Phlx amended the proposal to (1) clarify that the proposed rule change applies to [applicable persons] for any transaction on another exchange in an option that is also listed on the Phlx; (2) redefine the term "Clearing Agent" as "clearing member of the Exchange"; and (3) redefine the term "market maker account" as "market functions account." See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx to Sharon Lawson, Branch Chief, Options and Derivatives Branch, Division of Market Regulation, SEC, dated March 4, 1994 ("Amendment No. 2").

[4] See Securities Exchange Act Release No. 32557 (June 30, 1993), 58 FR 36495.

only specialists and ROTs who are registered to trade in such capacity in options listed for trading on the Phlx are afforded specialist/market maker margin treatment with respect to those options. The Phlx also believes that, in order to ensure compliance with Regulation T by its Clearing Members, a policy clearly stating the Clearing Members' responsibility is necessary.

The Phlx notes that the proposed Advice would only be applicable to the equity options floor. Thus, the Phlx has placed the notation "(O)" after the Advice. In addition, the Phlx proposal has also incorporated the Advice into the Phlx's minor rule plan[5] and has set forth a fine schedule for violation of the Advice.[6]

The Exchange believes the proposal is consistent with Regulation T of the Federal Reserve Board ("Regulation T").[7] Regulation T grants good faith margin treatment in the market functions accounts of specialists and ROTs only to qualified or offsetting positions. "Customer" margin is to be applied to all other positions. Accordingly, because the purpose of the proposal is to reserve good faith margin treatment for bona fide specialist or market maker trades, the Phlx believes that the proposal is consistent with Regulation T.

III. Commission Findings and Conclusions

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5) in that the proposal is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, as well as to protect investors and the public interest.

Specifically, the proposal, by imposing an Exchange requirement for Phlx Clearing Members to take reasonable steps to ensure that such Members only provide exempt credit treatment for positions taken in Phlx-listed options when properly eligible, helps to provide the Phlx the ability to police an important margin policy. The Phlx proposed rule change is consistent with Regulation T by expressly requiring Phlx Clearing Members to undertake certain reasonable steps to ensure compliance with Regulation T in Phlx-listed options transactions. The Commission believes that the Phlx proposed rule change imposes requirements that Phlx Clearing Members should already be undertaking in order to ensure their compliance with Regulation T. Accordingly, the Commission does not believe that the proposed rule change unfairly burdens Phlx Clearing Members. In addition, the Commission also believes that the fine schedule for proposed Advice F–19 is appropriate.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating the amendment will allow the proposal to be enacted without delay. Further, the amendment merely clarifies the meaning of certain language contained in the original filing and redefines several terms in order to strengthen the proposed rule change's consistency with certain other Exchange rules and Regulation T. The Commission also notes that the proposal, including Amendment No. 1, was published for the full 21 day comment period and no comments were received.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. 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 will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–92–30 and should be submitted by April 6, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Phlx–92–30), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6117 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20128; 812–8744; International Series Release No. 640]

Barclays Bank PLC; Notice of Application

March 10, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Barclays Bank PLC.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: Applicant seeks a conditional order to permit registered management investment companies for which it acts as foreign custodian or subcustodian (other than investment companies registered under section 7(d)) ("Investment Companies") to maintain their foreign securities and other assets in the custody of certain foreign banks (the "Foreign Subsidiaries") each of which is a direct subsidiary of or associated with applicant.

FILING DATE: The application was filed on January 3, 1994, and amended on February 22, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on

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[5] See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated March 7, 1994.

[6] The fine schedule for Advice F–19 provides that a fine of $500 will be imposed for the first violation and a fine of $1,000 will be imposed for the second violation. The sanction for the third violation is discretionary with the Phlx Business Conduct Committee. In addition, under a rolling three-year cycle, if three years elapse between the first and second violation, the second violation would be treated as a first violation. If there is a violation within three years after the most recent violation, the next highest fine will be issued. Thus, a third violation less than three years after a fine was issued for a second violation would be treated as a "third violation," even though more than three years may have elapsed after the first violation.

[7] Regulation T is issued by the Board of Governors of the Federal Reserve System ("Board") pursuant to the Act. Its principal purpose is to regulate extensions of credit by and to brokers and dealers. It also covers related transactions within the Board's authority under the Act and imposes, among other obligations, initial margin requirements and payment rules on securities transactions.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1993).

April 4, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons 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. Applicant, 54 Lombard Street, London EC3P 3AH, England, or c/o Bruce E. Clubb, Esq., Baker & McKenzie, 815 Connecticut Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a wholly-owned subsidiary of Barclays PLC, an English public limited company (collectively, with its subsidiaries, the "Barclays Group"). The Barclays Group is one of the largest financial services groups in the United Kingdom, and is engaged in a broad range of banking and financial services for both individual and corporate customers.

2. As part of the international services it offers, the Barclays Group provides a network of custody and subcustody services for Investment Companies and their custodians at various locations throughout the world, and it wishes to include in its network the Foreign Subsidiaries to which this application relates.

3. Applicant seeks an order to permit it, as the custodian or subcustodian of foreign securities, cash, and cash equivalents of Investment Companies, to maintain such assets in the custody of the following Foreign Subsidiaries: Barclays Bank of Botswana Limited, Banque du Caire Barclays International S.A.E. ("Banque du Caire"), Barclays Bank of Ghana Limited, Barclays Bank of Kenya Limited, Barclays Bank of Swaziland Limited, Barclays Bank of Zambia Limited, Barclays Bank of Zimbabwe Limited. With the exception of Banque du Caire, which is 49%-owned by applicant, each of the Foreign Subsidiaries is a majority-owned or wholly-owned direct subsidiary of applicant.

Applicant's Legal Analysis

1. Section 17(f) requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including banks having an aggregate capital, surplus, and undivided profits of at least $500,000. As defined in section 2(a)(5), "bank" includes (a) a banking institution organized under the laws of the United States, (b) a member bank of the Federal Reserve System, and (c) any other banking institution or trust company doing business under the laws of any state or of the United States, (i) a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, (ii) which is supervised and examined by state or federal authorities having supervision over banks, and (iii) which is not operated for the purpose of evading the Act. Therefore, the only foreign entities that are permitted by section 17(f) to serve as custodians for registered management investment companies are the overseas branches of U.S. banks.

2. Rule 17f–5 under the Act expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(i) defines the term "eligible foreign custodian" to include a banking institution or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof, and that has shareholders' equity in excess of U.S. $200,000,000.

3. Applicant is an eligible foreign custodian in the United Kingdom under the requirements of rule 17f–5, since it has shareholders' equity well in excess of the pound sterling equivalent of $200,000,000,[1] is organized and existing under the laws of England and Wales, and is authorized and regulated in the United Kingdom as a bank by the Bank of England.

4. Each of the Foreign Subsidiaries satisfies all but one of the requirements of rule 17f–5, as each is a banking institution or trust company incorporated or organized under the laws of a country other than the United States, and is regulated as such by such country's government or an agency thereof. None of the Foreign Subsidiaries, however, meets the shareholders' equity requirement of the rule. Accordingly, the Foreign Subsidiaries are not eligible foreign custodians under the rule. Absent exemptive relief, none of the Foreign Subsidiaries could serve as custodians for Investment Company assets.

5. Applicant believes that the protection of investors would be maintained under the proposed custody arrangements, which are similar to those employed by other foreign subsidiaries of applicant that have custody of Investment Company assets.[2] Under these arrangements, applicant would remain liable for the performance of custody services by the Foreign Subsidiaries, including any losses that may result from the insolvency of a Foreign Subsidiary.

6. Applicant submits that the requested relief is necessary and appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements regarding the Foreign Subsidiaries will satisfy the requirements of rule 17f–5 in all respects other than the Foreign Subsidiaries' level of shareholders' equity.

2. Applicant will deposit the assets of an Investment Company with a Foreign Subsidiary only in accordance with an agreement required to remain in effect at all times during which the Foreign Subsidiary fails to satisfy the requirements of rule 17f–5. Each agreement will be a three-party agreement among applicant, the Foreign Subsidiary, and the Investment Company (or its custodian) under which applicant will undertake to provide specified custody or subcustody services for an Investment Company or its custodian, and will delegate to the Foreign Subsidiary such of applicant's duties and obligations as will be necessary to permit the Foreign Subsidiary to hold the assets of the Investment Company in custody in the relevant country. The agreement will further provide that applicant will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance

[1] At December 31, 1992, applicant had shareholders' equity of approximately 5.8 billion pounds sterling (approximately $8.7 billion).

[2] The relief requested is similar to that previously granted with regard to certain of applicant's other subsidiaries. See Investment Company Act Release Nos. 17231 (Nov. 20, 1989) (notice) and 17268 (Dec. 19, 1989) (order), and 16508 (July 29, 1988) (notice) and 16536 (Aug. 24, 1988) (order).

by the Foreign Subsidiary or its responsibilities under the agreement to the same extent as if applicant had been required to provide custody services under such agreement.

3. Applicant currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the SEC, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6113 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20125; No. 812–8766]

Fortis Benefits Insurance Company, et al.

March 9, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Fortis Benefits Insurance Company ("Fortis"), Variable Account D of Fortis Benefits Insurance Company ("Account D"), First Fortis Life Insurance Company ("First Fortis"), Variable Account A of First Fortis Life Insurance Company ("Account A"), any other Separate Accounts established by Fortis or First Fortis in the future to support certain variable annuity contracts issued by Fortis or First Fortis ("Other Accounts"), and Fortis Investors, Inc. (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of Account A, Account D and the Other Accounts of mortality and expense risk charges in connection with the offer and sale of certain flexible premium deferred combination fixed and variable annuity contracts.

FILING DATE: The application was filed on January 11, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 4, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Fortis, Account D, and Other Accounts of Fortis, and Fortis Investors: c/o David A. Peterson, Esq., Fortis Benefits Insurance Company, 500 Bielenberg Drive, Woodbury, Minnesota 55125. First Fortis, Account A and Other Accounts of First Fortis: 220 Salina Meadows Parkway, suite 255, Syracuse, New York 13220.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel (202) 272–2676, or Michael Wible, Special Counsel (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Fortis and First Fortis (together, the "Companies") are stock life insurance companies that are affiliated by reason of being under common control through their direct and indirect parent companies. Fortis is wholly-owned by Time Insurance Company, a wholly-owned subsidiary of Fortis, Inc. Fortis, Inc. is a wholly-owned subsidiary of Fortis International, Inc., a wholly-owned subsidiary of AMEV/VSB 1990 N.V., which is, in turn, 50% owned by NV AMEV and 50% owned, through certain subsidiaries, by Group AG. First Fortis is wholly-owned by N.V. AMEV.

2. Fortis and First Fortis are the depositors, respectively, of Account D and Account A. Accounts D and A are segregated investment accounts registered as unit investment trusts under the 1940 Act. The Companies each may establish one or more Other Accounts in the future (Account D, Account A and Other Accounts collectively known as the "Accounts").

3. Account A has six investment subaccounts which invest solely in six corresponding portfolios of the Fortis Series Funds, Inc. ("Fortis Fund"). Account D is subdivided into ten subaccounts, seven of which initially will be available under the Contracts ("Available Subaccounts") The seven Available Subaccounts will invest solely in shares of: (a) three corresponding portfolios of the Fortis Fund, (b) three corresponding portfolios of Norwest Select Funds ("Norwest Fund"), and (c) one corresponding Portfolio of the Scudder Variable Life Investment Fund ("Scudder Fund").

4. The Fortis Fund and the Scudder Fund are open-end management investment companies registered under the Securities Act of 1933 ("1933 Act"). Fortis Advisers, Inc., an affiliate of the Companies, is the investment manager for each Fortis Fund portfolio. Scudder, Stevens & Clark, Inc., which is not an affiliate of the Companies, is the investment adviser for the Scudder portfolios.

5. The Norwest Fund will file with the Commission a notice of registration on Form N–8A and a registration statement on Form N–1A. Norwest Bank Minnesota, N.A., which is not an affiliate of the Companies, will be the investment adviser for each of the three Norwest portfolios.

6. The Companies may create additional subaccounts of the Accounts to invest in any additional portfolios of the Fortis Fund, the Norwest Fund, the Scudder Fund, or any other fund that may now or in the future be available. Similarly, subaccounts and/or portfolios may be eliminated from time-to-time.

7. Accounts D and A are used to fund flexible premium deferred combination fixed and variable annuity contracts ("Contracts") to be issued by the Companies on a group or individual basis. The Contracts will be offered in connection with certain retirement plans that receive special federal income tax treatment and to persons that do not qualify for such tax treatment. The Contracts require certain minimum initial payments and permit certain additional payments. A registration statement on Form N–4 has been filed with the Commission under the 1933 Act in connection with the Contracts.

8. Fortis Investors, an affiliate of the Companies, will distribute the Contracts. Fortis Investors is wholly-owned by Fortis Advisers, Inc., a wholly-owned subsidiary of Fortis, Inc. Fortis Investors is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

9. Various fees and expenses are deducted from each Contract. A deduction for state premium taxes, if assessed, in the amount of up to 3.5% of purchase payments or the amount annuitized will be made from the Contracts account value either at the time of annuitization, surrender, or

payment of a death benefit. Applicable rates are subject to change by legislation, administrative interpretation or judicial acts.

10. Currently, there is no charge for transfers among the subaccounts or the general accounts. The Companies, however, reserve the right to charge up to $25 per transfer out of a subaccount prior to annuitization. The charge will be designed to recover not more than the average administrative expenses of effecting such transfers. Not more than four such transfers per year may be made after annuitization. An annual Administrative Charge of $30 will be assessed against each Contract, subject to certain exceptions and waivers. The Administrative Charge will be deducted from each subaccount and from the fixed account in the same proportion as the then-current Contract values in each subaccount or fixed account. The Administrative Charge will reimburse the Companies for expenses incurred in maintaining records relating to the Contracts. This charge currently does not apply during the accumulation period if the Contract value at the end of the Contract Year is $25,000 or more. The charge also is being waived during the annuity period, subject to the Companies' right to reinstate the charge at any time. Additionally, a daily asset charge at an effective rate of 0.15% per annum will be assessed both before and after annuitization under all Contracts for administrative expenses.

None of the administrative charges may be raised during the life of the Contracts, except as specified. Total revenues from all administrative charges under the Contracts are not expected to exceed the Companies' expected costs of administering the Contracts, on average, excluding distribution expenses.

11. No sales charges are deducted from premium payments under the Contracts. A contingent deferred sales charge ("CDSC") in the amount of 5% is deducted from purchase payments for certain surrenders which occur within five years from the date such payments were credited under the Contract. The CDSC will be used to pay certain Contract distribution expenses. No CDSC is assessed for: (a) withdrawals of any earnings that have not been previously surrendered; (b) purchase payments that have not been previously surrendered and were received at least five years prior to the surrender date; and (c) payment of the death benefit. Additionally, up to 10% of purchase payments will not be subject to the CDSC. The Companies' current administrative policy is to waive the CDSC for full surrenders of Contracts that have been in force for at least 10 years, subject to certain conditions, although this policy may be changed or terminated at any time.

12. Each subaccount will be assessed, both before and after annuitization, an annual charge of 1.25% of their assets for mortality and expense risks assumed by the Companies. Of the 1.25% amount, approximately .80% is for mortality risks and .45% for expense risks. The 1.25% rate is guaranteed not to increase for the duration of the Contracts. The charge may be a source of profit for the Companies which will be added to their respective surplus and may be used for, among other things, the payment of distribution, sales and other expenses. The Companies currently anticipate a profit from this charge.

13. The Companies will assume certain mortality and expense risks under the Contracts. The Companies will assume a mortality risk by their contractual obligation to pay a death benefit in a lump sum (which may also be taken in the form of an annuity option) upon the death of an annuitant or Contractowner prior to the annuity commencement date. The lump sum death benefit payable will be the greater of (1) the sum of all net purchase payments made, less all prior surrenders, and less all previously-imposed surrender charges, (2) a Contract's account value, or (3) a Contract's account value as of the Contract's 5-year anniversary immediately preceding the date that the annuitant or owner dies or reaches his or her 75th birthday, less the amount of any subsequent surrenders and surrender charges.

No contingent deferred sales charge will be imposed upon the payment of the death benefit, which will place a further mortality risk on the Companies.

The Companies will assume an additional mortality risk by their contractual obligation to continue to make annuity payments for the entire life of the annuitant under annuity options which involve life contingencies. This assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under the Contract. This relieves the annuitant from the risk of "outliving" the amounts accumulated for retirement. The payment option tables contained in the Contracts will be based on the annuity mortality 1983 Tables. These Tables are guaranteed for the life of the Contracts.

14. The expense risk assumed by the Companies is that the actual expenses involved in administering the Contracts and the Accounts in connection with the Contracts will exceed the amounts recovered from the administrative charges.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act."

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Accounts of the 1.25% charge for the assumption of mortality and expense risks. Applicants believe that the terms of the relief requested with respect to any Other Contracts that may in the future be funded by Account A, Account D or the Other Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief in connection with Other Contracts to the extent required. Any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application.

Applicants submit that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing their administrative expenses and maximizing the efficient use of their resources. The delay and expense involved in having repeatedly to seek exemptive relief would reduce Applicant's ability effectively to take advantage of business opportunities as they arise.

Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby. Investors might be disadvantaged as a result of Applicants' increased overhead expenses.

Applicants thus believe that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants represents that the 1.25% per annum mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as, among others, the current charge levels, death benefit guarantees, guaranteed annuity rates, and other contract charges and options. The Applicants will maintain at their respective principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Companies' comparative review.

5. Applicants acknowledge that the surrender charge is not expected to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. The Companies have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Accounts and the Contractowners. The basis for that conclusion will be set forth in a memorandum which will be maintained by the Companies at their respective administrative offices and made available to the Commission upon request.

6. The Accounts will only invest in underlying funds which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons," formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6112 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25999]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 9, 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 April 4, 1994 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(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.

American Electric Power Company, Inc. (70–8361)

Notice of Proposal to Issue, Sell and Acquire Common Stock in Connection with Dividend Reinvestment and Stock Purchase Plan and Proposed Performance Share Incentive Plan; Exception from Competitive Bidding; Order Authorizing Proxy Solicitation

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(c) and 12(e) of the Act and Rules 42, 50(a)(5), 62 and 65 under the Act.

Pursuant to orders dated March 21, 1977 (HCAR No. 19949) and April 19, 1977 (HCAR No. 19992), AEP's shareholders approved a Dividend Reinvestment and Stock Purchase Plan ("Dividend Reinvestment Plan") at the 1977 Annual Meeting of Shareholders to provide that participants could purchase new shares of AEP common stock ("Common Stock") under the Dividend Reinvestment Plan with optional cash payments not more frequently than once in each calendar month at the current market price average on each investment date as provided in the Dividend Reinvestment Plan, subject to a limit of $3,000 (or such other amount not greater than $5,000 as the Board of Directors should approve) per participant per quarter. By subsequent order dated March 29, 1979 (HCAR No. 20979) AEP's Board of Directors was authorized to adopt a resolution on September 26, 1978, that increased the Dividend Reinvestment Plan's quarterly limitation on optional cash payments from $3,000 to $5,000.

Finally, pursuant to a series of orders, the last dated December 1, 1993 (HCAR No. 25936) ("1993 Order"), AEP was authorized to issue and sell, from time-to-time through December 31, 1996, up to 44 million shares of Common Stock, $6.50 par value, pursuant to the Dividend Reinvestment Plan. Through December 31, 1993, a total of 40,938,533 shares had been issued and sold, leaving a balance of 3,061,467 shares currently available for issuance and sale.

AEP now proposes to issue and sell, through December 31, 1996, shares of its authorized and unissued Common Stock, $6.50 par value, as provided in the 1993 Order, to the agent for the participants in its Dividend Reinvestment Plan, without limitations on, among other things, the maximum dollar amount of optional cash payments which may be made by participants in the Dividend

Reinvestment Plan to purchase such shares of Common Stock, except as may be imposed by the proper AEP System officers as part of the terms of the Dividend Reinvestment Plan.

AEP also requests authority to distribute up to one million shares of Common Stock, to be acquired on the open market, to implement the AEP Performance Share Incentive Plan ("PSI Plan"). The PSI Plan provides that senior officers of AEP System companies will be eligible to receive awards of Common Stock and/or cash based on the achievement of financial objectives over a performance period. A committee designated by AEP's Board of Directors will determine whether payments of awards are made in shares of Common Stock and/or in cash. Initially, 50% of the payment will be made in Common Stock and 50% in cash.

AEP anticipates that the PSI Plan will be fully funded by income provided from operating activities and that external borrowing will not be used to meet the requirements of the PSI Plan. The costs of the PSI Plan awards will be paid directly by the AEP System company that pays each participant's base salary during the performance period. AEP plans to make open market purchases to meet the requirements of the PSI Plan because of the relatively small size of the stock purchases and the negligible impact the market purchases of Common Stock will have on AEP's trading volume, price per share, and capital structure.

The affirmative vote of holders of a majority of the shares of Common Stock outstanding on March 9, 1994 is required to authorize: (1) AEP to issue Common Stock to the Dividend Reinvestment Plan without limitations on the maximum dollar amount of optional cash purchases of Common Stock by participants; and (2) the PSI Plan. AEP intends to submit the proposals to its shareholders for their approval at the annual meeting of shareholders to be held on April 27, 1994. In connection therewith, AEP proposes to solicit proxies from the holders of its outstanding Common Stock to be voted at the meeting. AEP further requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62(d).

It appearing to the Commission that AEP's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6114 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20127; International Series Release No. 639; 812–8792]

Westpac Banking Corp.; Application

March 10, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Westpac Banking Corporation (the "Bank").

RELEVANT ACT SECTION: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: The Bank seeks an order to permit the maintenance of foreign securities and other assets of registered investment companies other than investment companies registered under section 7(d) (an "Investment Company") with Westpac Custodian Nominees Limited ("Westpac Custodian"), an indirect, wholly-owned subsidiary of the Bank.

FILING DATE: The application was filed on January 25, 1994. By supplemental letter dated March 9, 1994, counsel, on behalf of applicants, agreed to file an amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such amendment.

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 April 4, 1994, and should be accompanied by proof of service on the 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant: Westpac Banking Corporation, 60 Martin Place, Sydney NSW 2000, Australia.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 504–2259, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (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 at the SEC's Public Reference Branch.

Applicant's Representations

1. The Bank, together with its subsidiaries (the "Westpac Group"), is one of four major banking organizations in Australia. The Bank is a corporation organized under the laws of New South Wales, Australia, and regulated by the Reserve Bank of Australia, which is responsible for the supervision and regulation of the Australian banking system. As of September 30, 1993, the Bank had shareholders' equity of A$7.1 billion (approximately U.S.$4.58 billion, based on the then-current exchange rate).

2. Westpac Custodian, an indirect, wholly-owned subsidiary of the Bank, was incorporated in New South Wales in 1984 to provide a wide range of custody related services, including reporting, reconciliation, settlement, safekeeping of physical securities, payment of taxes, income collection, proxy voting, and valuation. It is one of the largest providers of custodian services in Australia, with custody of over A$36.6 billion in assets as of September 30, 1993 (approximately U.S.$23.1 billion). Westpac Custodian is an authorized trustee corporation and is regulated by the Australian Securities Commission.

3. Westpac Group desires, as part of the global custody services it offers, to provide a network of custodial and sub-custodial services for Investment Companies and their custodians through the Bank and Westpac Custodian.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires that every registered management investment company place and maintain its securities and similar investments in the custody of certain enumerated entities, including "banks" having at all times aggregate capital, surplus, and undivided profits of at least $500,000. "Bank," as defined in section 2(a)(5) of the Act, includes (i) a banking institution organized under the laws of the United States, (ii) a member

bank of the Federal Reserve System, and (iii) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks, and which is not operated for the purpose of evading the provision of the Act. Section 17(f) therefore restricts those entitles located outside the United States that are permitted to serve as custodian for Investment Companies to overseas branches of domestic banks.

2. Rule 17f–5 expanded the group of entities that are permitted under section 17(f) of the Act to serve as foreign custodians. The rule defines an "Eligible Foreign Custodian" to mean, among other things, "a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000."

3. The Bank meets the requirements of rule 17f–5 for an Eligible Foreign Custodian since it has shareholders' equity in the Australian dollar equivalent of approximately U.S.$4.4 billion, is organized under the laws of Australia and is authorized and regulated there as a bank by the Reserve Bank of Australia. Except with respect to the minimum shareholders' equity requirement, Westpac Custodian also satisfies the requirements under rule 17f–5. Because Westpac Custodian does not satisfy the minimum shareholders' equity requirement, it will not, absent exemptive relief, qualify as an Eligible Foreign Custodian.

4. The Bank requests an order under section 6(c) of the Act exempting (i) the Bank and Westpac Custodian, (ii) any Investment Company, and (iii) any custodian for an Investment Company from the provisions of section 17(f) of the Act to the extent necessary to permit the Bank, any such Investment Company, and any such custodian, to maintain foreign securities, as defined in rule 17f–5, cash, and cash equivalents in the custody of Westpac Custodian. The Bank proposes to offer and provide custodial services through Westpac Custodian to Investment Companies that wish to hold securities of Australian or New Zealand issuers as part of their global portfolios.

5. Westpac Custodian is experienced in providing custodial services and is capable and well-qualified to provide custodial and sub-custodial services to Investment Companies and, under the foreign custody arrangements proposed, the protection of investors would not be diminished.

Applicant's Conditions

The Bank agrees that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed with respect to Westpac Custodian will satisfy the requirements of rule 17f–5 in all respects other than with regard to the minimum shareholders' equity requirement for an eligible foreign custodian.

2. The Bank currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

3. The Bank will deposit securities in Australia or New Zealand with Westpac Custodian only in accordance with a three-party contractual agreement, which will remain in effect at all times during which Westpac Custodian fails to meet the requirement of rule 17f–5 relating to minimum shareholders' equity, among (a) the Investment Company or a custodian of the securities of the Investment Company for which the Bank acts as sub-custodian, (b) the Bank, and (c) Westpac Custodian. Pursuant to the terms of this agreement, the Bank will provide specified custodial or sub-custodial services for the Investment Company or the custodian, as the case may be, and will delegate to Westpac Custodian such of its duties and obligations as will be necessary to permit Westpac Custodian to hold the securities in custody in Australia or New Zealand. The agreement will further provide that the Bank will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Westpac Custodian of its responsibilities under the agreement to the same extent as if the Bank had been required to provide custody services under such agreement.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6115 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1967]

Defense Trade Advisory Group Reestablishment

The Department of State is reestablishing the Defense Trade Advisory Group (DTAG) to provide a formal channel for regular consultation and coordination with U.S. defense exporters on issues involving defense trade and the U.S. laws and regulations governing munitions exports. The Under Secretary for Management has determined that the committee is necessary and in the public interest. It is the only State Department advisory committee providing advice on defense trade issues to the Department.

Members of the committee will be appointed by the Assistant Secretary of State for Political-Military Affairs. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d), 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

In the **Federal Register** of February 18, 1994, Vol. 59, No. 34, it was announced that the DTAG will hold a plenary meeting on March 17. The information contained in that notice is repeated here:

Pursuant to Section 10(a)(1) of the Federal Advisory Committee Act (FACA), notice was given of a meeting of the Defense Trade Advisory Group (DTAG). The DTAG, established in February 1992 pursuant to the FACA (Pub. L. 92–463); 5 U.S.C. app. I), and hereby re-established, is an advisory committee consisting of private sector defense trade specialists. They advise the Department on policies, regulations, and technical issues affecting defense trade.

The meeting will include speakers from the Bureau of Political-Military Affairs; reports on DTAG Working Group progress, accomplishments, and future projects; and unclassified briefings on topics of interest to defense exporters.

DATES: The open session will take place on Thursday, March 17, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Loy Henderson Conference Room, U.S. Department of State, 2201 C Street NW., Washington, DC 20520.

SUPPLEMENTARY INFORMATION: Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by Friday February 25, 1994. Each person should provide his or her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat at telephone number (202) 647–4231 or fax number (202) 647–4232 (Attention: Eva Chesteen). Attendees must carry a valid photo ID with them. They should enter the building through the C Street diplomatic entrance (21st and C Streets NW), where Department personnel will direct them to the Loy Henderson auditorium.

For further information, contact Linda Lum of the DTAG Secretariat, U.S. Department of State, Office of Export Control Policy (PM/EXP), room 2422 Main State, Washington, DC 20520–2422. She may be reached at telephone number (202) 647–4231 or fax number (202) 647–4232.

Dated: March 11, 1994.

William Pope,

Acting Deputy Assistant Secretary for Export Controls.

[FR Doc. 94–6239 Filed 3–14–94; 12:55 pm]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 140-xx; Guide For Developing And Evaluating a Special Federal Aviation Regulation (SFAR) 36 Engineering Procedures Manual

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for public comment proposed Advisory Circular (AC) 140-xx, Guide For Developing And Evaluation An SFAR 36 Engineering Procedures Manual. The proposed AC 140-xx provides information and guidance to the aviation community for developing and evaluating an SFAR 36 engineering procedures manual.

DATES: Comments submitted must identify the proposed AC 140-xx and be received by May 2, 1994.

ADDRESSES: Copies of the proposed AC 140-xx can be obtained from and comments may be returned to the following: Federal Aviation Administration, Continued Airworthiness Staff, AIR–100, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Federal Aviation Administration, Continued Airworthiness Staff, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington DC 20591, (202) 267-7218.

SUPPLEMENTARY INFORMATION:

Background

The development of an SFAR 36 engineering procedures manual that adequately covers all pertinent regulations and engineering procedures has proven to be a time-consuming task for the applicant and the Federal Aviation Administration. As a result, the proposed AC was drafted to provide information and guidance on the creation and evaluation of an SFAR 36 procedures manual.

Comments Invited

Interested persons are invited to comment on the proposed AC 140-xx listed in this notice by submitting such written data, views or arguments as they desire to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 140-xx may be examined before and after the comment closing date at the Federal Aviation Administration Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays between 8:30 a.m. and 4:30 p.m.

Issued in Washington, on March 10, 1994.

Mark R. Schilling,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 94–6104 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–94–06]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; Correction.

SUMMARY: This action makes a correction to the docket number for the disposition summary described for Lockheed Aircraft Service Company, Docket No. 25501, Exemption Number 3612A, in a notice of petitions for exemption published on February 11, 1994, (59 FR 6671). This action corrects that error.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3939.

SUPPLEMENTARY INFORMATION: The document was published February 11, 1994.

Explanation of Correction To Be Made

The docket number published for Lockheed Aircraft Service Company, Exemption Number 3612A should read 22998 in lieu of 25501.

Issued in Washington, DC on March 8, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 94–6105 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–94–10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 5, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal

Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraph (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 10, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 13199.
Petitioner: American Airlines.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2), (d)(2) and (3); 61.65(c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit the petitioner to use FAA-approved simulators to meet certain flight experience requirements of part 61.

Grant, February 28, 1994, Exemption No. 4652D

Docket No.: 23713.
Petitioner: SimuFlite Training International.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2), (d)(2) and (3); 61.65(c), (e)(2), (e)(3) and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit the petitioner to use FAA-approved simulators to meet certain flight experience requirements of part 61.

Grant, February 28, 1994, Exemption No. 3931I

Docket No.: 23921.
Petitioner: FlightSafety International.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2), (d)(2) and (3); 61.65(c), (e)(2), (e)(3) and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit the petitioner to use FAA-approved simulators to meet certain flight experience requirements of part 61.

Grant, February 28, 1994, Exemption No. 5317D

Docket No.: 26577.
Petitioner: Jet Tech, Inc..
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2), (d)(2) and (3); 61.65(c), (e)(2), (e)(3) and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit the petitioner to use FAA-approved simulators to meet certain flight experience requirements of part 61.

Grant, February 28, 1994, Exemption No. 5377A

Docket No.: 26582.
Petitioner: Air Transport Association of America (ATA).
Sections of the FAR Affected: 14 CFR 61.3(a) and (c), 61.29(c), 61.3(a), 63.16(d), and 121.383(a)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5487 and amend the conditions/ limitations contained therein to continue to allow ATA member air carriers, and similarly situated part 121 air carriers, to establish special procedures that enable an operator to issue temporary confirmation of any required crewmember certificate, to its flight crewmember, based upon information contained in the operator's approved record system.

Grant, February 28, 1994, Exemption No. 5487A

Docket No.: 26646.
Petitioner: North American Airline Training Group (NAATG).
Sections of the FAR Affected: 14 CFR 63, appendix A, paragraph (a)(3)(iv)(a).
Description of Relief Sought: To allow NATTG's non-pilot flight engineer applicants enrolled in NAATG's flight engineer flight training course of instruction to reduce the required 5 hours of flight training in an airplane to not less than 2 hours of intensive flight training in an airplane, subject to certain provisions.

Grant, March 8, 1994, Exemption No. 5852

Docket No.: 27388.
Petitioner: North American Aircraft-Rockwell International Corporation.
Sections of the FAR Affected: 14 CFR 21.195(a).
Description of Relief Sought/ Disposition. To permit the petitioner to obtain experimental certificate for two prototype model DASA FR–06, Ranger airplanes for the purpose of conducting a market survey for the U.S. Air Force.

Grant, March 2, 1994, Exemption 5849

Docket No.. 27626.
Petitioner: American Airlines.
Sections of the FAR Affected: 14 CFR 121.343(c).
Description of Relief Sought: To allow the petitioner to continue operating until November 30, 1994, six B727 aircraft that are not expected to be fitted by May 26, 1994, with a digital flight data recorder capable of simultaneously recording at least 11 flight parameters.

Denial, February 28, 1994, Exemption No. 5853

Docket No.: 27587.
Petitioner: USAir.
Section of the FAR Affected: 14 CFR 121.343(c).
Description of Relief Sought: To allow the petitioner to continue operating until February 26, 1995, 25 737–300/400 aircraft that are not expected to be fitted by May 26, 1994, with a digital flight data recorder capable of simultaneously recording at least 11 flight parameters.

Denial, February 28, 1994, Exemption No. 5841

Docket No.: 27588.
Petitioner: Corporate Air.
Sections of the FAR Affected: 14 CFR 121.343(c).
Description of Relief Sought/ Disposition: To allow the petitioner to continue operating until November 30, 1994, Fokker F–27 600 aircraft that are owned by Federal Express and that are not expected to be fitted by May 26, 1994, with digital flight data recorders capable of simultaneously recording at least 11 flight parameters.

Denial, February 28, 1994, Exemption No. 5850

[FR Doc. 94–6106 Filed 3–15–94; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–94–11]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 28, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 25886, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 11, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No: 25886.

Petitioner: Washoe County Sheriff's Office.

Sections of the FAR Affected: 14 CFR 61.118.

Description of Relief Sought/ Disposition: To Extend Exemption No. 5119 to continue to permit the petitioner to reimburse members of the Sheriff's Air Squadron for fuel, oil and maintenance costs that occur during official search missions.

[FR Doc. 94–6107 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 177 Ninth Meeting; Test Criteria and Guidance Relative to Portable Electronic Devices Carried On-Board Aircraft

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 177 meeting to be held April 7–8, starting at 9 a.m. The meeting will be held at the FAA Technical Center, Atlantic City, NJ. Assemble in the auditorium located adjacent to the lobby of the main Technical Center and Administration Building.

FAA contacts: Buzz Cerino (P) (609) 485–5640, James Aviles (P) (609) 485–5911.

The agenda for this meeting is as follows: (1) Observe a demonstration of the in-aircraft test procedures. Assemble in the main Technical Center and Administration Building auditorium; (2) Chairman's remarks; (3) Approval of the summary of the eighth meeting; (4) Presentations of subcommittees: (a) PED testing update (Cerino) (b) Susceptibility analysis and testing (Covell) (c) Aircraft testing logistics (Lloyd) (d) In-aircraft testing results (Waltho) (e) Report structure and assignments (Chairman); (5) Discussion of test results; (6) Work group break-out sessions, as needed; (7) New/other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 10, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–6108 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 172 Tenth Meeting; Future Air-Ground Communications In the VHF Aeronautical Band (118–137 MHZ)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 172 meeting to be held May 10–13, starting at 9:30 a.m. (first day only). The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) WG1, VHF Communications System Recommendations, meets 1½ days. (Final WG meeting); (3) Plenary Convenes: (a) Approval of Summary of ninth meeting (b) Working Group 1 Report (c) Review of WG2's VHF Data Radio Signal-in-Space MASPS. Final Draft for full committee acceptance of the document (d) Task Assignments; (4) Other business; (5) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Note: Specific Schedule

Tuesday, May 10 WGI (1½ Days)
Wednesday, May 11 (1300) Plenary*
Thursday, May 12 & 13 (0900) Plenary*

*Note Change from Previous Meeting Schedules.

Issued in Washington, DC, on March 10, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–6109 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application To Impose a Passenger Facility Charge (PFC) at Greater Cumberland Regional Airport, Cumberland, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of Notice of Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at Greater Cumberland Regional Airport, Cumberland, Maryland.

SUMMARY: This correction amends information which was included in the previously published notice.

In notice document 94–2053 beginning on page 4311 in the **Federal Register** issue of Monday, January 31, 1994, under "supplemental information" the last sentence of the second paragraph should read "The FAA will approve or disapprove the application, in whole or in part, no later than April 9, 1994". The fourth paragraph should read "Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA form 1800–31".

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300 Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

Issued in Jamaica, New York on March 9, 1994.

Thomas Felix,

Grant-In-Aids Program Manager, Eastern Region.

[FR Doc. 94–6110 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 15, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Busch, Finance Manager, Metropolitan Airports Commission, at the following address: Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Minneapolis-St. Paul Metropolitan Airports Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. Benson, Manager, Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, (612) 725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Minneapolis-St. Paul International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 25, 1994 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Minneapolis-St. Paul Metropolitan Airports Commission was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 28, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: August 1, 1994

Proposed charge expiration date: May 31, 1998

Total estimated PFC revenue: $113,408,100

Brief description of proposed project(s):

1. Airport Noise and Operations Monitoring System (ANOMS)
2. School Noise Abatement
3. Airside Electrical Modifications
4. Airfield Drainage Adjustments
5. HHH (International Terminal) Apron Blast Fence
6. Home Insulation/Home Buyouts—Part 150 Sound Insulation
7. Airfield Guidance Signage
8. Airside Bituminous
9. New Ford Town/Rich Acres Acquisition
10. Airport Security System Modifications
11. Apron Lighting Upgrade
12. Security Checkpoints Relocation (Lindbergh Terminal)
13. Pavement Rehabilitation
14. Lindbergh Terminal Chiller Replacement

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Minneapolis-St. Paul Metropolitan Airports Commission.

Issued in Des Plaines, Illinois, on March 8, 1994.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 94–6111 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. T84–01; Notice 32]

Final Passenger Motor Vehicle Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final theft data notice.

SUMMARY: This document publishes the final data on passenger motor vehicle thefts that occurred in calendar years 1990–1991. As provided in the Anti Car Theft Act of 1992, these data were used to determine the theft rates for existing passenger motor vehicle lines manufactured in model years 1990 and 1991 and to determine the median theft rate for all those lines. Vehicle lines with theft rates exceeding the median theft rate of 3.5826 per thousand vehicles produced, are subject to selection for coverage under the Theft Prevention Standard.

The purpose of this notice is to correct an error in the final passenger motor vehicle theft data for model years (MYs) 1990/1991 that were published on January 6, 1994 (59 FR 796) and to determine the new median theft rate effected by that correction.

EFFECTIVE DATE: These data apply to the 1990–1991 calendar years. The amendment made by this document is effective immediately.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street,

SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act), added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to Title VI, NHTSA promulgated 49 CFR Part 541, Federal Motor Vehicle Theft Prevention Standard. Part 541 establishes performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

Section 603 of the Cost Savings Act, as originally enacted, specified three categories of car lines that were high-theft lines within the meaning of Title VI. These three types were: existing lines that had a theft rate exceeding the median theft rate for calendar years (CYs) 1983–1984 (section 603(a)(1)(A)); new lines that were likely to have a theft rate exceeding that median theft rate (section 603(a)(1)(B)); and lines with theft rates below the median theft rate, but which had a majority of major parts interchangeable with lines whose theft rate exceeded or was likely to exceed the median theft rate (section 603(a)(1)(C)).

Section 603(b) of the Cost Savings Act provided that the median theft rate was the combined rate determined for CYs 1983–1984. Section 603(b) also set forth the equation NHTSA must use to determine the theft rates for each of the vehicle lines. After applying this equation to each existing line, NHTSA was directed by section 603(b) to rank the lines by theft rates to calculate the median theft rate.

In a **Federal Register** document of November 12, 1985 (50 FR 46666), NHTSA published the final theft data reflecting passenger motor vehicle thefts in CYs 1983–1984. In that document, NHTSA also explained how it decided on the data source to be used and how it calculated the final theft rates. Based on its calculations, NHTSA determined that the median theft rate for CYs 1983 and 1984 was 3.2712 thefts per thousand vehicles.

In calculating the final CY 1990–1991 theft rates, NHTSA followed the same procedures it used in calculating the 1983–1984 theft rates. In Table I of this document, the agency lists each of the 231 vehicle lines manufactured in model years 1990 and 1991 in descending order according to theft rate.

Suzuki notified the agency that it had inadvertently overlooked an additional 16,000 units produced for the Geo Metro for MY 1991. This notification was a result of Suzuki's request for reconsideration of a vehicle under the provisions of 49 CFR Part 542. By adding the missing 16,000 units for MY 1991 to the already reported production numbers, the theft rate for the Geo Metro changes from 3.7445 to 3.3979, shifting the position of the vehicle from number 108 of 231 vehicles to number 119.

Based on the data set forth in Table I, NHTSA has determined that the final median theft rate for MYs 1990 and 1991 be changed from 3.5866 to 3.5826 thefts per 1,000 vehicles produced. The final median is the theft rate ranked 116th (3.5826 thefts per thousand) in the table, according to the instructions in section 603(b)(2) of the Cost Savings Act.

If NHTSA has not previously determined the line to be high theft, each line shown in positions 1 through 115, inclusive, in Table I, will be subject to selection as a high-theft line. In selecting high-theft lines based on the 1990/91 median theft rate, NHTSA will follow the procedures it established in 49 CFR Part 542, Procedures for Selecting Lines To Be Covered By The Theft Prevention Standard, and provide affected manufacturers an opportunity to comment on NHTSA's preliminary determination that a line is high theft. Final selection by NHTSA will mean that the vehicles in these lines and their major replacement parts will have to be marked as specified in 49 CFR Part 541, The Federal Motor Vehicle Theft Prevention Standard, beginning with Model Year 1996.

Table III lists lines that have theft rates above the median theft rate of 3.5826 and have major parts interchangeable with those of lines that have theft rates below the median theft rate. The Geo Metro, Suzuki Swift, Ford Tempo and Mercury Topaz car lines have been deleted from Table III, reflecting a shift in vehicle positions caused by adding the missing production units of the Geo Metro car line. Additionally, the Chevrolet Lumina APV, Pontiac Transport APV and the Oldsmobile Silhouette APV which were inadvertently omitted from Table III have been added.

The following corrected list represents NHTSA's recalculation of theft rates for all 1990/1991 passenger motor vehicle lines. This list is only intended to inform the public of 1990/1991 motor vehicle theft experience and does not have any effect on the obligations of regulated parties under the Cost Savings Act.

Authority: 15 U.S.C. 2021 and 2023; delegation of authority at 49 CFR 1.50.

Issued on March 11, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
1 Ford Motor Co	Ford Mustang	1,545	2,085	115,821	91,479	17.5109
2 General Motors	GMC Jimmy S–15	276	1,048	18,257	61,794	16.5395
3 Honda	Prelude	379	555	29,708	29,785	15.6993
4 General Motors	Chevrolet Blazer S–10	946	2,825	56,080	192,680	15.1592
5 Nissan	Pathfinder	357	579	29,525	38,215	13.8175
6 Hyundai	Sonata	336	281	25,021	24,542	12.4488
7 Toyota	Supra	65	61	6,287	4,055	12.1833
8 General Motors	Oldsmobile Bravada	0	134	0	11,139	12.0298
9 Nissan	300ZX	449	229	38,882	18,502	11.8151
10 Volkswagen	Cabriolet	116	35	8,673	4,138	11.7867
11 Chrysler Corp	Jeep Cherokee	1,837	924	135,416	105,463	11.4622
12 Mazda	RX–7	107	77	10,560	7,800	10.0218
13 Alfa Romeo	164	0	19	0	1,947	9.7586

TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
14 General Motors	Cadillac Brougham	295	257	32,052	25,731	9.5530
15 Mitsubishi	Mirage	448	364	60,150	30,019	9.0053
16 Chrysler Corp	Dodge Monaco	23	153	7,154	12,433	8.9856
17 Volkswagen	Golf/GTI	76	186	13,696	15,965	8.8331
18 General Motors	Cadillac Seville	305	206	32,346	25,916	8.7707
19 Chrysler Corp	Jeep Wrangler	397	392	46,874	44,891	8.5980
20 Porsche	911	31	48	4,609	4,818	8.3802
21 General Motors	Pontiac Grand AM	1,596	1,381	189,150	171,582	8.2527
22 Chrysler Corp	Lebaron Coupe/Convertible	469	341	58,837	39,749	8.2162
23 General Motors	Chevrolet Camaro	288	759	33,200	97,290	8.0236
24 Mitsubishi	Montero	144	108	16,403	15,959	7.7869
25 Ford Motor Co	Ford Probe	755	654	110,201	73,522	7.6692
26 Chrysler Corp	Town & County MPV	32	10	3,238	2,244	7.6614
27 General Motors	Chevrolet Corvette	168	139	22,034	18,510	7.5720
28 Toyota	4–Runner	521	340	72,138	46,263	7.2719
29 General Motors	Pontiac Bonneville	494	345	75,655	42,919	7.0758
30 Volkswagen	Jetta	337	329	47,731	48,091	6.9504
31 Volvo	780	7	2	945	363	6.8807
32 Suzuki	Sidekick	59	80	7,162	13,052	6.8764
33 General Motors	Pontiac Firebird	154	288	19,157	45,234	6.8643
34 Chrysler Corp	Dodge Shadow	537	500	71,088	81,211	6.8090
35 Mitsubishi	Pickup Truck	194	132	24,976	23,928	6.6661
36 Ford Motor Co	Lincoln Continental	396	368	62,657	52,103	6.6574
37 Suzuki	Samurai	42	31	5,782	5,417	6.5184
38 General Motors	Pontiac 6000	293	223	52,352	27,940	6.4265
39 General Motors	GEO Tracker	232	195	34,948	31,498	6.4263
40 Porsche	928	4	1	414	369	6.3857
41 Ford Motor Co	Lincoln Mark VII	120	71	21,658	8,898	6.2508
42 General Motors	Buick Skylark	509	482	83,666	75,811	6.2141
43 Chrysler Corp	Dodge Dynasty	500	768	94,510	112,320	6.1306
44 General Motors	Chevrolet C–1500	1,639	1,105	267,411	168,497	6.0884
45 Mitsubishi	Galant/Sigma	301	212	45,397	39,562	6.0382
46 Toyota	MR2	0	129	0	22,080	5.8424
47 BMW	3	143	138	21,556	26,839	5.8064
48 Chrysler Corp	Plymouth Acclaim	538	671	95,142	114,510	5.7667
49 General Motors	Buick Reatta	55	2	8,431	1,491	5.7448
50 Chrysler Corp	Dodge Spirit	415	584	79,054	94,895	5.7431
51 General Motors	GMC Sierra C–1500	531	273	89,021	52,079	5.6981
52 Chrysler Corp	Plymouth Sundance	432	236	60,517	56,820	5.6930
53 General Motors	GEO Prizm	1,021	489	170,272	95,000	5.6923
54 General Motors	Oldsmobile Cutlass Calais	494	417	88,229	74,045	5.6140
55 General Motors	Pontiac Sunbird	519	731	106,960	115,721	5.6134
56 Ford Motor Co	Ford Thunderbird	593	427	104,847	78,133	5.5744
57 BMW	5	126	101	23,871	17,016	5.5519
58 Chrysler Corp	New Yorker 5th Ave/Imperial	461	405	93,538	63,375	5.5190
59 Chrysler Corp	Plymouth Laser	257	141	45,141	30,720	5.2464
60 Nissan	240SX	301	190	60,582	34,534	5.1621
61 Mitsubishi	3000GT	0	51	0	9,903	5.1500
62 General Motors	Oldsmobile Cutlass Ciera	584	604	126,321	107,028	5.0911
63 Isuzu	Amigo	61	28	11,622	6,030	5.0419
64 General Motors	Pontiac Lemans	148	172	34,351	29,500	5.0117
65 Mazda	626/MX–6	530	448	96,966	100,436	4.9544
66 Nissan	Maxima	528	482	110,685	94,646	4.9189
67 General Motors	Buick Estate Wagon	37	0	7,524	0	4.9176
68 General Motors	Buick Century	497	649	123,893	110,767	4.8837
69 Chrysler Corp	Eagle Premier	55	71	14,277	11,630	4.8636
70 Ford Motor Co	Lincoln Town Car	602	666	142,648	119,046	4.8454
71 Alfa Romeo	Spider	2	8	915	1,154	4.8333
72 Chrysler Corp	Dodge Stealth	0	96	0	19,907	4.8224
73 Hyundai	Scoupe	0	165	0	34,305	4.8098
74 Mitsubishi	Eclipse	383	211	67,658	56,058	4.8013
75 Honda	Accord	1,833	2,151	410,915	425,360	4.7640
76 Ford Motor Co	Ford Escort	1,030	1,545	188,146	355,642	4.7353
77 General Motors	Chevrolet Cavalier	1,482	1,127	263,204	293,995	4.6823
78 Volkswagen	Corrado	49	12	11,041	2,072	4.6519
79 Nissan	Sentra	885	547	163,355	144,748	4.6478

TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
80 Chrysler Corp	Dodge Daytona	186	69	37,884	17,286	4.6221
81 Honda/Acura	Legend	336	282	66,611	68,274	4.5817
82 Mercedes-Benz	129	19	50	5,413	9,797	4.5365
83 BMW	7	43	33	10,717	6,056	4.5311
84 Ford Motor Co	Mercury Cougar	335	280	76,580	60,669	4.4809
85 Hyundai	Excel	403	346	92,106	78,529	4.3895
86 General Motors	GEO Storm	370	343	73,376	89,996	4.3643
87 Mazda	B Series Pickup	323	269	70,866	65,585	4.3386
88 Toyota	Corolla/Corolla Sport	1,073	781	219,738	208,743	4.3269
89 Chrysler Corp	Jeep Wagoneer	53	10	10,928	3,702	4.3062
90 General Motors	Oldsmobile Delta 88 Royale	451	214	105,508	50,451	4.2639
91 Isuzu	Rodeo	0	123	0	28,953	4.2483
92 Ford Motor Co	Ford Tempo	999	734	218,976	189,747	4.2400
93 Chrysler Corp	Dodge Omni	69	0	16,481	0	4,1866
94 General Motors	Chevrolet Beretta	384	261	90,981	64,022	4.1612
95 General Motors	Buick Lesabre	593	387	152,967	83,677	4.1412
96 Nissan	Stanza	305	296	79,356	67,583	4.0901
97 Audi	Coupe Quattro	6	1	1,348	377	4.0580
98 Subaru	XT	0	7	12	1,725	4.0299
99 Chrysler Corp	Eagle Talon	117	125	28,064	32,096	4.0226
100 General Motors	Chevrolet Corsica	605	754	168,855	169,460	4.0170
101 Isuzu	Trooper/Trooper II	167	120	37,448	34,502	3.9889
102 Chrysler Corp	Lebaron Sedan	145	33	27,304	17,741	3.9516
103 General Motors	Cadillac Fleetwood/Deville	656	573	170,517	140,992	3.9453
104 Honda/Acura	Integra	479	267	109,321	80,333	3.9335
105 Toyota	Tercel	406	382	88,482	112,032	3.9299
106 Chrysler Corp	Plymouth Horizon	60	0	15,884	0	3.7774
107 General Motors	Chevrolet S–10 Pickup	349	1,271	72,784	358,397	3.7571
108 Ford Motor Co	Mercury Tracer	0	260	0	70,172	3.7052
109 Toyota	Camry	1,052	909	270,029	259,414	3.7039
110 Ford Motor Co	E150 Van	37	28	10,102	7,516	3.6894
111 General Motors	GMC Sonoma	101	306	21,165	90,222	3.6539
112 General Motors	Chevrolet Caprice	361	413	55,528	156,822	3.6449
113 General Motors	Chevrolet Lumina APV	223	180	72,089	38,551	3.6424
114 Chrysler Corp	Keep Comanche	45	19	10,681	7,063	3.6069
115 Ford Motor Co	Mercury Topaz	277	187	73,207	56,165	3.5866
116 General Motors	Oldsmobile 98/Touring	318	72	58,444	50,417	3.5826
117 Toyota	Celica	315	201	82,740	61,482	3.5778
118 Isuzu	Impulse	22	10	4,772	4,287	3.5324
119 General Motors	GEO Metro	250	337	74,557	98,197	3.3979
120 Mitsubishi	Wagon	6	0	1,791	0	3.3501
121 Nissan	Pickup Truck	460	408	129,951	131,144	3.3245
122 BMW	8	0	8	0	2,411	3.3181
123 Rover Group	Range Rover MPV	14	11	4,862	2,681	3.3143
124 Mercedes-Benz	201	42	45	9,247	17,033	3.3105
125 Mazda	323/Protege	297	212	74,316	79,948	3.2995
126 Isuzu	Stylus	0	49	0	14,919	3.2844
127 General Motors	Cadillac Allante	11	7	3,076	2,485	3.2368
128 Rover Group	Sterling 827	6	5	1,200	2,216	3.2201
129 Mitsubishi	Van	3	0	934	0	3.2120
130 General Motors	Pontiac Grand Prix	363	277	110,549	91,646	3.1653
131 Mazda	Navajo	0	38	0	12,080	3.1457
132 General Motors	Chevrolet Astro	290	429	123,394	105,795	3.1371
133 Mercedez-Benz	124	81	59	21,870	22,771	3.1361
134 General Motors	Oldsmobile Cutlass Supreme	361	267	109,288	91,770	3.1235
135 Daihatsu	Rocky MPV	24	5	7,514	1,883	3.0861
136 Ford Motor Co	Bronco II	166	0	54,988	0	3.0188
137 General Motors	Oldsmobile Toronado/Trofeo	38	29	14,480	7,831	3.0030
138 Chrysler Corp	Eagle Summit	40	41	9,595	17,626	2.9756
139 Ford Motor Co	Mercury Sable	278	264	93,126	89,349	2.9703
140 Suzuki	Swift	19	22	7,671	6,227	2.9501
141 Ferrari	Testarossa	1	1	426	255	2.9369
142 Toyota	Cressida	33	36	12,456	11,039	2.9368
143 Chrysler Corp	Dodge Caravan/Grant	709	506	234,609	182,675	2.9117
144 Jaguar	XJS	13	9	5,213	2,371	2.9008
145 General Motors	Pontiac Trans Sport APV	88	60	33,424	18,418	2.8548

TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
146 Porsche	944	6	2	1,990	850	2.8169
147 General Motors	Oldsmobile Silhouette APV	57	68	28,103	16,322	2.8137
148 Mazda	MX-5 Miata	157	97	52,247	38,868	2.7877
149 General Motors	Oldsmobile Custom Cruiser	18	13	3,573	7,660	2.7597
150 Nissan	Infiniti M30	20	19	7,466	6,718	2.7496
151 Mercedes-Benz	126	64	60	21,030	24,128	2.7459
152 Honda	Civic	737	759	277,631	269,947	2.7320
153 Mazda	929	36	47	18,090	12,449	2.7178
154 Chrysler Corp	Chrysler's TC	11	3	3,536	1,636	2.7069
155 General Motors	Chevrolet Celebrity	79	0	29,271	0	2.6989
156 Toyota	Pickup Truck	437	457	159,842	178,940	2.6389
157 Ford Motor Co	Ford Crown Victoria	148	133	57,680	49,213	2.6288
158 General Motors	Cadillac Eldorado	53	45	21,764	15,895	2.6023
159 Chrysler Corp	Dodge Ramcharger	30	13	12,311	4,483	2.5604
160 Ford Motor Co	Ford Festiva	140	95	47,449	44,544	2.5545
161 Volvo	740	147	58	54,036	29,343	2.4587
162 Nissan	Axxess	44	0	17,994	182	2.4208
163 Ford Motor Co	Mercury Grand Marquis	160	193	70,633	75,861	2.4097
164 General Motors	Chevrolet Lumina	763	422	296,720	196,473	2.4027
165 General Motors	Chevrolet Sprint	1	0	233	187	2.3810
166 Chrysler Corp	Plymouth Voyager/Grand	513	301	197,977	144,534	2.3766
167 Chrysler Corp	Dodge Ram Wagon/Van B150	24	18	13,706	3,969	2.3762
168 Isuzu	Pickup	106	94	50,214	34,635	2.3571
169 General Motors	Buick Regal	148	274	53,561	126,701	2.3410
170 Chrysler Corp	Plymouth Colt/Colt Vista	26	50	12,183	20,681	2.3126
171 Ford Motor Co	Ford Taurus	716	635	309,211	278,485	2.2988
172 Volkswagen	Passat	42	36	17,426	16,567	2.2946
173 General Motors	GMC Safari	88	99	43,263	38,453	2.2884
174 Ford Motor Co	Ranger Pickup	566	599	217,160	243,697	2.2628
175 Ford Motor Co	Explorer	0	711	0	323,551	2.1975
176 Chrysler Corp	Dodge Colt/Colt Vista	23	58	13,743	23,813	2.1568
177 Nissan	Infiniti Q45	20	40	11,615	16,264	2.1522
178 General Motors	Buick Electra Park Avenue	184	131	46,360	100,702	2.1420
179 Volkswagen	Fox	58	15	24,714	10,425	2.0775
180 Volvo	240	80	45	35,580	25,561	2.0445
181 Volvo	940	0	29	0	14,249	2.0352
182 Ford Motor Co	F150 Pickup Truck	298	215	138,657	114,669	2.0251
183 Audi	80/90	24	1	9,168	3,224	2.0174
184 Toyota	Lexus ES250	32	43	19,561	17,643	2.0159
185 Ford Motor Co	Mercury Capri	0	70	0	35,407	1.9770
186 Jaguar	XJ6	24	23	15,172	8,995	1.9448
187 Chrysler Corp	Dodge Dakota Pickup	154	112	66,459	71,490	1.9282
188 Subaru	Legacy	154	141	88,873	64,200	1.9272
189 Honda/Acura	NSX	0	6	0	3,139	1.9114
190 Toyota	Lexus LS400	77	82	42,227	41,559	1.8977
191 Saab	900	32	23	14,574	15,437	1.8327
192 Ford Motor Co	Aerostar	303	279	169,574	150,579	1.8179
193 General Motors	Oldsmobile Cutlass Cruiser	16	13	8,891	7,163	1.8064
194 Volvo	760	17	0	9,515	0	1.7867
195 Mitsubishi	Precis	17	3	3,210	8,000	1.7841
196 Subaru	Loyale	68	36	32,994	25,904	1.7658
197 Nissan	Pulsar NX	2	0	1,168	0	1.7123
198 Daihatsu	Charade	23	4	12,447	3,732	1.6688
199 Toyota	Land Cruiser	3	0	1,921	0	1.5617
200 Nissan	Infiniti G20	0	25	0	16,132	1.5497
201 Toyota	Previa	0	126	0	81,426	1.5474
202 General Motors	Buick Riveria	29	25	21,982	12,956	1.5456
203 Mazda	MPV Wagon	57	82	47,852	47,107	1.4638
204 Audi	100/200	15	12	10,869	9,036	1.3564
205 Volkswagen	Vanagon	9	6	7,363	4,729	1.2405
206 General Motors	Saturn SL	0	49	0	39,867	1.2291
207 Peugeot	405	0	4	700	2,557	1.2281
208 Audi	V8 Quattro Sedan	4	0	2,911	542	1.1584
209 Subaru	Justy	10	10	9,552	8,999	1.0781
210 General Motors	Chevrolet Sportvan G-10	0	15	8,715	5,804	1.0331
211 General Motors	Buick Roadmaster	0	6	0	6,729	0.8917

TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
212 Nissan	NX Coupe	0	7	0	8,705	0.8041
213 Chrysler Corp	Dodge Ram Pickup	24	19	42,251	21,763	0.6717
214 General Motors	Saturn SC	0	6	0	10,298	0.5826
215 Saab	9000	10	13	20,675	24,195	0.5126
216 General Motors	GMC Rally Sportvan	0	2	3,092	1,620	0.4244
217 Yugo	GV/GVL/GVX/GVS	1	1	1,323	8,250	0.2089
218 Peugeot	505	0	0	2	654	0.0000
219 Lamborghini	Diablo	0	0	0	110	0.0000
220 Ferrari	F40	0	0	90	60	0.0000
221 Ferrari	348	0	0	377	240	0.0000
222 Rolls-Royce	SIL Spirit/Spur/Mulsa/Eight	0	0	399	505	0.0000
223 Nissan	Van	0	0	292	0	0.0000
224 Rolls-Royce	Corniche/Continental	0	0	162	141	0.0000
225 Aston Martin	Saloon/Vantage/Volante	0	0	2	40	0.0000
226 Rolls-Royce	Turbo R	0	0	340	207	0.0000
227 Lotus	Elan	0	0	0	159	0.0000
228 Lotus	Esprit	0	0	102	28	0.0000
229 Ferrari	Mondial	0	0	98	49	0.0000
230 Maserati	Spyder	0	0	31	4	0.0000
231 Maserati	430/228	0	0	31	0	0.0000

TABLE II—DESIGNATED HIGH THEFT CAR LINES WITH THEFT RATES BELOW THE MEDIAN THEFT RATE OF 3.5826

Manufacturer	Make/model
BMW	8
Chrysler	Chrysler's TC
Ferrari	Mondial
Ford Mercury	Capri
General Motors:	
Buick	Riviera, Electra, Park Avenue, Regal
Cadillac	Eldorado, Allante
Chevrolet	Lumina
Oldsmobile	Cutlass Supreme, 98/Touring
Pontiac	Grand Prix
Saturn	Sports Coupe (SC)
Honda Acura	NSX
Isuzu	Impulse, Stylus
Jaguar	XJ6, XJS
Lotus	Elan
Mazda	MX–5 Miata, 929
Mercedes-Benz	124, 126, 201
Nissan Infiniti	M30, Q45
Peugeot	405
Rover Group	Sterling
Saab	900, 9000
Toyota	Cressida, Celica
Lexus	ES250, LS400
Volkswagen, Audi	100/200/S4

TABLE III.—VEHICLES THAT FELL BELOW THE MEDIAN THEFT RATE AND ARE INTERCHANGEABLE WITH LINES THAT FELL ABOVE THE MEDIAN THEFT RATE

Manufacturer	Theft rate
Chrysler:	
Chrysler Town and Country (MPV)	7.6614
Dodge Caravan/Grand (MPV)	2.9117
Plymouth Voyager/Grand (MPV) (Interchangeable with Chrysler Town and Country MPV)	2.3766
General Motors:	
Chevrolet Caprice	3.6449
Chevrolet Lumina APV (Interchangeable with Pontiac Transport APV and Oldsmobile Silhouette APV)	3.6424
Pontiac Transport APV	2.8548
Oldsmobile Silhouette APV	2.8137
Buick Roadmaster (Interchangeable with Chevrolet Caprice)	0.8917
Nissan:	
Pathfinder (MPV)	13.8175
Pickup Truck (LDT) (Interchangeable with Pathfinder MPV)	3.3245
Toyota:	
4-Runner (MPV)	7.2719
Pickup Truck (LDT) (Interchangeable with 4-Runner MPV)	2.6389

[FR Doc. 94–6097 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorization by 38 U.S.C. 3121, will be held on April 17, 18, and 19, 1994 in Washington, DC. The committee will meet from 10 a.m. to 3 p.m. on April 17, from 9 a.m. to 4 p.m. on April 18, and from 9 a.m. to 12 noon on April 19, 1994. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary. The meeting will be open to the public to the seating capacity of the meeting room. Due to changes in the location of the meeting area each day, it will be necessary for those wishing to attend to contact Theresa Boyd at (202) 233–6493 prior to April 14, 1994. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days of the meeting. Oral statements will be heard at 3 p.m. on April 18, 1994.

Dated: March 7, 1994.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–6120 Filed 3–15–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 51
Wednesday, March 16, 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).

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, March 24, 1994, 9 a.m. to 5:30 p.m.

LOCATION: First Floor Conference Room, 1550 M Street, N.W., Washington, DC.

STATUS: (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of Minutes of the Sixty-third Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Selection of Solicited Grants, and Selection of the 1994–1995 Jennings Randolph Fellows.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: (202) 457–1700.

Dated: March 14, 1994.

Charles E. Nelson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 94–6247 Filed 3–14–94; 2:28 pm]

BILLING CODE 3155–01–M

federal register

Wednesday
March 16, 1994

Part II

Environmental Protection Agency

40 CFR Part 60 et al.
National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–4846–7]

RIN 2060–AC98

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 11, 1993, the EPA proposed General Provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements pursuant to section 112 of the Clean Air Act as amended in 1990 (the Act). This action announces the EPA's final decisions on the General Provisions.

The General Provisions, located in subpart A of part 63, codify general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the 189 substances listed as hazardous air pollutants (HAP) in or pursuant to section 112(b) of the Act. Standards for individual source categories are being developed separately, and they will be codified in other subparts of part 63. When sources become subject to standards established for individual source categories in other subparts of part 63, these sources also must comply with the requirements of the General Provisions, except when specific General Provisions are overridden by the standards.

This action also amends subpart A of parts 60 and 61 to bring them up to date with the amended Act and, where appropriate, to make them consistent with requirements in subpart A of part 63.

DATES: *Effective Date.* March 16, 1994.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of NESHAP is available only by filing a petition for review in the U. S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Incorporation by Reference: The incorporation by reference of certain publications in these General Provisions is approved by the Director of the Office of the Federal Register as of March 16, 1994.

ADDRESSES: *Docket.* Docket No. A–91–09, containing information considered by the EPA in developing the promulgated General Provisions, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, including all non-Government holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

Background Information Document. A background information document (BID) for the promulgated General Provisions may be obtained from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650. Please refer to "General Provisions for 40 CFR Part 63, Background Information for Promulgated Regulation" (EPA–450/3–91–019b). The BID contains: (1) a summary of the public comments made on the proposed General Provisions and responses to the comments and (2) a summary of the changes made to the General Provisions as a result of the Agency's responses to comments that are not addressed in this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Tabler, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5256.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background

Section 301 of title III of the Clean Air Act Amendments of 1990, Public Law 101–549, enacted on November 15, 1990, substantially amended section 112 of the Act regarding promulgation of NESHAP. These NESHAP are to be established for categories of stationary sources that emit one or more of the 189 HAP listed in or pursuant to section 112(b). Each standard established for a source category will be codified in a subpart (or multiple subparts) of part 63. In order to eliminate the repetition of general information and requirements within these subparts, General Provisions that are applicable to all sources regulated by subsequent standards in part 63 have been developed. The General Provisions have the legal force and effect of standards, and they may be enforced independently of relevant standards, if appropriate.

The General Provisions codify procedures and criteria that will be used to implement all NESHAP promulgated under the Act as amended November 15, 1990. The provisions include administrative procedures related to applicability determinations (including new versus existing and area versus major sources), compliance extensions, and requests to use alternative means of compliance. In addition, general requirements related to compliance-related activities outline the responsibilities of owners and operators to comply with relevant emission standards and other requirements. The compliance-related provisions include requirements for compliance dates, operation and maintenance requirements, methods for determining compliance with standards, procedures for performance testing and monitoring, and reporting and recordkeeping requirements. Finally, the EPA is promulgating amendments to the General Provisions for parts 60 and 61 to address new statutory requirements and, where appropriate, to make portions of these existing regulations consistent with the part 63 General Provisions.

Owners or operators who are subject to a subpart promulgated for a specific source category under sections 112(d), 112(f), or 112(h) of the Act are also subject to the requirements of the General Provisions. The General Provisions also will be incorporated, as appropriate, into requirements established under other section 112 authorities (e.g., the early reduction program and case-by-case control technology determinations). Nevertheless, in the development of a part 63 emission standard applicable to a specific source category, the EPA may determine that it is appropriate that the subpart contain provisions that override one or more requirements of the General Provisions. When this occurs, the EPA will describe in the subpart exactly

which requirements of the General Provisions are applicable to the specific source category and which requirements have been overridden. If there is a conflict between a specific requirement in the General Provisions and a specific requirement of another subpart in part 63, the specific requirement of the subpart will supersede the General Provisions.

II. Summary of Major Changes Since Proposal

In response to comments received on the proposed General Provisions, numerous changes have been made in the final rule. A significant number of these are clarifying changes, designed to make the Agency's intent clearer as requested by commenters. In addition, many changes have been made in the final rule wherever reasonable to reduce the paperwork burden on sources affected by part 63 NESHAP and on State agencies that will implement part 63 NESHAP once they have been delegated the authority to do so.

Substantive changes made since proposal which have a broad impact on the regulated community that will be subject to the General Provisions are summarized in this section of the preamble. These, and other substantive changes made since proposal, are described in more detail in the following sections. The Agency's responses to public comments that are not addressed in this preamble and a summary of resulting changes in the final rule are contained in the BID for this final rulemaking (see **ADDRESSES** section of this notice).

Many comments were received on the timing and content of notifications and other reports required by the General Provisions and on recordkeeping requirements. Comments from owners or operators of facilities potentially subject to part 63 standards (and the General Provisions) generally asked for more time to prepare submittals than allowed in the proposed rule and for a reduction in the amount of information that must be recorded or submitted. State and local agencies that will be implementing the rule expressed concern about the timing and volume of information that would be submitted to them and about their ability to respond to these submittals. These agencies also requested flexibility in implementing requirements of the General Provisions.

The Agency made significant changes in the final rule from the proposed rule in response to these comments. These changes significantly reduce the burden on owners and operators but also recognize the need that enforcement agencies have for timely and adequate information to assess compliance with emission standards and other requirements established under section 112 of the Act. These significant changes are discussed below.

Initial Notification

Under § 63.9(b) of the General Provisions, when a relevant part 63 standard is promulgated for a source category, owners or operators of sources that are subject to the standard must submit a notification. In the final rule, the time period allowed for submission of the initial notification has been extended from 45 days to 120 days. Also, the information required to be submitted with the initial notification has been reduced greatly.

Requests for Compliance Extensions

Changes were made from proposal to § 63.6(i), which deals with compliance extension requests, to increase the allowable times for Agency review and for owners or operators to provide additional information. The EPA also added provisions to the final rule, pursuant to section 112(i)(6) of the Act, that establish procedures for a source to request a compliance extension if that source has installed best available control technology (BACT) or technology to meet a lowest achievable emission rate (LAER).

Excess Emission Reports

A major change was made in the recordkeeping and reporting requirements concerning the need for, and frequency of, quarterly excess emissions reports. In the proposed rule, if continuous monitoring systems (CMS) data were to be used for direct compliance determinations, a quarterly report on excess emissions or parameter monitoring exceedances was required in § 63.10(e)(3), even if there were no occurrences of excess emissions or exceedances during that reporting period ("negative reporting"). In the final rule, as long as there are no occurrences of excess emissions or parameter monitoring exceedances, semiannual reporting is sufficient. In addition, the procedures for an affected source to reduce the frequency of required reports have been clarified in the final rule.

Performance Tests and Performance Evaluations

The performance test deadline specified under § 63.7(a)(2) was extended from 120 days to 180 days after a source's compliance date. Similarly, the § 63.7(b) requirement to provide notice of the date of the performance test was reduced from 75 days to 60 days before the test. Observation of the test by the EPA (or the delegated State agency) is intended to be optional, and this section was revised to clarify this point. A similar change was made to § 63.8(e)(2), notice of performance evaluation (for CMS), to allow a 60-day notification period rather than a 75-day period. Also, § 63.7(g) was revised to allow sources 60 days, instead of 45 days, to submit the required performance test results to the enforcing agency.

A major comment related to performance tests concerned the proposed requirement that sources submit site-specific performance test plans to the Administrator for review and approval before a required performance test is conducted. This requirement has been changed in the final rule such that the test plan must be developed and made available for review, but it does not need to be submitted for approval prior to a required performance test unless it is requested by the EPA or delegated State agency. A similar change has been made in the final rule regarding the development and submittal of site-specific performance evaluation test plans under § 63.8(d).

Some commenters expressed confusion regarding the distinction between performance tests and performance evaluations, and the EPA has added definitions of "performance test" and "performance evaluation" to the final rule to respond to this confusion. In addition, the Agency has defined the phrase "representative performance" in the final rule for the purpose of clarifying the conditions for conducting performance tests.

Finally, the EPA clarified the situation when a final standard is more stringent than a proposed standard and when a source would be allowed to (1) conduct an initial performance test to demonstrate compliance with the proposed standard and a second test to demonstrate compliance with the final standard or (2) conduct an initial performance test to demonstrate compliance with the final standard.

Startup, Shutdown, and Malfunction Plan

Commenters generally objected to the level of detail they perceived to be required in the startup, shutdown, and malfunction plan (§ 63.6(e)). The intent and purpose of the plan is explained further in section IV.F.1 of this preamble and clarifying changes have been made in the rule. Specifically, the rule has been revised to delete the requirement for "step-by-step" procedures. Numerous comments were

received relating to the timing and circumstances of reports of deviations from a source's plan. In response to the commenters' concerns, the EPA has revised the rule to require reporting of actions that are "not consistent" (rather than "not completely consistent") with the plan. The Agency also has increased the time period for sources to provide "immediate" reports of these actions from 24 hours to 2 working days. The follow-up report is required within 7 working days.

Other Changes to Reporting and Recordkeeping Requirements

The final rule includes provisions for EPA Regional Offices to waive the duplicate submittal of notifications and reports at their discretion. Also, the requirements relating to negotiated schedules (i.e., "mutual agreement provisions") were revised from proposal to more clearly reflect implementing agencies' prerogatives to comply with the schedules outlined in the General Provisions. Finally, a recordkeeping requirement has been added (in § 63.10(b)(3)) for owners and operators of area sources to maintain a record of the determination of their area source status when this determination is necessary to demonstrate that a relevant standard for major sources does not apply to them.

There were also significant changes in other areas of the rule from proposal. These are summarized below.

Monitoring

Several comments concerned the relevance and applicability of the part 63 monitoring provisions to related monitoring provisions contained in other parts (e.g., parts 60, 61, 64, and 70), as well as the relationship between monitoring provisions in the General Provisions and those in other subparts of part 63. The EPA has provided additional clarification and made changes to specific provisions as a result of these comments.

Repair Period for Continuous Monitoring Systems (CMS)

The Agency also received many comments on the proposed 7-day repair period for CMS. After consideration of these comments, the EPA revised § 63.8(c)(1) of the rule to distinguish between routine and nonroutine CMS malfunctions. The final rule requires the immediate repair of "routine" CMS failures. In addition, the owner or operator will be required to identify these routine malfunctions in the source's startup, shutdown, and malfunction plan. Nonroutine failures of the CMS must be reported and repaired within 2 weeks after commencing actions inconsistent with the plan unless circumstances beyond the owner or operator's control prevent the timely repair or replacement of the CMS.

Construction and Reconstruction

Many comments were received regarding the administrative procedures for reviewing and approving plans for construction or reconstruction, and several changes were made to the rule in response to these comments. At the request of State and local agencies, the EPA has deleted the provision in § 63.5(c) that allowed an owner or operator to request that the implementing agency prereview construction or reconstruction plans. In addition, the final rule has been revised to allow owners and operators of new or reconstructed major affected sources greater discretion in the timing of submitting applications for approval of construction or reconstruction. The final rule requires that these applications be submitted "as soon as practicable" before the construction or reconstruction is planned to commence, rather than 180 days in advance, as was proposed. The Agency also revised the definition of reconstruction and the ensuing requirements for a reconstructed source to clarify their applicability. The Agency received several comments regarding reconstruction determinations, especially where a source has installed control devices to meet emission standards established for existing sources. In response, the Agency has explained its policy on these issues and clarified that it is not the Agency's intent to penalize sources that make changes to comply with existing source maximum achievable control technology (MACT) requirements by subjecting them to new source MACT requirements to which they otherwise would not be subject.

Applicability

The rule has been revised in several places to clarify the applicability of the General Provisions. Revisions were made to § 63.1 of the rule to clarify that a source that is subject to any part 63 standard or requirement is also subject to the requirements of the General Provisions unless otherwise specified in the General Provisions or the relevant standard. Provisions have been added to address two situations related to major and area source determinations. As noted earlier, the Agency added a recordkeeping requirement in the final rule to require sources that determine they are not subject to a relevant standard to keep a record of their applicability determination. The EPA also added provisions in the final rule to address compliance dates for unaffected area sources that increase their emissions such that they become major sources that are subject to part 63 NESHAP.

Separate Rulemaking on Potential to Emit

Under section 112, the determination of whether a facility is a major source or an area source is made on the basis of the facility's "potential to emit" HAP, "considering controls." This is an important determination, because different requirements may be established in a part 63 standard for major and area sources, and area sources in a source category may not be regulated by some standards. The EPA's intended policy for implementing "potential to emit considering controls" was reflected in the definition proposed in § 63.2 of the General Provisions for the term "potential to emit." The proposed definition included the requirement that, for a physical or operational limitation on HAP emissions (including air pollution control devices) to be considered to limit a source's potential to emit for the purposes of part 63, the limitation or the effect it would have on emissions must be federally enforceable. A definition of "federally enforceable" was also proposed.

Many comments were received on the topic of potential to emit. As discussed later in this preamble, consistent with past Agency policies on potential to emit, the EPA has retained in today's final rule the same definition of potential to emit that was proposed. However, substantive issues were raised by commenters on the mechanisms and timeframe available for establishing the Federal enforceability of potential to emit limitations that went beyond the scope of issues addressed in the August 11, 1993 proposed rulemaking for the General Provisions.

Because of this, and because of the importance of potential to emit to determining the applicability of part 63 standards and other requirements, the Agency is planning to propose a separate rulemaking to address several specific potential to emit issues. This separate notice of proposed rulemaking, which will appear in the near future in the **Federal Register**, would amend the General Provisions to provide mechanisms for validating limits on sources' potential to emit HAP until permanent mechanisms for creating HAP potential to emit limits are in place in States. In addition, this separate rulemaking would specify deadlines by

which major sources of HAP would be required to establish the Federal enforceability of limitations on their potential to emit in order to avoid compliance with otherwise applicable emission standards or other requirements established in or under part 63.

The EPA will take final action on this separate proposal after receiving and considering public comments. Until the Agency takes final action on the proposal, any determination of potential to emit made to determine a facility's applicability status under a relevant part 63 standard should be made according to requirements set forth in the relevant standard and in the General Provisions promulgated today.

Cross Referencing in the Rule

Cross-references to other parts (e.g., regulations in part 71 establishing a Federal operating permit program) or subparts (e.g., subpart C, the list of hazardous air pollutants) were included in the proposed General Provisions as a convenience to inform readers where they may locate other general information. At present, no rules have been proposed or promulgated in either subpart C or in part 71. Consequently, these cross-references have been removed from the General Provisions.

III. Public Participation

Prior to proposal of the General Provisions, interested parties were advised by public notice in the **Federal Register** (56 FR 54576, October 22, 1991) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the draft General Provisions. That meeting was held on November 19–21, 1991. In addition, a status report on the General Provisions was presented to the NAPCTAC during the Committee's November 17–18, 1992 meeting. Both meetings were open to the public and each attendee was given an opportunity to comment on the draft General Provisions. In addition, numerous meetings and correspondence occurred between the Agency and representatives from affected industries, environmental groups, and State and local agencies during the process of drafting the proposed General Provisions. Documentation of these interactions can be found in docket A–91–09.

The proposed General Provisions were published in the **Federal Register** on August 11, 1993 (58 FR 42760). The preamble to the proposed General Provisions discussed the availability of the proposal BID ("General Provisions for 40 CFR part 63, Background Information for Proposed Regulation" (EPA–450/3–91–019)), which provides an historical perspective on precedents set by the EPA in implementing similar General Provisions under the pre-1990 Act. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

The public comment period officially ended on October 12, 1993. A public hearing was not requested; however, seventy-one comment letters were received. The comments were carefully considered, and where determined to be appropriate by the Administrator, changes were made in the final General Provisions.

IV. Significant Comments and Changes to the Proposed General Provisions

Comments on the proposed General Provisions were received from industry, State and local air pollution control agencies, Federal agencies, trade associations, and environmental groups. A detailed discussion of comments and the EPA's responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The major comments and responses are summarized in this preamble.

A. Applicability Determinations

1. Overview

Sections 112 (c) and (d) of the amended Act require the EPA to list and establish emission standards for major and area sources of the HAP that are listed in or pursuant to section 112(b). A list of categories of sources emitting listed HAP was published in the **Federal Register** on July 16, 1992 (57 FR 31576). Each standard developed by the EPA for a source category (referred to as a "relevant standard" or a "source category-specific standard") will be proposed for public comment in the **Federal Register** and when it is finalized, it will be codified in a subpart (or multiple subparts) of part 63.

Each standard promulgated for a source category will apply to major sources of HAP that contain equipment or processes that are defined and regulated by that standard. Area sources of HAP also may be subject to the standard if an area source category has been listed and the standard specifies that it applies to area sources. Each standard will include requirements for new and existing sources.

The determination of whether a source is a major source or an area source is made on the basis of its "potential to emit" HAP. In general, sources with a potential to emit, considering controls, 10 tons per year or more of any one listed HAP or 25 tons per year or more of any combination of listed HAP are major sources. For the purposes of implementing section 112, the major/area source determination is made on a plant-wide basis; that is, HAP emissions from all sources located within a contiguous area and under common control are considered in the determination, unless specific provisions elsewhere in section 112 (e.g., for oil and gas wells under section 112(n)(4)) override this general rule.

More than one source category on the EPA's source category list may be represented within a plant that is a major source of HAP. This will be the case, for example, at a large chemical manufacturing complex. The major source determination will be made on the basis of HAP emissions from all emission sources within the complex. However, there could be many operational units within the complex, with each unit producing a different petroleum or chemical product or intermediate. The EPA source category list defines many categories on the basis of product produced (e.g., polyether polyols production, chlorine production). Standards for each of these categories will be developed in separate rulemakings. The EPA believes that Congress intended that all portions of a major source be subject to MACT regardless of the number of source categories into which the facility is divided. Thus, the EPA will set one or more MACT standards for a major source, and sources within that major source will be covered by the standard(s), regardless of whether, when standing alone, each one of those regulated sources would be major.

As described earlier (as well as in the preamble to the proposed General Provisions), the General Provisions promulgated with this rulemaking are intended to bring together in one place (subpart A of part 63) those general requirements applicable to all owners and operators who must comply with standards established for the listed source categories. The General Provisions for part 63 contain provisions that are common to relevant standards such as definitions, and requirements for initial notifications, performance testing, monitoring, and reporting and recordkeeping. The establishment of General Provisions for part 63 standards eliminates the need to repeat common elements in each source category-specific standard. It is also consistent with the approach taken previously by the EPA in developing and implementing new source performance standards (NSPS) under section 111 of the Act and NESHAP

under section 112 of the Act before the 1990 Clean Air Act Amendments. General Provisions for these programs are contained in subpart A of part 60 and subpart A of part 61, respectively.

The basic approach in the General Provisions promulgated today for determining applicability (i.e., who is subject to these requirements) is the same as was proposed. That is, applicability of the General Provisions is determined by the applicability of relevant source category-specific standards promulgated in other subparts of part 63. Each owner or operator who is subject to a relevant source category-specific standard in part 63 is also subject to the General Provisions, except when the standard specifically overrides a specific General Provisions requirement. Section 63.1(b) of the final General Provisions, addressing initial applicability determinations for part 63, has been revised to clarify this approach for determining applicability. Section 63.1(b)(1) of the proposed rule stated that the owner or operator of any stationary source that is included in the most up-to-date source category list and that emits or has the potential to emit any HAP is subject to the provisions of part 63. The reference to the source category list has been removed from the final rule, and a paragraph has been added specifying that part 63 provisions apply to any stationary source that "emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act and is subject to any standard, limitation, prohibition or other federally enforceable requirement established pursuant to [part 63]." This clarifies that belonging to a listed category of sources alone does not render a source subject to the provisions of part 63; rather, the source must be subject to a part 63 standard or other requirement.

The term "affected source" is established and used in the General Provisions to designate the specific "source," or group of "sources," that is subject to a particular standard. This term is analogous to the term "affected facility" used in NSPS. Affected sources will be defined explicitly in each part 63 standard promulgated for a source category or established for a source on a case-by-case basis. The individual pieces of equipment, processes, production units, or emission points that will be defined as affected sources subject to emission limits or other requirements under that relevant standard will be determined in the development of the standard for the source category or the source. An affected source within a source category could be defined, for example, as a storage tank with greater than a specified capacity and containing organic liquids with greater than a specified vapor pressure. Within a major source, any individual "source" or group of "sources" that meets the definition of affected source in a relevant standard would be subject to the requirements in the standard for major sources.

In general, the timing of applicability (i.e., when does an owner or operator become subject to the General Provisions) is determined by when a relevant source category-specific standard is promulgated. The effective date for standards promulgated under sections 112(d), 112(h), and 112(f) of the Act is the date of promulgation. On the date of promulgation of a relevant source category-specific standard, the General Provisions also become applicable to owners or operators subject to the standard for the source category.

The EPA received numerous comments relating to various definitions of "source," how these definitions relate to one another, and how they determine which portions of a HAP-emitting industrial (or commercial) facility will be regulated by emission standards or other requirements under amended section 112. Some of these comments agreed with the EPA's proposed approach to defining these terms, some suggested alternative approaches, and many requested clarification on these topics. Major comments and the EPA's responses on the definitions of "major source" and "area source," and on the definition of "affected source," are discussed below. Comments on the relationship of the General Provisions to relevant source category-specific standards are discussed in section IV.C.1. Additional responses to comments relating to applicability of the General Provisions are included in the promulgation BID.

2. Definitions of Major Source and Area Source

Several commenters noted that the discussion in the proposal preamble on "major source," as defined in the proposed rule, suggests inclusion of all stationary sources located on contiguous or adjacent property. These commenters argue that the EPA's interpretation goes beyond the statutory definition of major source in section 112(a)(1), which does not use the term "adjacent." Another commenter stated that adding "adjacent" to the definition adds uncertainty to applicability determinations.

The EPA disagrees with these commenters. First, the use of the term "adjacent" is consistent with the language of the statute. The common dictionary definition of "contiguous" consists, in part, of "nearby, neighboring, adjacent." On this basis, the EPA has historically interpreted "contiguous property" to mean the same as "contiguous or adjacent property" in the development of numerous regulations to implement the Act. Under this approach, the physical relationship of emission units to production processes is irrelevant if the units are adjacent geographically and under common ownership or control.

This approach clarifies, that as a practical matter, the fact that all property at a plant site may not be physically touching does not mean that separate plant sites exist. For example, it is common for a railroad right-of-way or highway to cut across a plant site. However, this does not create two separate plant sites. To claim that it does would be an artificial distinction, and it is contrary to the intent of the statutory definition of major source.

Many commenters asserted that the definition of "major source" in the General Provisions should include reference to standard industrial classification (SIC) codes as was done in the part 70 permit program regulations implementing title V of the Act. However, other comments were received that supported the proposed definition of "major source" and expressed concern that the EPA might adopt the title V approach to defining "major source" which, according to one commenter, would be inconsistent with the definition in section 112(a)(1) of the Act.

The EPA believes that, because Congress included a definition for "major source" in section 112 that does not include reference to SIC codes, Congress intended that major sources of HAP would encompass entire contiguous (or adjacent) plant sites without being subdivided according to industrial classifications. The separation of HAP emission sources by SIC code would be an artificial division of sources that, in reality, all contribute to public exposure around a plant site.

Furthermore, because of the different objectives of section 112 and title V of the Act, and because section 112 contains its own definition, the definition for "major source" in part 63 need not be identical to the definition for "major source" currently promulgated in part 70. The EPA believes that the definition for major source adopted in the General Provisions is appropriate for implementing section 112. The EPA will consider whether changes to the

definition of major source in part 70, as it relates to section 112, are appropriate. If the EPA concludes that such changes are needed, the EPA will propose changes to part 70 and take comment before reaching a final decision in the **Federal Register.**

Comments were received that the definition of "area source" should be changed to "affected area source." Also, commenters suggested that the definitions of "major source" and "area source" should be revised to refer to emission units or groups of similar emission units that are in a specific category of major sources located within a contiguous area under common control and to clarify that area sources are not affected by NESHAP established for major sources.

The EPA believes that it is more appropriate and less confusing to define "major source" and "area source" consistent with the definitions in section 112(a) of the Act. Nonetheless, for the purposes of implementing section 112, consistent with the applicability discussion above, "area sources" may be further divided into affected area sources and unaffected area sources. An affected area source would be a plant site that is not a major source but is subject to a relevant part 63 emission standard that regulates area sources in that source category.

One commenter requested that the EPA address the issue of a compliance date for area sources that increase their emissions (or potential emissions) such that they become major sources and therefore subject to a relevant standard. The commenter said that this was a particular concern in situations where the area source has not obtained a construction permit.

The commenter is correct that the proposed General Provisions did not address area sources that subsequently become major sources and therefore subject to a relevant standard. Sections 63.6(b)(7) and (c)(5) have been added to the final rule to address this situation.

Section 63.6(b)(7) states that an unaffected new area source that increases its emissions of (or its potential to emit) HAP such that it becomes a major source, must comply with the relevant emission standard immediately upon becoming a major source. An unaffected existing area source that increases its emissions (or its potential to emit) such that it becomes a major source, must comply by the date specified for such a source in the standard. If such a date is not specified, the source would have an equivalent period of time to comply as the period specified in the standard for other existing sources. However, if the existing area source becomes a major source by the addition of a new affected source, or by reconstructing, the portion of the source that is new or reconstructed is required to comply with the standard's requirements for new sources. These compliance periods apply to area sources that become affected major sources regardless of whether the new or existing area source was previously affected by that standard.

3. Definition of Affected Source

The EPA received numerous comments on the usefulness of the term "affected source," in response to the Agency's specific request for comments on this term in the proposal preamble. Comments were received that supported the Agency's proposed use of "affected source," and others offered suggestions for changes or clarifications.

Some commenters stated that it is not clear how inclusive "affected source" is meant to be. For example, does it collectively cover all equipment associated with the source category?

Some commenters argued that the definition of "affected source" in the General Provisions should be narrow, encompassing as few emission points as possible. Others argued for a broad definition consistent with the EPA's policy on defining the "affected source" during the development of specific NESHAP.

Several commenters suggested terms as alternatives to "affected source." Terms suggested included "part 63 source" and "regulated source." Commenters claimed that alternative terms would be more appropriate and would reduce confusion about the applicability of a variety of EPA regulations including NESHAP under part 61 and the title IV acid rain regulations.

After a review of the suggestions made by commenters, the EPA decided to retain the term "affected source" in the final rule. No comments were received that disputed the need for a separate term to designate the units that are subject to requirements in a source category-specific standard. Further, the EPA did not find any of the arguments for alternative terms compelling. For example, commenters did not make it clear how the use of a term such as "regulated source" would be more descriptive and less confusing than "affected source."

Nevertheless, the EPA has endeavored to address any confusion that might arise on a case-by-case basis. For example, the EPA has revised the definition for the term "affected source" in part 63 to note that it should not be confused with the same term used in title IV of the Act and the rules developed to implement title IV, the acid rain provisions. Despite this revision, the Agency believes States may wish to draw a distinction in their regulations to implement the title V permit program and in individual sources' title V permits in order to avoid the possibility of confusion between the term affected source as used in part 63 and the term affected source as used in the title IV regulations. For example, the Agency believes it may be appropriate in some instances for State permitting authorities, when dealing with sources affected by both title IV and part 63 requirements, to refer to sources affected by part 63 as "part 63 affected sources."

With regard to those comments that requested narrow or broad definitions of the term "affected source," the EPA believes these comments would be addressed more appropriately in the context of rulemakings that will establish standards for individual source categories. The General Provisions merely define a term, "affected source," that refers to the collection of processes, equipment, or groups of equipment that will be defined in each relevant standard under part 63 (including case-by-case MACT standards or "equivalent emission limitations") for the purposes of defining the scope of applicability of that standard. Consistent with the approach of using the nonspecific term "affected source," the EPA believes it is inappropriate for the General Provisions rule to restrict in advance the definition of the affected source that may be developed for the purposes of regulation by a particular standard established under part 63.

B. Potential to Emit

The EPA received many comments on the definition of potential to emit that appeared in the proposed General Provisions. Many of these comments questioned the appropriateness of considering only federally enforceable controls or limitations in determining a source's potential to emit. The commenters suggested that all operational controls or limitations or, alternatively, all legally enforceable controls or limitations, should be considered in determining potential to emit, not just federally enforceable ones. One commenter further suggested that all physical or operational limitations that keep a source below the major source threshold are effectively federally enforceable, as any operation with HAP emissions above the threshold values would violate the title V permit and MACT standard

compliance requirements for major sources.

The Agency believes that these comments are similar in all relevant respects to arguments the Agency already has considered and responded to in a previous rulemaking that dealt with the Federal enforceability of emissions controls and limitations at a source. For a thorough discussion on this topic, see "Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Air Quality, New Source Review; Final Rules" that appeared in the Federal Register on June 28, 1989 (54 FR 27274). (A copy of this notice has been included in the docket for this rulemaking.) After careful consideration during that rulemaking, the EPA decided to retain the requirement for Federal enforceability. At this time, the Agency sees no reason to rescind its decisions described in the June 28, 1989 Federal Register notice. On the contrary, the Agency here is affirming the relevance of the Federal enforceability requirements set forth in the June 28, 1989 notice in the context of determinations of major source status under the new Federal air toxics program.

In the context of implementing the air toxics program under amended section 112, the purposes of the Federal enforceability requirements are as follows: (1) To make certain that limits on a source's capacity are, in fact, part of its physical and operational design, and that any claimed limitations will be observed; (2) to ensure that an entity with strong enforcement capability (i.e., the Federal government) has legal and practical means to make sure that such commitments are actually carried out; and (3) to support the goal of the Act that the EPA should be able to enforce all relevant features of the air toxics program as developed pursuant to section 112. The Agency continues to believe that, if sources may avoid the requirements of a Federal air pollution control program by relying on State or local limitations, it is essential to the integrity of the National air toxics program that such limitations be actually and effectively implemented. Thus, Federal enforceability is both necessary and appropriate to ensure that such limitations and reductions are actually incorporated into a source's design and followed in practice. Further, Federal enforceability is needed to back up State and local enforcement efforts and to provide incentive to source operators to ensure adequate compliance. Federal enforceability also enables citizen enforcement under section 304 of the Act.

Thus, in the final General Provisions rulemaking, the Agency is retaining the existing Federal enforceability requirement in the definition of potential to emit for the purposes of implementing section 112 of the Act as amended in 1990.

In the June 28, 1989 Federal Register notice, the EPA established that, to be federally enforceable, emission limitations established for a source must be practicably enforceable. To be practicably enforceable, the limitations or conditions must ensure adequate testing, monitoring, recordkeeping, and reporting to demonstrate compliance with the limitations and conditions. Restrictions on operation, production, or emissions must reflect the shortest practicable time period (generally one month). "Blanket" emission limitations such as calendar year limits (e.g., tons per year) are not considered practicably enforceable. In contrast, hourly, daily, weekly, or monthly rolling averages generally are considered acceptable.

Many of the comments requesting that the EPA credit controls that are not federally enforceable in the potential to emit determination were based on a concern over the limited mechanisms available by which emission controls can qualify as federally enforceable. For example, although the EPA will consider terms and conditions in a permit issued under title V of the Act to be federally enforceable, approved State title V permit programs are not yet in place. This effectively limits the mechanisms available to sources subject to early MACT standards. Comments were also received requesting further clarification on how the Agency's potential to emit policy would be implemented, and on how this policy could be implemented with the least burden on both States and affected sources.

As noted earlier in this preamble, the EPA is preparing a separate notice of proposed rulemaking to address potential to emit issues. This notice will propose for public comment a thorough discussion on the Agency's policy with regard to implementing potential to emit in the air toxics program. Among other actions, this rulemaking would amend the General Provisions to provide an interim mechanism for controls to qualify as federally enforceable for HAP until permanent mechanisms are in place. The Agency will consider comments on this proposal and take final action on an expedited schedule.

C. Relationship of General Provisions to Other Clean Air Act Requirements.

1. Relationship to Individual NESHAP.

The promulgated General Provisions to part 63 are applicable to all source categories that will be regulated by part 63 NESHAP. Emissions of HAP from all listed source categories eventually will be regulated by NESHAP pursuant to section 112 of the Clean Air Act Amendments of 1990. The General Provisions provide basic, common requirements for all sources subject to applicable standards, and they are intended to avoid unnecessary duplication of information in all subsequent subparts. All parts of the General Provisions apply to an affected source regulated by an applicable standard, unless otherwise specified by the particular standard.

The EPA recognizes that in the development of a standard applicable to a specific source category, the Agency may determine that certain General Provisions of subpart A may not be appropriate. Consequently, as mentioned earlier, subpart A allows individual subparts to supersede some of the requirements of subpart A. Should there be a conflict between the requirements in the General Provisions and specific requirements of another subpart in part 63, whether or not the subpart explicitly overrides the General Provisions, the requirements of the other subpart will prevail.

The Agency received many comments regarding the proposed relationship between the General Provisions and part 63 standards for specific source categories. A substantial number of commenters expressed the opinion that the EPA should reverse the presumptive relationship that the General Provisions apply unless specifically overridden in a source category-specific standard. These commenters argued that the General Provisions should not be applicable until specifically incorporated by an applicable standard. Thus, instead of automatic applicability to any regulated source, the General Provisions would have no regulatory force until specifically incorporated by individual subparts. Specific reasons cited by commenters for advocating this approach focused on minimizing the potential for conflict between the General Provisions and individual subparts and reducing confusion on the part of owners or operators who must establish which provisions are applicable. Some commenters also stated that only generic requirements should be included in the General Provisions, and more specific

requirements should be left to individual NESHAP.

The Agency believes that the alternative approach suggested by these commenters is not appropriate. Consequently, the proposed approach has been retained in the final rule. The Agency's concern is that minimum regulatory requirements be established for the control of HAP emissions from source categories. The General Provisions as promulgated ensure an appropriate baseline level of requirements for all sources, and they provide guidance at an early stage to sources regarding the types of requirements that will ensue upon promulgation of an applicable standard. The EPA believes that the provisions of subpart A are the minimum generic requirements necessary for the implementation of NESHAP. The EPA's experience with existing General Provisions under parts 60 and 61 confirms that such provisions eliminate repetition within individual standards. They also improve consistency and understanding of the basic requirements for affected sources among the regulated community and compliance personnel.

Despite the preceding discussion, the EPA does recognize the potentially confusing task faced by owners and operators who must determine which provisions of the General Provisions apply to them, which are explicitly superseded by an applicable subpart, and which are superseded because they conflict with a requirement in an individual standard. Many commenters are concerned about the potential for confusion regarding their compliance responsibilities. By establishing a mechanism whereby all the provisions of subpart A are applicable to an affected source unless otherwise specified, the EPA believes some source responsibilities are directly clarified.

Furthermore, as the Agency continues to develop emission standards for specific source categories, the EPA intends to indicate clearly in these subsequent rulemakings which requirements of subpart A sources in the category are subject to and which requirements are superseded by the individual subpart. The public will have the opportunity to review and comment on Agency decisions on which requirements of the General Provisions are overridden in a source category-specific standard when that standard is proposed in the Federal Register.

Other issues were raised by commenters pertaining to general features of the relationship between the General Provisions and individual MACT standards. Several commenters expressed concern with the potential for a situation where there are conflicting provisions between the individual subpart and subpart A, and the individual subpart does not specifically supersede the General Provisions requirement. Proposed § 63.1(a)(13) stated that individual subparts will specify which General Provisions are superseded. Certain commenters believe that provisions in individual subparts should prevail, even if they do not explicitly state that they supersede General Provisions.

The EPA agrees with these commenters. It is the Agency's intent that when there are conflicting requirements in the General Provisions and a source category-specific standard, the requirements of the standard will supersede the General Provisions. If a specific standard does not address a requirement within the General Provisions, then the General Provisions must be followed by the owner or operator. The Agency intends to review thoroughly the appropriateness of applying the General Provisions when developing each source category-specific standard and to indicate clearly in the standard any requirements of the General Provisions that are overridden. However, the Agency appreciates the concerns of the commenters that a conflicting requirement may be overlooked and not explicitly identified in the standard. Therefore, to avoid confusion should a conflicting requirement not be explicitly identified in the standard, the EPA has deleted the statement in § 63.1(a)(13) that individual subparts always will specify which provisions of subpart A are superseded.

2. Relationship to Section 112(g), Section 112(j), and Section 112(i)(5) of the Act

Several comments were received on the relationship of the General Provisions for part 63 to requirements under sections 112(g) and 112(j) of the Act. Regulations to implement section 112(g) and section 112(j) are being developed by the EPA in separate rulemakings. Section 112(g) addresses the modification, construction, and reconstruction of major sources after the effective date of title V permit programs and primarily before source category-specific standards are promulgated. Section 112(j) addresses equivalent emission limitations to be established by the States through title V permits if the EPA fails to promulgate a standard for a category of sources on the schedule established under section 112(e).

Under both of these sections, States may be required to make case-by-case MACT determinations for sources if the EPA has not yet established an applicable emission limitation under section 112. For example, under section 112(g)(2), after the effective date of a title V permit program in any State, no person may modify a major source of HAP in the State, unless the Administrator (or the State) determines that the MACT emission limitation under section 112 for existing sources will be met. This determination must be made on a case-by-case basis where an applicable emission limitation has not been established by the EPA. A similar determination involving new source MACT must be made before a major source is constructed or reconstructed.

Several commenters stated that it was unclear if the General Provisions are intended to be minimum requirements that would apply to sources subject to case-by-case MACT standards established under sections 112 (g) and (j).

The EPA is still considering the most appropriate way to link the General Provisions to the case-by-case MACT standards established under sections 112 (g) and (j). While the EPA believes that some requirements of the General Provisions should apply to any MACT standard established under section 112 (including case-by-case MACT standards), the Agency also recognizes that there may be situations where blanket application of the General Provisions to a particular source or source category may not be appropriate. As discussed elsewhere in this preamble and as stated in the applicability section of the final rule, an emission standard established for a particular source category can override some provisions of the General Provisions, as appropriate. The EPA is reviewing whether it is appropriate to provide similar authority to States with approved title V permit programs to override the General Provisions in case-by-case MACT standards established under sections 112(g) and 112(j) and how such authority should be implemented. In general, the EPA believes that the General Provisions provide an appropriate framework for many aspects of demonstrating compliance with case-by-case MACT determinations. The issue of the relationship of the General Provisions to section 112(g) and section 112(j) will be addressed in the rulemakings implementing these subsections or in future EPA guidance material.

One commenter wanted the EPA to clarify that the General Provisions are superseded by forthcoming subpart B regulations to implement section 112(g).

The EPA disagrees with this commenter. From a general perspective,

it cannot be stated that the General Provisions would be superseded by regulations established under section 112(g). Many definitions and requirements of the General Provisions will be appropriate for standards established under section 112(g) (e.g., definitions of key terms such as "major source" and "HAP"). However, as discussed in the response to the previous comment, the EPA is reviewing whether it is appropriate to allow case-by-case MACT standards developed under section 112(g) to override individual requirements of the General Provisions.

A commenter stated that the definition of "federally enforceable" in the proposed General Provisions was different from the definition proposed in regulations to implement section 112(j) (58 FR 37778, July 13, 1993). This commenter further stated that only one definition should appear, and that it should be in subpart A.

The EPA agrees with the commenter and intends that the definition of federally enforceable in the General Provisions should apply to all requirements developed pursuant to section 112 including standards developed under section 112(j) and section 112(g). A definition of "federally enforceable" was included in the proposed regulations to implement section 112(j) because those regulations were published before the proposal date of the General Provisions. The final regulations implementing section 112(j) of the Act and forthcoming regulations implementing section 112(g) will defer to the definition of federally enforceable that is included in the General Provisions.

One commenter argued that the issue of preconstruction review should be left to the rule that will implement section 112(g) of the Act. Further, the commenter stated that if the proposed preconstruction review requirements in the General Provisions are adopted, they should be consistent with procedures in the section 112(g) rule.

The EPA disagrees with these comments. The requirements for preconstruction review included in the General Provisions are intended to implement the preconstruction review requirements of section 112(i)(1) of the Act, which the EPA views as inherently different from the preconstruction review requirements of section 112(g). Section 112(i)(1) requires review by the EPA (or a State with delegated authority) prior to the construction or reconstruction of a major source of HAP in cases where there is an applicable emission limitation that has been promulgated by the EPA under sections 112 (d), (f), or (h); that is, a national emission standard has been promulgated. The requirements of a national emission standard undergo public review and comment during development of the rule.

In contrast, requirements in section 112(g) for review prior to construction, reconstruction, or modification of a major source address situations where a national emission standard has not been promulgated and MACT must be determined on a case-by-case basis. In this situation, there has been no prior opportunity for public review of and comment on applicable requirements.

This basic difference makes it appropriate to have separate provisions implementing the preconstruction review requirements of sections 112(i)(1) and 112(g) of the Act. In addition, section 112(g) does not apply before the effective date of the title V permit program in each State, whereas section 112(d) or 112(h) standards may go into effect before the permit program and thus need independent regulatory provisions governing preconstruction review.

One commenter said that the EPA should state that after the effective date of a MACT standard established by the EPA, compliance with that standard by a source would also constitute compliance with section 112(g).

The EPA generally agrees that compliance with an applicable MACT standard promulgated by the EPA under section 112(d) or section 112(h) also would constitute compliance with section 112(g). Although section 112(g) requires an administrative determination that MACT will be met whenever a major source is constructed, reconstructed, or modified, a case-by-case MACT determination is required under section 112(g) only when no applicable emission limitations have been established by the EPA. The forthcoming rulemaking for section 112(g) will clarify the streamlined nature of the section 112(g) administrative requirements for major sources subject to already promulgated standards.

Several commenters were confused by the last sentence in proposed § 63.5(b)(6) that "this paragraph is not intended to implement the modification provisions of section 112(g) of the Act." One commenter asked what this paragraph was intended to implement if not section 112(g).

Section 63.5(b) is intended to clarify the general compliance requirements imposed by section 112 for sources subject to a relevant emission standard that has been promulgated in part 63 (which may be major or area sources). The emission units or emission points that are subject to a NESHAP in a part 63 subpart applicable to a specific source category are defined in each subpart and are designated as the affected source. The intent of § 63.5(b)(6) is simply to emphasize that changes to an affected source (e.g., process changes or equipment additions) that are within the definition of affected source in the applicable subpart are considered to be part of that affected source and, therefore, they also are subject to the standard. In the final rule, additional language was added to § 63.5(b)(6) to further clarify that if the change consists of the addition of a new affected source, the new affected source would be subject to requirements established in the standard for new sources.

Section 112(g) requirements are much broader and different in that they address changes to a major source, regardless of whether a relevant emission limitation has been promulgated by the EPA. These broader requirements are being addressed in the separate rulemaking to implement section 112(g).

Upon review of the wording of the proposed General Provisions, the EPA has concluded that the statement in proposed § 63.5(b)(6) indicating that this paragraph is not intended to implement section 112(g) creates confusion rather than clarifying the Agency's intent. Therefore, it has been removed in the final rule.

The relationship between the General Provisions and section 112(i)(5) of the Act also has been clarified in the final rule. Section 112(i)(5) of the Act outlines provisions for extensions of compliance for sources that achieve early reductions in HAP emissions. Under these provisions, an existing source may comply with an emission limitation promulgated pursuant to section 112(d) 6 years after the compliance date, provided that the source achieves a 90 percent (95 percent, in the case of particulates) reduction in emissions before the otherwise applicable standard is first proposed. Regulations implementing section 112(i)(5) are contained in subpart D of part 63.

Section 63.1(c)(4) of the General Provisions addresses the applicability of the General Provisions to such sources, and it has been revised in the final rule. The revision to this section reflects the fact that the General Provisions are applicable to other requirements established pursuant to section 112 of the Act, except when overridden. The proposed language required that an owner or operator comply with the

requirements of subpart A that are specifically addressed in the extension of compliance. In the final rule, § 63.1(c)(4) has been revised to state that an owner or operator who has received an extension of compliance under the early reduction program in subpart D shall comply with all requirements in the General Provisions except those requirements that are specifically overridden in the extension of compliance. This revision to the rule clarifies the Agency's intended relationship between these two subparts of part 63.

3. State Options Under Section 112(l) of the Act

Several comments were received that States should be allowed flexibility in implementing the requirements of the General Provisions. General flexibility was requested as well as flexibility in implementing specific aspects such as frequency of source reporting and action timelines that may be impractical for some States. One commenter stated that incorporation of the General Provisions into an existing State or local program will interfere with the existing program. Another commenter stated that existing State procedures and timelines for preconstruction review should supersede the General Provisions.

The EPA believes that the opportunity for States to have flexibility in implementing the General Provisions is provided through the rulemaking that implements section 112(l) of the Act (see subpart E of part 63). Under subpart E of part 63, each State may develop and submit to the EPA for approval a program for the implementation and enforcement of emission standards and other requirements promulgated under section 112. The EPA may approve alternative requirements or programs submitted by States as long as the State's alternatives are at least as stringent as the Federal programs they replace. Thus, States have the opportunity to propose to the EPA, through the subpart E process, alternative requirements to the General Provisions. Alternative requirements that could be proposed by a State include those items (e.g., timelines and provisions for preconstruction review) cited by commenters on the proposed General Provisions.

An alternative requirement to a General Provisions requirement that is proposed by a State will be reviewed by the EPA to determine if it would accomplish the same objective(s) as the comparable General Provisions requirement and not compromise implementation and enforcement of part 63 emission standards.

Subpart E of part 63 was promulgated in the **Federal Register** on November 26, 1993 (58 FR 62262). This final rulemaking describes in detail the process for a State to receive approval for alternative requirements to those promulgated at the Federal level. Additional guidance on this process is available, and information on how to obtain it is discussed in section V of the subpart E proposal preamble (58 FR 29296, May 19, 1993).

Section 112(d)(7) of the Act and paragraph 63.1(a)(3) of the applicability section of the General Provisions clearly indicate that an emission limit or other applicable requirement more stringent than the General Provisions may be issued under State authority. The EPA believes that this, along with the opportunity provided through subpart E for a State to propose alternative requirements, provides the flexibility that the commenters are seeking without further revision to the General Provisions. The EPA plans to supplement the guidance developed thus far for implementing section 112(l) with additional material to address approval criteria for alternative procedures that may be proposed by a State in place of the General Provisions.

The EPA disagrees with the commenter who stated that existing procedures and timelines for preconstruction review in a State should automatically supersede the General Provisions. States seeking to implement and enforce any provisions of their own programs in lieu of regulations established by the EPA under section 112 must receive approval under section 112(l).

4. Permitting of Section 112 Sources Under Title V

Title V of the Act instructs the EPA to establish the minimum elements of a national air pollution control operating permit program to be implemented by State or local agencies if they qualify. Owners or operators are required to obtain a permit when a State's operating permit program becomes effective. Furthermore, when sources become subject to part 63 regulations, these regulations must be incorporated into the permits for these sources. Permit requirements will be drawn directly from the requirements in Federal regulations such as NESHAP. Thus, the General Provisions in this part will form the basis for specific permit conditions, as they form the basis for specific requirements under subsequent part 63 rulemakings. The part 70 regulations implementing the title V permit program, promulgated at 57 FR 32250 (July 21, 1992), identify when a source of HAP is required to obtain a permit. The promulgated General Provisions contain language that informs owners or operators of some of the situations in which a source of HAP would be required to apply for a permit.

Section 70.3(a) allows States to defer temporarily the requirement to obtain a permit for any sources that are not major sources but would otherwise be subject to title V. If the EPA approves a State program with such a deferral provision, the EPA will complete a future rulemaking to consider the appropriateness of any permanent exemption for categories of nonmajor sources. Nonmajor sources subject to a section 112 standard are addressed in § 70.3(b), which states that the EPA has authority to allow States to exempt or defer these nonmajor sources from permitting requirements, and that the EPA will exercise this authority, if at all, at the time of promulgation of a section 112 standard. Consistent with this provision, the EPA will determine in each future rulemaking under part 63 that establishes an emission standard that affects area sources whether to: (1) Give States the option to exclude area sources affected by that standard from the requirement to obtain a title V permit (i.e., by exempting the category of area sources altogether from the permitting requirement); (2) give States the option to defer permitting of area sources in that category until the EPA takes a rulemaking action to determine applicability of the permitting requirements; or (3) confirm that area sources affected by that emission standard are immediately subject to the requirement to apply for and obtain a title V permit in all States.

Although the EPA will decide whether and when to permit regulated area sources in each applicable part 63 rulemaking, the Agency believes, in general, that it is appropriate for all sources regulated under part 63 to undergo the title V permitting process, as this will enhance effective implementation and enforcement of the requirements of section 112 of the Act. Unless a determination by the EPA is made by rule that compliance with permitting requirements by regulated area sources would be "impractical, infeasible, or unnecessarily burdensome" and thus an exemption is appropriate or the EPA allows States to exercise their option to defer permitting of area sources, all affected sources under part 63, including area sources, will be required to obtain a permit. Thus, affected area sources will be immediately subject to part 70 when they become subject to a part 63 emission standard. (When area sources

become subject to part 70 they will have up to 12 months to apply for a permit.) Section 63.1(c)(2) of the final General Provisions has been revised to clarify that emission standards established in part 63 will specify what the permitting requirements will be for area sources affected by those standards, and that if a standard remains silent on these matters, then nonmajor sources that are subject to the standard are also subject to the requirement to obtain a title V permit without deferral.

D. Monitoring and Performance Testing Requirements

1. Monitoring

a. *Relationship to part 64.* Some commenters said that the part 63 monitoring requirements are duplicative of the part 64 enhanced monitoring program. Alternatively, other commenters claimed that all of the monitoring requirements should be included in each part 63 subpart.

The proposed part 64 enhanced monitoring program (58 FR 54648, October 22, 1993) applies only to existing regulations and does not apply to new regulations being developed under part 63. Furthermore, the proposed part 64 provisions only apply to major sources, while the General Provisions can apply to area sources as well. The EPA will incorporate the concept of enhanced monitoring directly into all new rules under part 63. This approach is consistent with the statement in the preamble to the part 70 operating permits program (July 21, 1992, 57 FR 32250) that all future rulemakings will have no gaps in their monitoring provisions. The General Provisions include generic requirements that apply to all affected sources, while individual subparts under part 63 will include additional monitoring provisions specific to each source category.

b. *Definition of "continuous monitoring system."* Commenters said that the definitions for CMS and continuous emission monitoring systems (CEMS) are very broad and appear to include total equipment. For example, sample systems may be used to serve several analyzers, all of which are considered one CMS. If one analyzer fails, the proposed rule appears to assume that the entire CMS has failed, and data from properly functioning analyzers may not be used because one analyzer has failed to function properly.

Some commenters said that § 63.8(c)(6) should be revised to clearly distinguish between CEMS, continuous opacity monitoring systems (COMS), and continuous parameter monitors. In particular, the measurement devices used to monitor parameters such as temperature, flow, and pressure are very stable and do not require frequent or ongoing calibration error determinations. One commenter said that language should be added that states: "Continuous parameter monitoring systems (CPMS's) must be calibrated prior to installation and checked daily for indication that the system is responding. If the CPMS includes an internal system check, results must be recorded and checked daily for proper operation."

One commenter said that the EPA should review § 63.8 to amend references to "continuous monitoring systems" whenever a requirement should not apply to continuous parameter monitoring systems.

Another commenter said that the EPA should differentiate between CMS and continuous parameter monitoring systems when setting calibration drift provisions in § 63.8(c)(1).

After review of these comments, the Administrator determined that the definition of "continuous monitoring system" should be clarified. The definition of CMS has been clarified to include any system used to demonstrate compliance with the applicable regulation on a continuous basis in accordance with the specifications for that regulation. The definition has been changed as follows:

> Continuous monitoring system (CMS) is a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

This definition is intended to apply to the CMS required by the regulation for a regulated pollutant or process parameter. If any portion of such a CMS fails (e.g., flow analyzer), the CMS data cannot be used for compliance determination and the entire CMS is out of control. The repair of the faulty portion of the CMS and a subsequent successful performance check of that portion would bring the entire CMS back into operation.

If, for example, the regulation requires a CEMS for each of two pollutants (e.g., SO_2 and NO_x) and the two CEMS share diluent analyzers, failure of one of the pollutant analyzers (e.g., the SO_2 analyzer) would not necessarily put the NO_x CEMS into an out-of-control situation. The distinction is that these are two CEMS, not one. On the other hand, if the diluent analyzer serving both CEMS fails, both CEMS are out of control.

The definition of CMS was revised to include continuous parameter monitoring system with the intent that basic performance requirements that appear in the General Provisions would apply to all CMS including continuous parameter monitoring systems. Responses to other comments and subsequent revisions to the regulation further clarify that performance specifications relevant to certain types of CMS would be proposed and promulgated with accompanying new regulations, and would indicate precisely what performance requirements apply and the frequency of checks, and other requirements, beyond those in the General Provisions.

The general CMS performance requirements outlined in the General Provisions apply to any type of CMS, including continuous parameter monitoring systems. The General Provisions sections that define daily and other periodic performance checks and requirements for CMS consistently refer to applicable performance specifications and individual regulations for procedures and other specific requirements. Individual regulations may include more or less restrictive performance requirements, as appropriate.

c. *Relevance of part 60 performance specifications.* According to some commenters, §§ 63.8(c)(2), (c)(3), and (e)(4) of the proposed General Provisions require continuous monitoring systems to meet existing part 60 performance specifications, which were written for criteria pollutant measurement and contain many items that are not applicable to HAP. New methods, specific to HAP, should be proposed for public comment.

The EPA agrees with the commenters. Therefore, all references to part 60 CEMS performance specifications have been deleted. Specific methods to evaluate CEMS performance will be included within the individual subparts of part 63. It should be noted that, if appropriate, these subparts may refer to Appendix B of part 60. However, in all instances, the required performance specifications for an individual subpart will be subject to public comment upon proposal.

d. *Repair period for continuous monitoring systems.* According to some commenters, the proposed 7-day period for the repair of CMS in § 63.8(c)(1) is too restrictive, for example, in cases where a major component has failed and replacement parts may not be available within 7 days. In addition, when a critical component fails and is replaced,

the entire monitoring system may have to undergo another performance specification test and/or extensive recalibration. These requirements may take up to 14 days to perform. The EPA should clarify that there is no violation in situations where the repairs or adjustments require more than 7 days, so long as the owner or operator responds with reasonable promptness. The adoption of the part 64 approach, which requires the submittal of a corrective action plan and schedule in the event of a monitor failure, would be more reasonable than specifying a specific time period and would increase the consistency between the two rules. Alternatively, a longer time period for repair of systems should be allowed either in the General Provisions or in each individual standard. One commenter said that § 63.8(c) should be revised to allow up to 10 days of downtime per quarter. Finally, the EPA could establish a minimum level of acceptable data collection frequency (e.g., 75 to 95 percent monthly), which would provide up-front time flexibility for repairs and adjustments without compromising environmental benefit.

One commenter said that the EPA must provide downtime for routine maintenance because proper maintenance of the equipment will extend the life of the equipment as well as ensure the quality of data collected by the CMS. Section 63.8(c)(4) should be revised to add the exclusion of maintenance periods from the operation requirements. Another commenter said that the owner or operator should not be required to conduct sampling or daily zero and high-level checks if the manufacturing process is not in operation, and that process shutdowns should be included in the list of "exempted" periods under § 63.8(c)(4). Finally, one commenter said that § 63.8(c)(4) should be revised to include performance evaluations and other quality assurance/quality control activities as exceptions to the downtime reporting requirements.

After consideration of these comments, the EPA has revised § 63.8(c)(1) to require "immediate" repair or replacement of CMS parts that are considered "routine" or otherwise predictable. The startup, shutdown, and malfunction plan required by § 63.6(e)(3) will identify those CMS malfunctions that fall into the "routine" category, and the owner or operator is required to keep the necessary parts for repair of the affected equipment readily available. If the plan is followed and the CMS repaired immediately, this action can be reported in the semiannual startup, shutdown, and malfunction report required under § 63.10(d)(5)(i).

For those events that affect the CMS and are considered atypical (i.e., not addressed by the startup, shutdown, and malfunction plan), the owner or operator must report actions that are not consistent with the startup, shutdown, and malfunction plan within 24 hours after commencing actions inconsistent with the plan. The owner or operator must send a follow-up report within 2 weeks after commencing inconsistent actions that either certifies that corrections have been made or includes a corrective action plan and schedule. This approach is similar to the approach in 40 CFR part 64 regarding monitor failures. The owner or operator should be able to provide proof that repair parts have been ordered or any other records that would indicate that the delay in making repairs is beyond his or her control. Otherwise, it would cause enforcement difficulties to decide when a delay is caused in spite of best efforts and when the delay is caused by less than best efforts. Therefore, all delays beyond the 2-week period may be considered violations. As discussed in section 2.4.8 of the promulgation BID, if the delay is caused by a malfunction and the source follows its malfunction plan, that is not considered a violation.

The Agency agrees with the commenter that routine maintenance of all CMS is necessary and has revised § 63.8(c)(4) to include maintenance periods in the list of periods when CMS are excepted from the monitoring requirements.

2. Performance Testing

a. *Relationship to other testing requirements.* Several commenters had concerns regarding the relationship between the requirements in § 63.7, Performance testing requirements, and the testing requirements that will be contained in other subparts of part 63. One commenter noted a discrepancy between proposed § 63.7(e), which requires performance testing under representative conditions, and § 63.103(b)(3) of the proposed Hazardous Organic NESHAP (HON) (December 31, 1992, 57 FR 62690), which requires performance testing at "maximum" representative operating conditions, and the commenter asked that the EPA either make the performance test requirements consistent for all part 63 subparts or allow sources to defer to the HON requirement. Another commenter indicated that performance tests may not always be meaningful, particularly in situations where the applicable subpart requires the elimination of the use of HAP in the process.

Other commenters stated that methods for performance testing should be defined in each individual NESHAP under part 63 and that methods under analysis by the EPA should be subject to comment by the regulated community. Others objected to reference to methods contained in the appendices of part 60 because they are for measuring criteria pollutants and not HAP.

The testing requirements contained in § 63.7 are general and represent an infrastructure for performance testing as required by the individual standards developed under part 63. The general testing requirements contained in § 63.7 specify when the initial performance test must be conducted, under what operating conditions the test must be conducted, the content of the site-specific test plan, how long the Agency has to review the test plan (if review is required—see next comment), how many runs are needed, procedures for applying for the use of an alternative test method, procedures to request a waiver of the performance test, and other general requirements. Each subpart will include specific testing requirements, such as the test method that must be used to determine compliance, the required duration and frequency of testing, and any other testing requirements unique to that standard.

As described in § 63.7(a)(4), subparts may contain testing provisions that supersede portions of § 63.7. The example in the proposed HON (subpart F) cited by the commenter is a prime illustration of this situation. Section 63.103(b)(3) of the proposed subpart F states that "Performance tests shall be conducted according to the provisions of § 63.7(e), except that performance tests shall be conducted at maximum representative operating conditions for the process * * *." (December 31, 1992, 57 FR 62690). This section clearly states that all of the requirements of § 63.7(e) apply, except that the test must be conducted at maximum operating conditions, instead of at representative conditions, as required by § 63.7(e). It is also possible that the EPA could waive all performance testing requirements for a particular standard if it is determined that performance tests could not be used for determining compliance with the standard, and other procedures, in lieu of performance testing, would be specified for the determination of compliance.

For each subpart, the EPA will evaluate the possibility of using existing test methods that are contained in parts

51, 60, and 61. However, if a previously promulgated method is not appropriate, the EPA will propose a new test method. Any requirement to test for HAP in part 63, other than the requirements in § 63.7, and any new test method(s), will be subject to public comment at the time the standard and method are proposed.

b. *Definition of "representative performance."* Several commenters had concerns regarding the lack of a definition of "representative performance" required for performance test conditions. One commenter said that § 63.7(e) should be revised to reflect maximum design operating conditions that the source or control device will normally experience. Several commenters stated that the source should be allowed to determine representative operating conditions for a performance test. One commenter thought that the source should determine representative operating conditions, subject to EPA approval. Another commenter stated that § 63.7(e)(1) is acceptable as proposed.

The term "representative performance" used in § 63.7(e) means performance of the source that represents "normal operating conditions." At some facilities, normal operating conditions may represent maximum design operating conditions. In any event, representative performance or conditions under which the source will normally operate are established during the initial performance test and will serve as the basis for comparison of representative performance during future performance tests. To clarify this intent, a phrase has been added in § 63.7(e) to indicate that representative performance is that based on normal operating conditions for the source.

c. *Two performance tests.* Commenters said that, for sources constructed with the proposed rule in mind, the EPA should not require two performance tests under § 63.7(a)(2)(ix) if one will suffice. As proposed, § 63.7(a)(2)(ix) requires that, if the owner or operator commences construction or reconstruction after proposal and before promulgation of a part 63 standard and if the promulgated standard is more stringent than the proposed standard, the owner or operator must conduct a performance test to demonstrate compliance with the proposed standard within 120 days of the promulgation (i.e., effective) date and a second performance test within 3 years and 120 days from the effective date of the standard to demonstrate compliance with the promulgated standard. The commenter said that if the source can comply with the more stringent promulgated standard within 120 days of the effective date, it should only be required to perform one test.

The EPA does not believe that an additional performance test is an unreasonable burden, given that the source is allowed an additional 3 years to come into compliance with the promulgated part 63 standard. However, the EPA agrees with the commenter that if the source chooses to comply with the promulgated standard within 180 days (changed from 120 days per the discussion in section IV.G.2.b of this preamble) of the effective date, then a second performance test should not be required. While this was always the intent of this section, the EPA also agrees that this section of the proposed rule could have been interpreted to require two source tests in all situations. Therefore, § 63.7(a)(2)(ix) has been revised to allow owners or operators of new or reconstructed sources the option to comply with the promulgated standards within 180 days after the standard's effective date.

d. *Review of site-specific test plans.* The provisions pertaining to site-specific test plans contained in § 63.7(c)(2) received a great deal of attention from commenters. Several commenters indicated that the level of detail required in the site-specific test plan would create an unreasonable burden. One commenter estimated that it could take up to 2 years to prepare a test plan with the level of detail required in § 63.7(c)(2). Many suggested that site-specific test plans should be required only when there is a deviation from the reference methods.

A number of commenters believe the proposed requirements that every site-specific test plan be submitted to the Agency, and then approved by the Agency within 15 days, would be extremely burdensome for both the owners and operators and regulatory agencies.

As a result of these comments, significant changes have been made to § 63.7(c). Owners or operators still must prepare site-specific test plans, and the required elements of such plans are the same as those proposed. The EPA believes the requirements of the test plan are basic and necessary to ensure that the test will be conducted properly. However, the requirement that all site-specific test plans be submitted to, and approved by, the Administrator has been deleted. The rationale for these decisions is discussed in the following paragraphs.

The Agency believes that test plans should be prepared for all performance tests. The test plan assures that all involved parties understand the objectives and details of the test program. A well-planned test program is vital to ensure that the source is in compliance with the standard. The EPA does not believe that the preparation of site-specific test plans is overly burdensome to facilities. In fact, experienced testing professionals routinely prepare site-specific test plans (including quality assurance programs) that would meet the performance test requirements of § 63.7(c)(2).

In addition, the EPA has created a guideline document, "Preparation and Review of Site-Specific Test Plans" (December 1991) to assist owners, operators, and testing professionals in the preparation of complete site-specific test plans. This guidance can be downloaded from the EPA Office of Air Quality Planning and Standards bulletin board, the Technology Transfer Network (TTN).

Upon review of the comments, particularly those from State and local agencies, the EPA decided that it was appropriate to make significant changes in the provisions requiring submittal and approval of site-specific test plans. As noted above, each affected source owner or operator must prepare a site-specific test plan. However, owners or operators are only required to submit this plan to the Agency for review and approval upon request from the Administrator (or delegated State). In addition, the provisions relating to the approval of site-specific test plans have been modified to allow greater flexibility; that is, the timelines have been modified to allow more time for interim activities performed by both the Administrator and the owner or operator.

In order to be consistent with the changes made regarding performance test plans, the EPA has also revised § 63.8(d)(2) of the General Provisions, and the submittal of a site-specific performance evaluation test plan for the evaluation of CMS performance is also optional at the Administrator's request.

E. Construction and Reconstruction

1. Definition of Reconstruction

In response to comments, the EPA has revised the definition of reconstruction to make it clearer and easier to understand. The revised definition clarifies that reconstruction may refer to an affected or a previously unaffected source that becomes an affected source upon reconstruction. This definition also clarifies that the source must be able to meet the relevant standards established by the Administrator or by a State. Major affected sources, or

previously unaffected major sources that reconstruct to become major affected sources, must undergo preconstruction review in accordance with procedures described in §§ 63.5 (b)(3) and (d). Affected sources that are nonmajor or previously unaffected nonmajor sources that reconstruct must submit a notification in accordance with § 63.5(b)(4), but they are not required to undergo preconstruction review.

2. Construction/Reconstruction Plan Review

Comments also were received on the need for procedures governing the review of construction and reconstruction plans under proposed § 63.5(c). State and local agencies commented that they do not have the resources to conduct optional plan reviews at the source's request, nor did they feel that this is an appropriate requirement for the General Provisions.

Upon review of these comments, the Agency has decided to delete § 63.5(c) from the final rule. While the Agency encourages communication between delegated authorities and owners or operators of new or reconstructed sources that may be affected by a part 63 standard during the preparation of construction/reconstruction applications, the Agency has decided to reduce the burden on State and local agencies by not mandating the informal review of plans in the General Provisions.

One State agency indicated that the General Provisions should allow existing State construction permit programs to be used as the administrative mechanism for performing preconstruction reviews for sources subject to part 63 standards. As discussed in greater detail in section IV.C.3 of this preamble, States can use existing construction permit programs to implement the provisions in § 63.5 if the programs are approved under the section 112(l) approval process developed in subpart E of part 63.

3. Determination of Reconstruction

Several commenters had concerns about the manner in which reconstruction determinations would be made. One commenter indicated that replacements "in-kind" and retrofitting should be exempt from a reconstruction determination. Other commenters felt that the cost of control devices to comply with existing source MACT, reasonably available control technology, or any other emissions standard should not be included.

The reconstruction determination formula is based upon factors outlined in the rule, including a fixed capital cost comparison between a replacement project and a comparable new source. This cost comparison may include the cost of control equipment, consistent with the EPA's existing policy as stated in the December 16, 1975 **Federal Register** notice (see 40 FR 58416) that deals with modification, notification, and reconstruction requirements under 40 CFR part 60. The preamble to that regulation states that:

> The term "fixed capital cost" is defined as the capital needed to provide all the depreciable components and is intended to include such things as the costs of engineering, purchase, and installation of major process equipment, contractors' fees, instrumentation, auxiliary facilities, buildings, and structures. Costs associated with the purchase and installation of air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, etc.) are not considered in estimating the fixed capital cost of a comparable entirely new facility unless that control equipment is required as part of the process (e.g., product recovery).

Retrofitting and replacements are the type of activities to which the reconstruction provisions are intended to apply. In those instances where changes are instigated specifically to comply with a relevant part 63 standard, and the changes are integral to the process, it is not the EPA's intent to penalize existing sources by subjecting them to new source MACT requirements.

4. Application for Approval of Construction or Reconstruction

Several commenters objected to the requirement that new major affected sources submit an application for approval of construction or reconstruction 180 days before construction or reconstruction is planned to commence.

Although the EPA does not agree with the commenters' contention that the 180-day time period is overly burdensome, § 63.5(d)(1)(i) of the final rule has been revised to allow owners and operators of new major affected sources greater discretion in the timing of submitting applications. The final rule requires owners or operators to submit the application "as soon as practicable" before the construction or reconstruction is planned to commence. The burden is on the owner or operator to ensure that the application is submitted in a timely fashion, so that adequate review may take place under the procedures specified in § 63.5(e) and commencement of construction or reconstruction will not be delayed. The EPA believes it is in owners' and operators' best interests to submit preconstruction review applications as early as is feasible. The requirements in § 63.9(b)(4)(i) and § 63.9(b)(5) for a notification of intention to construct or reconstruct a new major affected source or a new affected source have also been revised to reflect this change in the final rule.

F. Operation and Maintenance Requirements: Startup, Shutdown, and Malfunction Plans

1. Content of Plans

Several commenters complained that the § 63.6(e)(3)(i) requirement that the startup, shutdown, and malfunction plan contain detailed "step-by-step" procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction" was overly burdensome and did not allow the facility to devise maintenance actions that would ensure compliance with the relevant emission limitation. In addition, commenters said that the overall level of detail required in the startup, shutdown, and malfunction plan was excessive.

Commenters said that the plan should focus only on equipment that is actually used to achieve and maintain compliance with a relevant standard such as pollution abatement equipment, process equipment used as the last piece of recovery equipment if not followed by emission control equipment, emission or parameter monitoring equipment, and recordkeeping equipment. Also, § 63.6(e)(3)(i) should be revised to clarify that the plan requirements apply to: "malfunctioning process and air pollution equipment used to comply with the relevant standard." Another commenter said that process equipment should not be included in the plan because companies already have adequate incentives to maintain their process equipment.

Another comment concerned the timeframe under which the plan must be developed and implemented. The commenter noted that § 63.6(e)(3)(i) implies that the source might have to develop the plan before the compliance date for the relevant standard or startup.

The EPA intends the startup, shutdown, and malfunction plans to be thorough. On the other hand, the EPA expects these plans to be based on reasonable evaluations by the owner or operator, and the plans are intended to provide flexibility to the owner or operator to act appropriately at all times to reduce emissions during these events. The requirement for "step-by-step" procedures has been deleted because it conveys a level of detail that is not always needed. In addition, the suggestion to limit the requirements to

that equipment that can have an effect on compliance with the relevant standard has been adopted as well. Process equipment may be included, however, because process equipment can affect emissions.

In general, the level of detail is left to the discretion of the owner or operator who must decide how much detail plant personnel need in order to ensure proper operation and maintenance of equipment during startup, shutdown, and malfunction events. Excess emissions occur during these events when air pollution is emitted in quantities greater than anticipated by the applicable standard. Excess emissions are often determined by compliance monitoring required by the applicable standard. If excess emissions are not reasonably anticipated during these events, the plans could be very simple. Alternatively, if excess emissions are expected to occur during startup, shutdown, or malfunction events, the plan needs to be correspondingly detailed to ensure that appropriate actions are taken to control the emissions.

Excess emissions are typically direct indications of noncompliance with the emission standard and, therefore, are directly enforceable. Without demonstrating that a startup, shutdown, or malfunction event caused the excess emissions, the owner or operator cannot certify compliance. In such instances where the excess emissions occurred during a startup, shutdown, or malfunction, the owner or operator must also have followed the plan to certify compliance. If the owner or operator prepares a deficient plan, the EPA can request that the plan be upgraded and may consider enforcement actions.

Section 63.6(e)(3)(i) has been revised to clarify that the plan must be developed before and implemented by the compliance date for the source.

2. Option to Use Standard Operating Procedures

Commenters supported the use of standard operating procedures (SOP) as a surrogate for the development of a separate startup, shutdown, and malfunction plan. However, they pointed out two concerns with the use of SOP. The first potential problem is that SOP generally are very complex (at least at chemical plants), and they are developed to allow the operator to respond to a wide variety of process conditions. Commenters were concerned that an excessive amount of time could be spent in educating permitting agencies regarding the contents of the SOP. A second concern is that SOP may contain confidential business information. Commenters said that the rules should provide that such information will be kept confidential by the Agency.

One commenter noted that facilities covered by Occupational Health and Safety Administration (OSHA) operating requirements should be allowed to use the OSHA plan to meet the intent of § 63.6(e), Operation and maintenance requirements, and file a notification that they are covered by OSHA in place of submitting a startup, shutdown, and malfunction plan. Other plans such as hazardous waste emergency response plans should be accepted as alternatives, too.

A few commenters also asked whether it is necessary to maintain a separate plan if the startup, shutdown, and malfunction plan becomes part of the operating permit. If SOP are used, they could simply be referenced in the operating permit. Alternatively, commenters said that SOP used for startup, shutdown, and malfunction plans should not be required in permits and are not enforceable under part 70.

The intent of allowing the use of SOP is to provide the owner or operator an option of complying with these requirements that may result in reduced recordkeeping burden. If the owner or operator determines that use of SOP is too cumbersome, he or she should develop a specific startup, shutdown, and malfunction plan.

Because the need for startup, shutdown, and malfunction plans is determined by Federal requirements, each plan would be incorporated by reference into the source's part 70 operating permit. As such, the plans would be considered public information; however, confidential business information can be protected according to the procedures in part 70 and § 63.15 of the General Provisions. The EPA believes that, while an owner or operator should not include confidential information in the plan, if certain confidential information is necessary for the plan to be used properly, the owner or operator should discuss the situation with the enforcing agency.

Facilities would be allowed to use an OSHA or other plan (or any portion thereof) in lieu of a startup, shutdown, and malfunction plan only if it meets the requirements in § 63.6(e). The burden is on the source owner or operator to demonstrate that any plan not specifically developed to comply with the requirements in § 63.6(e) meets the intent and all applicable requirements in that section.

3. Reporting Requirements

Some commenters said that startup, shutdown, and malfunction reports should only be required (at least in the case of area sources) when excess/reportable emissions to the atmosphere occurred as a direct result. Commenters requested that the EPA should encourage sources to discover ways not to emit amounts of pollutants in excess of applicable standards, or not to exceed established parametric limits, during periods of startup, shutdown, and malfunctions by inserting the concept of "emissions in excess of an otherwise applicable standard or operation outside of established parametric requirements" into the definitions of startup, shutdown, and malfunction situations. If a source does not experience a period where some emission or parameter requirement is exceeded, no records or reports should be required, according to commenters. In addition, commenters stated that the requirement that a responsible corporate official certify a report of action taken under a startup, shutdown, and malfunction plan is well beyond statutory authority and should be withdrawn.

As discussed below, the EPA has changed the General Provisions to clarify that startup, shutdown, and malfunction reports need only address events that cause emissions in excess of an otherwise applicable standard or operation outside of an established parametric requirement. This change will encourage owners and operators to maintain emissions at all times to the levels required by the standard. When no excess emissions occur under this approach, no records or reports are required. On the other hand, if an owner or operator fails to record the necessary information when excess emissions do occur, they cannot certify compliance with the startup, shutdown, and malfunction plan.

Section 63.10(d)(5) has been revised to allow the reports to be signed by the owner or operator or other responsible official. In some cases, "corporate" officials may not be located at the plant site. Also, smaller companies may not be incorporated and may only have a few employees. For example, dry cleaning facilities are generally small businesses, in which case the owner must sign the report.

Commenters also said that the EPA should provide flexibility to owners and operators in correcting malfunctions rather than requiring that actions be "completely" consistent with the source's startup, shutdown, and malfunction plan. It is impossible for owners and operators to develop plans

that address every conceivable malfunction. Instead, the EPA should require that actions be "materially" consistent with the plan.

One purpose of the startup, shutdown, and malfunction reports is to provide an explanation of why the plan was not followed during a startup, shutdown, or malfunction. Presumably, an owner or operator cannot certify compliance with the standards for such events. In the event of a startup, shutdown, or malfunction, the Agency believes there is value in receiving these reports for actions that are not consistent with the plan. These reports establish an historical record for review by the enforcing agency. However, in order to respond to commenters' concerns, the regulation has been revised to remove the word "completely" from the phrase "completely consistent" in §§ 63.6(e)(3)(iii) and (iv) and § 63.10(b)(2)(v). This revision still satisfies the Agency's intent to receive reports for actions that are not consistent with the plan.

Commenters complained that immediate startup, shutdown, and malfunction reports required under § 63.10(d)(5)(ii) should not be required because they are redundant with respect to reporting requirements found in the Superfund Amendments and Reauthorization Act (section 304) and the Comprehensive Environmental Response, Compensation, and Liability Act (section 103), in the permit rules, and in the individual standards themselves.

The alternate notification systems referred to by the commenter generally are concerned with releases in quantities and under conditions that may not be consistent with the reporting and compliance needs of the authorities delegated the authority to enforce part 63 requirements. To the extent that other reporting mechanisms provide duplicate information, they can be used to satisfy the part 63 requirements. This information would then be compiled in the source's part 70 operating permit.

4. Reporting Timelines

Several commenters suggested changes to the required timelines in § 63.6(e)(3)(iv). In the case of reporting any actions taken that are not "completely consistent with the procedures in the affected source's startup, shutdown, and malfunction plan" within 24 hours, commenters suggested that this requirement should be changed to be "the next working day." Alternatively, the requirement could be changed to be consistent with the title V emergency provisions that require reporting within 2 working days.

Commenters suggested that because an event can last for several days, the requirement to submit a follow-up report should be revised to state that the report is due 7 days "after the end of the event." Other commenters said that only deviations that are significant (e.g., last more than 24 hours) and which fail to correct or which prolong the malfunction should be reportable in writing, and then only within 14 days of the occurrence. Other commenters said that quarterly reports should be sufficient or that no reports should be required if the events are recorded in the source's operating log.

Upon review and consideration of the comments, §§ 63.6(e)(3)(iv) and 63.10(d)(5)(ii) have been revised to require reporting of actions that are not consistent with the plan within 2 working days instead of within 24 hours. This allows the General Provisions and the operating permits program established under title V to be consistent. In addition, the regulation has been revised to require that follow-up reports for deviations are due "7 working days after the end of the event."

5. Compliance With Emission Limits

According to some commenters, the EPA should require that affected sources meet otherwise applicable emission limits during startups, shutdowns, and malfunctions. Commenters saw the assumption that emissions can and will occur as inconsistent with the Agency's approach in the part 61 NESHAP, which requires that sources comply with emission limitations at all times. Also, some commenters stated that the EPA has not shown that exceedance of standards is always necessary during these periods or that malfunctions are not avoidable. These commenters believed that difficulties in determining violations do not justify relaxing standards.

Other commenters said that sources should take steps to minimize emissions during startup, shutdown, and malfunction periods. For example, a time limitation on the length of a startup or shutdown could be established. Alternatively, the EPA should exempt facilities from the requirements associated with the startup, shutdown, and malfunction plans if they can comply with the standards during these events. A simple notification that the source intends to comply at all times rather than develop and implement the provisions of § 63.6(e) (i.e., a startup, shutdown, and malfunction plan) should be added to recognize this condition.

In contrast, other commenters wanted to strengthen the assumption that excess emissions during these events is not a violation unless specified in the relevant standard or a determination is made under § 63.6(e)(2) that acceptable operation and maintenance procedures are not being followed.

The EPA believes, as it did at proposal, that the requirement for a startup, shutdown, and malfunction plan is a reasonable bridge between the difficulty associated with determining compliance with an emission standard during these events and a blanket exemption from emission limits. The purpose of the plan is for the source to demonstrate how it will do its reasonable best to maintain compliance with the standards, even during startups, shutdowns, and malfunctions. In addition, individual standards may override these requirements in cases where it is possible to hold sources to stricter standards. In some cases it may be reasonable to require certain source categories to meet the emission standards at all times.

Another point to consider is the beneficial effect of enhanced monitoring. Once enhanced monitoring requirements are effective through the individual standards, owners and operators will be required to pay extremely close attention to the performance of their process and emission control systems. If the enhanced monitoring requirements are generated reflecting normal operational variations, the number of potential noncomplying emissions should be minimized and only truly significant malfunctions will need to be addressed in the plan. Enhanced monitoring should drive sources to continuous good performance that minimizes emissions and, thus, startup, shutdown, and malfunction plans can focus on the less common events. In this way, concerns regarding excess emissions during startups, shutdowns, or malfunctions should lessen.

The EPA agrees that sources that can demonstrate that compliance with the emission standards is not in question during periods of startup, shutdown, and malfunctions should not be required to develop and implement full-blown startup, shutdown, and malfunction plans. Instead, these sources should demonstrate in their startup, shutdown, and malfunction plan why standards cannot be exceeded during periods of startup, shutdown, and malfunction.

In a related matter, the EPA has also clarified § 63.6(e)(1)(i) to state that sources must minimize emissions "at least to the levels required by all

relevant standards" to respond to a commenter's concern that the original language to "minimize emissions" could exceed the requirements of the Act.

G. Recordkeeping and Reporting Requirements

1. Notification Requirements

a. *Applicability.* A significant number of commenters supported the proposed requirement that only affected major and area sources within a category of sources for which a part 63 standard is promulgated be required to submit an initial notification. On the other hand, four commenters believe that all sources, affected and unaffected, should be required to submit an initial notification to identify sources that may be subject to a part 63 standard or other requirement. One of these commenters stated that sources claiming that they are below the major source threshold should notify both the EPA and the State and should submit documentation of their claim (e.g., a copy of the permit showing control requirements). One commenter suggested that delegated agencies should be responsible for identifying affected sources, rather than requiring initial notifications.

In addition, many commenters complained that the initial notification requirement for affected sources was too detailed and suggested a few ways to simplify the initial notification: (1) Include only notification of name and address of owner or operator, address of affected source, and compliance date; or (2) require only a letter of notification identifying subject sources.

The EPA requested comments on the proposed requirement for initial notification by only affected sources within a category of sources, specifically on whether the proposed requirements offer sufficient opportunity for the EPA or delegated agencies to identify sources that may be subject to a part 63 standard, or other requirement, and to review and confirm a source's determination of its applicability status with regard to that standard or requirement. The EPA has evaluated the comments received and has decided that the final General Provisions will require initial notification by only affected sources within a category of sources, the same as proposed. This would reduce the burden on area sources, many of which are small businesses. The implementation of the parts 70 and 71 permit programs will be the process to bring overlooked or noncomplying sources into the regulatory program. In addition, the MACT technical support documents defining the source categories and well-designed toxics emission inventories also will help agencies to identify affected sources. The EPA believes that these mechanisms are sufficient for the EPA or delegated agencies to identify additional sources that may be subject to a part 63 standard or other requirement.

Although only affected sources will be required to submit an initial notification, the EPA has added a requirement for the owner or operator of an unregulated source to keep a record of the applicability determination made for his or her source. Section 63.10(b)(3) requires that an owner or operator who determines that his or her stationary source is not subject to a relevant standard or other provision of part 63 keep a record of this applicability determination. This record must include an analysis demonstrating why the source is unaffected. This information must be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with respect to the relevant part 63 standard or requirement.

In response to the comments requesting simplification of the initial notification requirements for affected sources, the final rule provides that some of the information that the proposed rule would have required in the initial notification be provided later in the notification of compliance status [§ 63.9(h)]. The initial notification will include only the following information: (1) The name and address of the owner or operator; (2) the address (i.e., physical location) of the affected source; (3) an identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date; (4) a brief description of the nature, size, design and method of operation of the source, including its operating design capacity and an identification of each point of emission for each HAP, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each HAP; and (5) a statement of whether the affected source is a major source or an area source.

In addition, § 63.9(h), Notification of compliance status, has been revised to include the information formerly required in the proposed initial notification under § 63.9(b)(2) (v) through (viii).

b. *Duplicate notification submittal.* Some commenters said that the § 63.9(a)(4)(ii) requirement that sources in a State with an approved permit program submit notifications to both the part 70 permitting authority and the relevant EPA Regional Office is unnecessary. A similar requirement is found in § 63.10(a)(4)(ii) regarding report submittal. According to these commenters, once a State has permitting authority, it should have the full authority to receive all notifications and reports.

The rule has been amended to allow EPA Regional Offices the option of waiving the requirement for the source to provide a duplicate copy of notifications and reports. The EPA has tried to limit the amount of duplicate reporting a source is required to do under part 63. However, in some cases it is necessary for both the permitting authority and the Regional Office to receive notifications and reports. Even when the EPA has delegated a program to a permitting authority, the Regional Offices must receive some baseline information to track implementation of the programs and provide guidance for national and regional consistency.

c. *Negotiated schedules.* Section 63.9(i)(2) of the proposed General Provisions, which requires delegated agencies to request in writing a source's permission to take additional time to review information, is inappropriate according to some commenters. Agencies should not have to request additional time to review information.

Upon review and consideration of this comment, the Administrator determined that this proposed provision is in conflict with the Administrator's authority to gather and consider information granted under section 114 of the Act. As a result, this aspect of the negotiated schedule provision has been deleted from the final rule. However, the Administrator also believes that reasonable accommodations regarding schedule negotiations can and should be made between administering agencies and affected sources so long as overall environmental goals are achieved. Language has been added to § 63.9(i)(4) to require agencies to notify sources of delays in schedules and to inform the sources of amended schedules to facilitate communication between the two parties.

2. Timeline Issues

As part of the Agency's evaluation process in developing the final rule, timing issues in general were considered, along with individual comments from industry, State and local agencies, trade associations, and other parties. A summary of the General Provisions as they relate to timelines of the individual requirements is presented in Appendix A of the promulgation BID for the General Provisions. (This summary is too lengthy to include in this preamble.)

The Agency considers these provisions to be significant because they represent the critical path timing constraints to be met by all affected sources.

a. *Compliance extension requests.* Because § 63.6(i)(12)(ii) as proposed only allows a source 15 days to respond to an EPA request for additional information on a compliance extension request, commenters said that the EPA should provide additional time to account for times when additional testing is needed or there are other circumstances that require additional time to prepare a response. Similarly, a 7-day deadline for a source to respond to a notice of an intent to deny a request for extension (§ 63.6(i)(12)(iii)(B)) or a notice that an application is incomplete (§ 63.6(i)(13)(iii)(B)) is insufficient, according to commenters. One commenter said that the time periods should be mutually agreed upon by the owner or operator and the permitting authority. Another commenter said that a simple mechanism for States to alter the timeframes of these and other notification, reporting, and recordkeeping provisions should be added.

Other commenters said that the deadlines for Agency review and responses should be increased.

The majority of the deadlines in §§ 63.6(i)(12) and (i)(13) have been increased to allow additional time for Agency review and for owners or operators to provide additional information. In particular, § 63.6(i)(13)(i) has been changed to allow the Administrator 30 days to notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance. Sections 63.6(i)(12)(i) and (i)(13)(i) have been changed to allow the Administrator 30 days and 15 days, respectively, to notify the owner or operator of the status of his/her application. Sections 63.6(i)(12)(ii) and (i)(13)(ii) have been changed to allow the owner or operator 30 days and 15 days, respectively, to provide additional information after receiving notice of an incomplete application. Sections 63.6(i)(12)(iii)(B) and (i)(13)(iii)(B) have been changed to allow the owner or operator 15 days to provide additional information after receiving notice of an intended denial. Finally, § 63.6(i)(13)(iv) has been revised to allow the Administrator 30 days to issue a final determination.

The increased time periods for review and response may result in some instances where a request for an extension could be denied, leaving the source with very little time to demonstrate compliance under the existing schedule. This may be an issue for sources subject to the section 112(f) residual risk standards, which are to be promulgated 8 years after the section 112(d) MACT standards. However, the EPA believes that the likelihood of this scenario occurring is relatively remote and would only occur under a worst-case situation of one or more requests for additional information and both parties using the full time period allotted for their individual actions. In addition, other changes made to performance test requirements (e.g., a decrease in the performance test notification period and the change to make submission of site-specific test plans for approval at the Agency's discretion) will decrease the lead time required for a source to demonstrate compliance, thus limiting the impacts of a "late" denial of an extension request.

Furthermore, as part of the section 112(l) approval process, State agencies may establish different timelines to allow better coordination with existing State programs, with some exceptions such as compliance dates. Also, as discussed in § 63.9(i), an owner or operator and the permitting agency may mutually agree to schedule changes.

Commenters also stated that the General Provisions should include provisions for a 5-year extension of compliance for installation of BACT or technology to attain LAER pursuant to section 112(i)(6) of the Act.

In response to these comments, the EPA has revised the regulation to incorporate these compliance extensions. Provisions implementing extensions of compliance for installation of BACT or technology to meet LAER are included in the final rule in § 63.6(i)(5).

b. *Performance test deadlines.* Many commenters said that sources should be allowed more than 120 days from startup or other triggering milestones to conduct a performance test. Most suggested 180 days as a more appropriate time period. Hazardous air pollutant performance testing is perceived to be more complicated than performance testing for criteria pollutants. An additional argument is that the part 60 general provisions (§ 60.8(a)) provide 180 days in which to conduct performance tests after startup and that the part 63 requirements should be consistent.

The Agency agrees that, in many cases, 180 days to conduct performance tests may be necessary, and there is also some merit in having the performance testing deadlines in parts 60 and 63 be consistent. Therefore, the EPA has modified § 63.7(a)(2) to set performance test deadlines within 180 days of the effective date of the relevant standards, the initial startup date, or the compliance date, as applicable.

c. *Notification of performance test.* Many commenters felt that the § 63.7(b) requirement that owners or operators submit a notification of a performance test 75 days before the test is scheduled to begin was an excessive period of time. Commenters also said that the observation of the test by the EPA should be optional.

Section 63.7(b) has been revised to reduce the notification period to 60 days. This time period should provide sufficient notice given that the requirement to submit these plans for review and approval is now at the Administrator's discretion (see section IV.D.2.c of this preamble). Observation of the test by the EPA is intended to be optional, and the section has been revised to clarify this point. A similar change was made to § 63.8(e)(2), notice of performance evaluation (for CMS) to allow a 60-day period rather than a 75-day period.

In the same general vein of allowing additional time to comply with the performance testing requirements, the times allowed for an owner or operator to respond to the Administrator's request to review a site-specific test plan under § 63.7(c) and for the Administrator to provide a decision have been changed to allow both parties more time to conduct these activities. The same changes were also made to similar requirements related to site-specific performance evaluation plans under §§ 63.8(d) and (e).

d. *Test results.* Commenters said that § 63.7(g) should be revised to allow more than 45 days for sources to submit the results of performance tests to the appropriate agencies.

Section 63.7(g) has been revised to allow sources 60 days to submit the required performance test results to the enforcing agency.

e. *Initial notification.* Several commenters said that affected sources should be given more than 45 days under § 63.9(b) to provide an initial notification. In many cases, 45 days will not be enough time to learn of the adoption of an emission standard, determine whether the standard is applicable to the source, and file the initial notification. Many commenters suggested 120 days as a more appropriate period. Some noted that the EPA already has proposed under the HON to require the initial notification up to 120 days after the effective date of that rule.

The Agency agrees that many sources will require more time than allowed at proposal to determine whether they are

affected by individual standards and to file the initial notification required by § 63.9(b). Therefore, the initial notification period in the final rule has been increased from 45 days to 120 days after the effective date of standards (or after a source becomes subject to a standard). For most sources, this change will enhance their ability to meet the initial notification requirements and will not affect their ability to meet other milestones, such as conducting any required performance testing and ensuring that the source is in compliance with the standard by the compliance date, which in many cases will be 3 years from the effective date. However, in cases where the existing source compliance date is considerably shorter than the 3-year maximum allowed period or the source in question is a new source that must comply within 180 days of the effective date (or startup), a shorter initial notification period may be set in the individual standards to accommodate those cases where an earlier notification would be desirable from both the source's and the permitting agency's perspective. As discussed in section IV.G.1.a of this preamble, the requirement to submit several pieces of information was removed from the initial notification and added to the compliance status report, which decreases the burden and time required to develop the initial notification. Therefore, the Agency believes that 120 days is adequate for submitting the initial notification.

3. Recordkeeping and Reporting

a. Records retention—length. Several comments were received on § 63.10(b)(1) related to the 5-year record retention period. Some commenters argued that: (1) The EPA has not established a need for a 5-year period, (2) there is no statutory requirement for 5 years of records retention, and consistency with the part 70 provisions is not an adequate basis, and (3) the 5-year records retention requirement is in conflict with EPA policy and the Paperwork Reduction Act. Some commenters suggested that a 2- or 3-year period would be preferable.

In contrast, some commenters supported the 5-year period because it is consistent with the part 70 provisions.

The EPA believes that the 5-year records retention requirement is reasonable and needed for consistency with the part 70 permit program and the 5-year statute of limitations, on which the permit program based its requirement. The retention of records for 5 years would allow the EPA to establish a source's history and patterns of compliance for purposes of determining the appropriate level of enforcement action. The EPA believes, based on prior enforcement history, that the most flagrant violators frequently have violations extending beyond the 5-year statute of limitations. Therefore, the EPA should not be artificially foreclosed, by allowing the destruction of potential evidence of violations, from pursuing the worst violators to the fullest extent of the law because of nonexistent records.

b. *Quarterly reports.* Some commenters opposed the requirement that excess emissions and continuous monitoring systems reports must be submitted quarterly when the CMS data are to be used directly for compliance determination (§ 63.10(e)(3)(i)(B)). Commenters especially objected to this provision when "negative" reports (that show the source is in compliance) would be submitted. Instead, commenters believed that the reports should be submitted semiannually, which is consistent with the requirements of title V. In cases where reporting less frequently than semiannually will not compromise enforcement of a relevant emissions standard, commenters said that the EPA should allow even less frequent reporting.

Other commenters suggested that all sources should be required to report quarterly. According to these commenters, allowing sources to report quarterly at first and later switch to a semiannual or quarterly schedule, depending on compliance status and history, would be confusing and difficult for States to administer. Furthermore, the commenters suggested that only sources that have demonstrated compliance with all requirements of the Act should be allowed to reduce their reporting frequency.

Some commenters stated that if the Agency's current approach is adopted, any request to reduce the frequency of reporting should be deemed approved unless expressly denied within 30 days. Other commenters said that the § 63.10(e)(3)(iii) requirement that the source provide written notification of a reduction in reporting frequency is unwarranted and should be eliminated. Instead, these commenters suggested that the reduction should automatically occur after a year of compliance.

One commenter said that 1 year of data is insufficient to use as a basis for reducing the frequency of reports, while another said that it is inappropriate to use more than the previous year of data collected.

In consideration of these comments, § 63.10(e)(3)(i) has been revised to allow semiannual reports for sources that are using CMS data for compliance but have no excess emissions to report. Quarterly reports still are required when excess emissions occur at sources that use CMS data for compliance, and the frequency of reporting may be reduced only through the procedures described in § 63.10(e)(3)(ii). The Administrator believes that this change will reduce the number of reports and the burden on sources.

Section 63.10(e)(3)(iii) has been revised to clarify that, in the absence of a notice of disapproval of a request to reduce the frequency of excess emissions and continuous monitoring systems reports within 45 days, approval is granted. However, the Administrator believes that excess emissions and compliance parameter monitoring reports are a critical enforcement tool and that any reductions in their frequency should be considered carefully by the implementing agency.

As for the comment that 1 year of data may be inappropriate to use in evaluating a request for a reduction in frequency, the 1-year period is the minimum required for a source to submit a request. Up to 5 years of data may be considered, at the Administrator's discretion. Because of the potential variability among sources and the possible issues associated with an individual source's compliance status (e.g., a history of noncompliance), it is important to preserve the Administrator's discretion in reviewing more extensive data to make a determination.

The EPA is committed to identifying ways to increase industry's flexibility to comply with the part 63 General Provisions where it does not impair achieving environmental objectives. As such, the provisions that allow for a reduction in reporting burden are appropriate. (The part 70 operating permit provisions preclude the EPA from allowing sources to report less frequently than semiannually.) However, the EPA believes that the burden should be on sources to demonstrate ongoing compliance with applicable standards prior to considering a request to reduce the reporting frequency. While the EPA is sensitive to the possible difficulty that sources and States might face in tracking varying reporting schedules, the specific conditions in title V operating permits are intended, in part, to help address the variability among sources.

V. Administrative Requirements

A. Docket

The docket for this rulemaking is A–91–09. 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 rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to 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) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

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

Pursuant to the terms of Executive Order 12866, the OMB has notified the EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB suggestions or recommendations will be documented in the public record.

Any written comments from the OMB to the EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES.** The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, (6102), ATTN: Docket No. A–91–09, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

C. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must clear any reporting and recordkeeping requirements that qualify as an "information collection request" under the PRA. Approval of an information collection request is not required for this rulemaking because, for sources affected by section 112 only, the General Provisions do not require any activities until source category-specific standards have been promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the General Provisions for each source category covered by part 63 will be estimated when a standard applicable to such category is promulgated.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that have "significant impact on a substantial number of small entities." Small entities are small businesses, organizations, and governmental jurisdictions. This analysis is not necessary for this rulemaking, however, because it is unknown at this time which requirements from the General Provisions will be applicable to any particular source category, whether such category includes small businesses, and how significant the impacts of those requirements would be on small businesses. Impacts on small entities associated with the General Provisions will be assessed when emission standards affecting those sources are developed.

List of Subjects

40 CFR Part 60

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 61

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 63

Environmental Protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.1 is amended by adding paragraph (c) to read as follows:

§ 60.1 Applicability.

* * * * *

(c) In addition to complying with the provisions of this part, the owner or operator of an affected facility may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act (Act) as amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see part 70 of this chapter.

3. Section 60.2 is amended by revising the definitions of "Act" and "Malfunction" and by adding in alphabetical order the definitions "Approved permit program," "Issuance," "Part 70 permit," "Permit program," "Permitting authority," "State," "Stationary source," and "Title V permit" to read as follows:

§ 60.2 Definitions.

* * * * *

Act means the Clean Air Act (42 U.S.C. 7401 et seq.)

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

* * * * *

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the

requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

* * * * *

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

* * * * *

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part; and/or (2) the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

* * * * *

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

* * * * *

4. In § 60.7, paragraphs (e), (f), and (g) are redesignated as paragraphs (f), (g), and (h), respectively, and new paragraph (e) is added to read as follows:

§ 60.7 Notification and recordkeeping.

* * * * *

(e)(1) Notwithstanding the frequency of reporting requirements specified in paragraph (c) of this section, an owner or operator who is required by an applicable subpart to submit excess emissions and monitoring systems performance reports (and summary reports) on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(i) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected facility's excess emissions and monitoring systems reports submitted to comply with a standard under this part continually demonstrate that the facility is in compliance with the applicable standard;

(ii) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the applicable standard; and

(iii) The Administrator does not object to a reduced frequency of reporting for the affected facility, as provided in paragraph (e)(2) of this section.

(2) The frequency of reporting of excess emissions and monitoring systems performance (and summary) reports may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the required recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

(3) As soon as monitoring data indicate that the affected facility is not in compliance with any emission limitation or operating parameter specified in the applicable standard, the frequency of reporting shall revert to the frequency specified in the applicable standard, and the owner or operator shall submit an excess emissions and monitoring systems performance report (and summary report, if required) at the next appropriate reporting period following the noncomplying event. After demonstrating compliance with the applicable standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard as provided for in paragraphs (e)(1) and (e)(2) of this section.

5. Section 60.19 is added to subpart A to read as follows:

§ 60.19 General notification and reporting requirements.

(a) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(b) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be delivered or postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(c) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such

time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(d) If an owner or operator of an affected facility in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has an established timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such facility under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the affected facility is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(e) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 61, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which periodic reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the applicable subpart in this part, or 1 year after the stationary source is required to be in compliance with the applicable 40 CFR part 61 or part 63 of this chapter standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(f)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (f)(2) and (f)(3) of this section, the owner or operator of an affected facility remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (f)(2) and (f)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

6. The authority citation for part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

7. Section 61.01 is amended by adding paragraph (d) to read as follows:

§ 61.01 List of pollutants and applicability of part 61.

* * * * *

(d) In addition to complying with the provisions of this part, the owner or operator of a stationary source subject to a standard in this part may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act (Act) as amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see part 70 of this chapter.

* * * * *

8. Section 61.02 is amended by adding in alphabetical order the definitions "Approved permit program," "Issuance," "Part 70 permit," "Permit program," "Permitting authority," "State," and "Title V permit" to read as follows:

§ 61.02 Definitions.

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

* * * * *

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

* * * * *

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

* * * * *

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement:

(1) The provisions of this part; and/or

(2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

* * * * *

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by

a State permitting authority is called a part 70 permit in this part.

* * * * *

9. Section 61.10 is amended by adding paragraphs (e) through (j) to read as follows:

§ 61.10 Source reporting and waiver request.

* * * * *

(e) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(f) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(g) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(h) If an owner or operator of a stationary source in a State with delegated authority is required to submit reports under this part to the State, and if the State has an established timeline for the submission of reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(i) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 60, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part, or 1 year after the source is required to be in compliance with the applicable part 60 or part 63 standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(j)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (j)(2) and (j)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (j)(2) and (j)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

10. The authority citation for part 63 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended by Pub. L. 101–549 (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

11. Part 63 is amended by adding subpart A to read as follows:

Subpart A—General Provisions

Sec.

Subpart A—General Provisions

§ 63.1 Applicability.

(a) *General.* (1) Terms used throughout this part are defined in § 63.2 or in the Clean Air Act (Act) as amended in 1990, except that individual subparts of this part may include specific definitions in addition to or that supersede definitions in § 63.2.

(2) This part contains national emission standards for hazardous air pollutants (NESHAP) established pursuant to section 112 of the Act as amended November 15, 1990. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more

hazardous air pollutants listed in this part pursuant to section 112(b) of the Act. This section explains the applicability of such standards to sources affected by them. The standards in this part are independent of NESHAP contained in 40 CFR part 61. The NESHAP in part 61 promulgated by signature of the Administrator before November 15, 1990 (i.e., the date of enactment of the Clean Air Act Amendments of 1990) remain in effect until they are amended, if appropriate, and added to this part.

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (including those requirements in part 60 of this chapter), or a standard issued under State authority.

(4) The provisions of this subpart (i.e., subpart A of this part) apply to owners or operators who are subject to subsequent subparts of this part, except when otherwise specified in a particular subpart or in a relevant standard. The general provisions in subpart A eliminate the repetition of requirements applicable to all owners or operators affected by this part. The general provisions in subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

(5) [Reserved]

(6) To obtain the most current list of categories of sources to be regulated under section 112 of the Act, or to obtain the most recent regulation promulgation schedule established pursuant to section 112(e) of the Act, contact the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD–13), Research Triangle Park, North Carolina 27711.

(7) Subpart D of this part contains regulations that address procedures for an owner or operator to obtain an extension of compliance with a relevant standard through an early reduction of emissions of hazardous air pollutants pursuant to section 112(i)(5) of the Act.

(8) Subpart E of this part contains regulations that provide for the establishment of procedures consistent with section 112(l) of the Act for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(9) [Reserved]

(10) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(11) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(12) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in § 63.9(i).

(13) Special provisions set forth under an applicable subpart of this part or in a relevant standard established under this part shall supersede any conflicting provisions of this subpart.

(14) Any standards, limitations, prohibitions, or other federally enforceable requirements established pursuant to procedural regulations in this part [including, but not limited to, equivalent emission limitations established pursuant to section 112(g) of the Act] shall have the force and effect of requirements promulgated in this part and shall be subject to the provisions of this subpart, except when explicitly specified otherwise.

(b) *Initial applicability determination for this part.* (1) The provisions of this part apply to the owner or operator of any stationary source that—

(i) Emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act; and

(ii) Is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part.

(2) In addition to complying with the provisions of this part, the owner or operator of any such source may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Act (42 U.S.C. 7661). For more information about obtaining an operating permit, see part 70 of this chapter.

(3) An owner or operator of a stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants who determines that the source is not subject to a relevant standard or other requirement established under this part, shall keep a record of the applicability determination as specified in § 63.10(b)(3) of this subpart.

(c) *Applicability of this part after a relevant standard has been set under this part.* (1) If a relevant standard has been established under this part, the owner or operator of an affected source shall comply with the provisions of this subpart and the provisions of that standard, except as specified otherwise in this subpart or that standard.

(2) If a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a title V permit from the permitting authority in the State in which the source is located. Emission standards promulgated in this part for area sources will specify whether—

(i) States will have the option to exclude area sources affected by that standard from the requirement to obtain a title V permit (i.e., the standard will exempt the category of area sources altogether from the permitting requirement);

(ii) States will have the option to defer permitting of area sources in that category until the Administrator takes rulemaking action to determine applicability of the permitting requirements; or

(iii) Area sources affected by that emission standard are immediately subject to the requirement to apply for and obtain a title V permit in all States.

If a standard fails to specify what the permitting requirements will be for area sources affected by that standard, then area sources that are subject to the standard will be subject to the requirement to obtain a title V permit without deferral. If the owner or operator is required to obtain a title V permit, he or she shall apply for such permit in accordance with part 70 of this chapter and applicable State regulations, or in accordance with the regulations contained in this chapter to implement the Federal title V permit program (42 U.S.C. 7661), whichever regulations are applicable.

(3) [Reserved]

(4) If the owner or operator of an existing source obtains an extension of compliance for such source in accordance with the provisions of subpart D of this part, the owner or operator shall comply with all requirements of this subpart except those requirements that are specifically overridden in the extension of compliance for that source.

(5) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source also shall be subject to the notification requirements of this subpart.

(d) [Reserved]

(e) *Applicability of permit program before a relevant standard has been set under this part.* After the effective date of an approved permit program in the State in which a stationary source is (or would be) located, the owner or operator of such source may be required to obtain a title V permit from the permitting authority in that State (or revise such a permit if one has already been issued to the source) before a relevant standard is established under this part. If the owner or operator is required to obtain (or revise) a title V permit, he/she shall apply to obtain (or revise) such permit in accordance with the regulations contained in part 70 of this chapter and applicable State regulations, or the regulations codified in this chapter to implement the Federal title V permit program (42 U.S.C. 7661), whichever regulations are applicable.

§ 63.2 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

Act means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399).

Actual emissions is defined in subpart D of this part for the purpose of granting a compliance extension for an early reduction of hazardous air pollutants.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Affected source, for the purposes of this part, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act. Each relevant standard will define the "affected source" for the purposes of that standard. The term "affected source," as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Sources regulated under part 60 or part 61 of this chapter are not affected sources for the purposes of part 63.

Alternative emission limitation means conditions established pursuant to sections 112(i)(5) or 112(i)(6) of the Act by the Administrator or by a State with an approved permit program.

Alternative emission standard means an alternative means of emission limitation that, after notice and opportunity for public comment, has been demonstrated by an owner or operator to the Administrator's satisfaction to achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under a relevant design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act.

Alternative test method means any method of sampling and analyzing for an air pollutant that is not a test method in this chapter and that has been demonstrated to the Administrator's satisfaction, using Method 301 in Appendix A of this part, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part.

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

Commenced means, with respect to construction or reconstruction of a stationary source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

Compliance date means the date by which an affected source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to section 112 of the Act.

Compliance plan means a plan that contains all of the following:

(1) A description of the compliance status of the affected source with respect to all applicable requirements established under this part;

(2) A description as follows: (i) For applicable requirements for which the source is in compliance, a statement that the source will continue to comply with such requirements;

(ii) For applicable requirements that the source is required to comply with by a future date, a statement that the source will meet such requirements on a timely basis;

(iii) For applicable requirements for which the source is not in compliance, a narrative description of how the source will achieve compliance with such requirements on a timely basis;

(3) A compliance schedule, as defined in this section; and

(4) A schedule for the submission of certified progress reports no less frequently than every 6 months for affected sources required to have a schedule of compliance to remedy a violation.

Compliance schedule means: (1) In the case of an affected source that is in compliance with all applicable requirements established under this part, a statement that the source will continue to comply with such requirements; or

(2) In the case of an affected source that is required to comply with applicable requirements by a future date, a statement that the source will meet such requirements on a timely basis and, if required by an applicable requirement, a detailed schedule of the dates by which each step toward compliance will be reached; or

(3) In the case of an affected source not in compliance with all applicable requirements established under this part, a schedule of remedial measures, including an enforceable sequence of actions or operations with milestones and a schedule for the submission of certified progress reports, where applicable, leading to compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established pursuant to section 112 of the Act for which the affected source is not in compliance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

Construction means the on-site fabrication, erection, or installation of an affected source.

Continuous emission monitoring system (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of emissions.

Continuous monitoring system (CMS) is a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

Continuous opacity monitoring system (COMS) means a continuous monitoring system that measures the opacity of emissions.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Effective date means: (1) With regard to an emission standard established under this part, the date of promulgation in the Federal Register of such standard; or

(2) With regard to an alternative emission limitation or equivalent emission limitation determined by the Administrator (or a State with an approved permit program), the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this part. The effective date of a permit program established under title V of the Act (42 U.S.C. 7661) is determined according to the regulations in this chapter establishing such programs.

Emission standard means a national standard, limitation, prohibition, or other regulation promulgated in a subpart of this part pursuant to sections 112(d), 112(h), or 112(f) of the Act.

Emissions averaging is a way to comply with the emission limitations specified in a relevant standard, whereby an affected source, if allowed under a subpart of this part, may create emission credits by reducing emissions from specific points to a level below that required by the relevant standard, and those credits are used to offset emissions from points that are not controlled to the level required by the relevant standard.

EPA means the United States Environmental Protection Agency.

Equivalent emission limitation means the maximum achievable control technology emission limitation (MACT emission limitation) for hazardous air pollutants that the Administrator (or a State with an approved permit program) determines on a case-by-case basis, pursuant to section 112(g) or section 112(j) of the Act, to be equivalent to the emission standard that would apply to an affected source if such standard had been promulgated by the Administrator under this part pursuant to section 112(d) or section 112(h) of the Act.

Excess emissions and continuous monitoring system performance report is a report that must be submitted periodically by an affected source in order to provide data on its compliance with relevant emission limits, operating parameters, and the performance of its continuous parameter monitoring systems.

Existing source means any affected source that is not a new source.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator and citizens under the Act or that are enforceable under other statutes administered by the Administrator. Examples of federally enforceable limitations and conditions include, but are not limited to:

(1) Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to section 112 of the Act as amended in 1990;

(2) New source performance standards established pursuant to section 111 of the Act, and emission standards established pursuant to section 112 of the Act before it was amended in 1990;

(3) All terms and conditions in a title V permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable;

(4) Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP);

(5) Limitations and conditions that are part of a Federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR part 51;

(6) Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the EPA into a SIP as meeting the EPA's minimum criteria for Federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability;

(7) Limitations and conditions in a State rule or program that has been approved by the EPA under subpart E of this part for the purposes of implementing and enforcing section 112; and

(8) Individual consent agreements that the EPA has legal authority to create.

Fixed capital cost means the capital needed to provide all the depreciable components of an existing source.

Fugitive emissions means those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Under section 112 of the Act, all fugitive emissions are to be considered in determining whether a stationary source is a major source.

Hazardous air pollutant means any air pollutant listed in or pursuant to section 112(b) of the Act.

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

Lesser quantity means a quantity of a hazardous air pollutant that is or may be emitted by a stationary source that the Administrator establishes in order to define a major source under an applicable subpart of this part.

Major source means any stationary source or group of stationary sources located within a contiguous area and

under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

New source means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part.

One-hour period, unless otherwise defined in an applicable subpart, means any 60-minute period commencing on the hour.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Performance audit means a procedure to analyze blind samples, the content of which is known by the Administrator, simultaneously with the analysis of performance test samples in order to provide a measure of test data quality.

Performance evaluation means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Permit modification means a change to a title V permit as defined in regulations codified in this chapter to implement title V of the Act (42 U.S C. 7661).

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

Permit revision means any permit modification or administrative permit amendment to a title V permit as defined in regulations codified in this chapter to implement title V of the Act (42 U.S.C. 7661).

Permitting authority means: (1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Reconstruction means the replacement of components of an affected or a previously unaffected stationary 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 the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

Regulation promulgation schedule means the schedule for the promulgation of emission standards under this part, established by the Administrator pursuant to section 112(e) of the Act and published in the **Federal Register**.

Relevant standard means:

(1) An emission standard;

(2) An alternative emission standard;

(3) An alternative emission limitation; or

(4) An equivalent emission limitation established pursuant to section 112 of the Act that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation.

A relevant standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator (or a State) establishes for new or existing sources to which such standard or limitation applies. Every relevant standard established pursuant to section 112 of the Act includes subpart A of this part and all applicable appendices of this part or of other parts of this chapter that are referenced in that standard.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part) applying for or subject to a title V permit: "responsible official" shall have the same meaning as defined in part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this part.

Shutdown means the cessation of operation of an affected source for any purpose.

Six-minute period means, with respect to opacity determinations, any one of the 10 equal parts of a 1-hour period.

Standard conditions means a temperature of 293 K (68° F) and a pressure of 101.3 kilopascals (29.92 in. Hg).

Startup means the setting in operation of an affected source for any purpose.

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part and/or (2) the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

Test method means the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure. The test method may include methods described in an appendix of this chapter, test methods incorporated by reference in this part, or methods validated for an application through procedures in Method 301 of Appendix A of this part.

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

Visible emission means the observation of an emission of opacity or optical density above the threshold of vision.

§ 63.3 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

(a) *System International (SI) units of measure:*

A = ampere
g = gram
Hz = hertz
J = joule
°K = degree Kelvin
kg = kilogram
l = liter
m = meter
m^3 = cubic meter
mg = milligram = 10^{-3} gram
ml = milliliter = 10^{-3} liter
mm = millimeter = 10^{-3} meter
Mg = megagram = 10^6 gram = metric ton
MJ = megajoule
mol = mole
N = newton
ng = nanogram = 10^{-9} gram
nm = nanometer = 10^{-9} meter
Pa = pascal
s = second
V = volt
W = watt
Ω = ohm
µg = microgram = 10^{-6} gram
µl = microliter = 10^{-6} liter

(b) *Other units of measure:*

Btu = British thermal unit
°C = degree Celsius (centigrade)
cal = calorie
cfm = cubic feet per minute
cc = cubic centimeter
cu ft = cubic feet
d = day
dcf = dry cubic feet
dcm = dry cubic meter
dscf = dry cubic feet at standard conditions
dscm = dry cubic meter at standard conditions
eq = equivalent
°F = degree Fahrenheit
ft = feet
ft^2 = square feet
ft^3 = cubic feet
gal = gallon
gr = grain
g-eq = gram equivalent
g-mole = gram mole
hr = hour
in. = inch
in. H_2O = inches of water
K = 1,000
kcal = kilocalorie
lb = pound
lpm = liter per minute
meq = milliequivalent
min = minute
MW = molecular weight
oz = ounces
ppb = parts per billion
ppbw = parts per billion by weight
ppbv = parts per billion by volume
ppm = parts per million
ppmw = parts per million by weight
ppmv = parts per million by volume
psia = pounds per square inch absolute
psig = pounds per square inch gage
°R = degree Rankine
scf = cubic feet at standard conditions
scfh = cubic feet at standard conditions per hour
scm = cubic meter at standard conditions
sec = second
sq ft = square feet
std = at standard conditions
v/v = volume per volume
yd^2 = square yards
yr = year

(c) *Miscellaneous:*

act = actual
avg = average
I.D. = inside diameter
M = molar
N = normal
O.D. = outside diameter
% = percent

§ 63.4 Prohibited activities and circumvention.

(a) *Prohibited activities.* (1) No owner or operator subject to the provisions of this part shall operate any affected source in violation of the requirements of this part except under—

(i) An extension of compliance granted by the Administrator under this part; or

(ii) An extension of compliance granted under this part by a State with an approved permit program; or

(iii) An exemption from compliance granted by the President under section 112(i)(4) of the Act.

(2) No owner or operator subject to the provisions of this part shall fail to keep records, notify, report, or revise reports as required under this part.

(3) After the effective date of an approved permit program in a State, no owner or operator of an affected source in that State who is required under this part to obtain a title V permit shall operate such source except in compliance with the provisions of this part and the applicable requirements of the permit program in that State.

(4) [Reserved]

(5) An owner or operator of an affected source who is subject to an emission standard promulgated under this part shall comply with the requirements of that standard by the date(s) established in the applicable subpart(s) of this part (including this subpart) regardless of whether—

(i) A title V permit has been issued to that source; or

(ii) If a title V permit has been issued to that source, whether such permit has been revised or modified to incorporate the emission standard.

(b) *Circumvention.* No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to—

(1) The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere;

(2) The use of gaseous diluents to achieve compliance with a relevant standard for visible emissions; and

(3) The fragmentation of an operation such that the operation avoids regulation by a relevant standard.

(c) *Severability.* Notwithstanding any requirement incorporated into a title V

permit obtained by an owner or operator subject to the provisions of this part, the provisions of this part are federally enforceable.

§ 63.5 Construction and reconstruction.

(a) *Applicability.* (1) This section implements the preconstruction review requirements of section 112(i)(1) for sources subject to a relevant emission standard that has been promulgated in this part. In addition, this section includes other requirements for constructed and reconstructed stationary sources that are or become subject to a relevant promulgated emission standard.

(2) After the effective date of a relevant standard promulgated under this part, the requirements in this section apply to owners or operators who construct a new source or reconstruct a source after the proposal date of that standard. New or reconstructed sources that start up before the standard's effective date are not subject to the preconstruction review requirements specified in paragraphs (b)(3), (d), and (e) of this section.

(b) *Requirements for existing, newly constructed, and reconstructed sources.* (1) Upon construction an affected source is subject to relevant standards for new sources, including compliance dates. Upon reconstruction, an affected source is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

(2) [Reserved]

(3) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new major affected source or reconstruct a major affected source subject to such standard, or reconstruct a major source such that the source becomes a major affected source subject to the standard, without obtaining written approval, in advance, from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section.

(4) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new affected source or reconstruct an affected source subject to such standard, or reconstruct a source such that the source becomes an affected source subject to the standard, without notifying the Administrator of the intended construction or reconstruction. The notification shall be submitted in accordance with the procedures in § 63.9(b) and shall include all the information required for an application for approval of construction or reconstruction as specified in paragraph (d) of this section. For major sources, the application for approval of construction or reconstruction may be used to fulfill the notification requirements of this paragraph.

(5) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, no person may operate such source without complying with the provisions of this subpart and the relevant standard unless that person has received an extension of compliance or an exemption from compliance under § 63.6(i) or § 63.6(j) of this subpart.

(6) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, equipment added (or a process change) to an affected source that is within the scope of the definition of affected source under the relevant standard shall be considered part of the affected source and subject to all provisions of the relevant standard established for that affected source. If a new affected source is added to the facility, the new affected source shall be subject to all the provisions of the relevant standard that are established for new sources including compliance dates.

(c) [Reserved]

(d) *Application for approval of construction or reconstruction.* The provisions of this paragraph implement section 112(i)(1) of the Act.

(1) *General application requirements.* (i) An owner or operator who is subject to the requirements of paragraph (b)(3) of this section shall submit to the Administrator an application for approval of the construction of a new major affected source, the reconstruction of a major affected source, or the reconstruction of a major source such that the source becomes a major affected source subject to the standard. The application shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard promulgated in this part. The application shall be submitted as soon as practicable before startup but no later than 60 days after the effective date of a relevant standard promulgated in this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of § 63.9(b)(5) of this subpart. The owner or operator may submit the application for approval well in advance of the date construction or reconstruction is planned to commence in order to ensure a timely review by the Administrator and that the planned commencement date will not be delayed.

(ii) A separate application shall be submitted for each construction or reconstruction. Each application for approval of construction or reconstruction shall include at a minimum:

(A) The applicant's name and address;

(B) A notification of intention to construct a new major affected source or make any physical or operational change to a major affected source that may meet or has been determined to meet the criteria for a reconstruction, as defined in § 63.2;

(C) The address (i.e., physical location) or proposed address of the source;

(D) An identification of the relevant standard that is the basis of the application;

(E) The expected commencement date of the construction or reconstruction;

(F) The expected completion date of the construction or reconstruction;

(G) The anticipated date of (initial) startup of the source;

(H) The type and quantity of hazardous air pollutants emitted by the source, reported in units and averaging times and in accordance with the test methods specified in the relevant standard, or if actual emissions data are not yet available, an estimate of the type and quantity of hazardous air pollutants expected to be emitted by the source reported in units and averaging times specified in the relevant standard. The owner or operator may submit percent reduction information if a relevant standard is established in terms of percent reduction. However, operating parameters, such as flow rate, shall be included in the submission to the extent that they demonstrate performance and compliance; and

(I) [Reserved]

(J) Other information as specified in paragraphs (d)(2) and (d)(3) of this section.

(iii) An owner or operator who submits estimates or preliminary information in place of the actual emissions data and analysis required in paragraphs (d)(1)(ii)(H) and (d)(2) of this section shall submit the actual, measured emissions data and other correct information as soon as available but no later than with the notification of compliance status required in § 63.9(h) [see § 63.9(h)(5)].

(2) *Application for approval of construction.* Each application for approval of construction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each point of emission for each hazardous air pollutant that is emitted (or could be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations. An owner or operator who submits approximations of control efficiencies under this subparagraph shall submit the actual control efficiencies as specified in paragraph (d)(1)(iii) of this section.

(3) *Application for approval of reconstruction.* Each application for approval of reconstruction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section—

(i) A brief description of the affected source and the components that are to be replaced;

(ii) A description of present and proposed emission control systems (i.e., equipment or methods). The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations;

(iii) An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new source;

(iv) The estimated life of the affected source after the replacements; and

(v) A discussion of any economic or technical limitations the source may have in complying with relevant standards or other requirements after the proposed replacements. The discussion shall be sufficiently detailed to demonstrate to the Administrator's satisfaction that the technical or economic limitations affect the source's ability to comply with the relevant standard and how they do so.

(vi) If in the application for approval of reconstruction the owner or operator designates the affected source as a reconstructed source and declares that there are no economic or technical limitations to prevent the source from complying with all relevant standards or other requirements, the owner or operator need not submit the information required in subparagraphs (d)(3) (iii) through (v) of this section, above.

(4) *Additional information.* The Administrator may request additional relevant information after the submittal of an application for approval of construction or reconstruction.

(e) *Approval of construction or reconstruction.* (1)(i) If the Administrator determines that, if properly constructed, or reconstructed, and operated, a new or existing source for which an application under paragraph (d) of this section was submitted will not cause emissions in violation of the relevant standard(s) and any other federally enforceable requirements, the Administrator will approve the construction or reconstruction.

(ii) In addition, in the case of reconstruction, the Administrator's determination under this paragraph will be based on:

(A) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new source;

(B) The estimated life of the source after the replacements compared to the life of a comparable entirely new source;

(C) The extent to which the components being replaced cause or contribute to the emissions from the source; and

(D) Any economic or technical limitations on compliance with relevant standards that are inherent in the proposed replacements.

(2)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of construction or reconstruction within 60 calendar days after receipt of sufficient information to evaluate an application submitted under paragraph (d) of this section. The 60-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(3) Before denying any application for approval of construction or reconstruction, the Administrator will notify the applicant of the Administrator's intention to issue the denial together with—

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator to enable further action on the application.

(4) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 calendar days of presentation of additional information or arguments (if the application is complete), or within 60 calendar days after the final date specified for presentation if no presentation is made.

(5) Neither the submission of an application for approval nor the Administrator's approval of construction or reconstruction shall—

(i) Relieve an owner or operator of legal responsibility for compliance with

any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(ii) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(f) *Approval of construction or reconstruction based on prior State preconstruction review.* (1) The Administrator may approve an application for construction or reconstruction specified in paragraphs (b)(3) and (d) of this section if the owner or operator of a new or reconstructed source who is subject to such requirement demonstrates to the Administrator's satisfaction that the following conditions have been (or will be) met:

(i) The owner or operator of the new or reconstructed source has undergone a preconstruction review and approval process in the State in which the source is (or would be) located before the promulgation date of the relevant standard and has received a federally enforceable construction permit that contains a finding that the source will meet the relevant emission standard as proposed, if the source is properly built and operated;

(ii) In making its finding, the State has considered factors substantially equivalent to those specified in paragraph (e)(1) of this section; and either

(iii) The promulgated standard is no more stringent than the proposed standard in any relevant aspect that would affect the Administrator's decision to approve or disapprove an application for approval of construction or reconstruction under this section; or

(iv) The promulgated standard is more stringent than the proposed standard but the owner or operator will comply with the standard as proposed during the 3-year period immediately following the effective date of the standard as allowed for in § 63.6(b)(3) of this subpart.

(2) The owner or operator shall submit to the Administrator the request for approval of construction or reconstruction under this paragraph no later than the application deadline specified in paragraph (d)(1) of this section [see also § 63.9(b)(2) of this subpart]. The owner or operator shall include in the request information sufficient for the Administrator's determination. The Administrator will evaluate the owner or operator's request in accordance with the procedures specified in paragraph (e) of this section. The Administrator may request additional relevant information after the submittal of a request for approval of construction or reconstruction under this paragraph.

§ 63.6 Compliance with standards and maintenance requirements.

(a) *Applicability.* (1) The requirements in this section apply to owners or operators of affected sources for which any relevant standard has been established pursuant to section 112 of the Act unless—

(i) The Administrator (or a State with an approved permit program) has granted an extension of compliance consistent with paragraph (i) of this section; or

(ii) The President has granted an exemption from compliance with any relevant standard in accordance with section 112(i)(4) of the Act.

(2) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source, such source shall be subject to the relevant emission standard or other requirement.

(b) *Compliance dates for new and reconstructed sources.* (1) Except as specified in paragraphs (b)(3) and (b)(4) of this section, the owner or operator of a new or reconstructed source that has an initial startup before the effective date of a relevant standard established under this part pursuant to sections 112(d), 112(f), or 112(h) of the Act shall comply with such standard not later than the standard's effective date.

(2) Except as specified in paragraphs (b)(3) and (b)(4) of this section, the owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard established under this part pursuant to sections 112(d), 112(f), or 112(h) of the Act shall comply with such standard upon startup of the source.

(3) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established under this part pursuant to sections 112(d), 112(f), or 112(h) of the Act but before the effective date (that is, promulgation) of such standard shall comply with the relevant emission standard not later than the date 3 years after the effective date if:

(i) The promulgated standard (that is, the relevant standard) is more stringent than the proposed standard; and

(ii) The owner or operator complies with the standard as proposed during the 3-year period immediately after the effective date.

(4) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of a relevant standard established pursuant to section 112(f) shall comply with the emission standard under section 112(f) not later than the date 10 years after the date construction or reconstruction is commenced, except that, if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator shall comply with the standard as provided in paragraphs (b)(1) and (b)(2) of this section.

(5) The owner or operator of a new source that is subject to the compliance requirements of paragraph (b)(3) or paragraph (b)(4) of this section shall notify the Administrator in accordance with § 63.9(d) of this subpart.

(6) [Reserved]

(7) After the effective date of an emission standard promulgated under this part, the owner or operator of an unaffected new area source (i.e., an area source for which construction or reconstruction was commenced after the proposal date of the standard) that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source that is subject to the emission standard, shall comply with the relevant emission standard immediately upon becoming a major source. This compliance date shall apply to new area sources that become affected major sources regardless of whether the new area source previously was affected by that standard. The new affected major source shall comply with all requirements of that standard that affect new sources.

(c) *Compliance dates for existing sources.* (1) After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part. Except as otherwise provided for in section 112 of the Act, in no case will the compliance date established for an existing source in an applicable subpart of this part exceed 3 years after the effective date of such standard.

(2) After the effective date of a relevant standard established under this part pursuant to section 112(f) of the Act, the owner or operator of an existing source shall comply with such standard

not later than 90 days after the standard's effective date unless the Administrator has granted an extension to the source under paragraph (i)(4)(ii) of this section.

(3)–(4) [Reserved]

(5) After the effective date of an emission standard promulgated under this part, the owner or operator of an unaffected existing area source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source that is subject to the emission standard shall comply by the date specified in the standard for existing area sources that become major sources. If no such compliance date is specified in the standard, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in that standard for other existing sources. This compliance period shall apply to existing area sources that become affected major sources regardless of whether the existing area source previously was affected by that standard. Notwithstanding the previous two sentences, however, if the existing area source becomes a major source by the addition of a new affected source or by reconstructing, the portion of the existing facility that is a new affected source or a reconstructed source shall comply with all requirements of that standard that affect new sources, including the compliance date for new sources.

(d) [Reserved]

(e) *Operation and maintenance requirements.* (1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards.

(ii) Malfunctions shall be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section.

(iii) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.

(2) Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures [including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section], review of operation and maintenance records, and inspection of the source.

(3) *Startup, Shutdown, and Malfunction Plan.* (i) The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard. As required under § 63.8(c)(1)(i), the plan shall identify all routine or otherwise predictable CMS malfunctions. This plan shall be developed by the owner or operator by the source's compliance date for that relevant standard. The plan shall be incorporated by reference into the source's title V permit. The purpose of the startup, shutdown, and malfunction plan is to—

(A) Ensure that, at all times, owners or operators operate and maintain affected sources, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards;

(B) Ensure that owners or operators are prepared to correct malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of hazardous air pollutants; and

(C) Reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(ii) During periods of startup, shutdown, and malfunction, the owner or operator of an affected source shall operate and maintain such source (including associated air pollution control equipment) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (e)(3)(i) of this section.

(iii) When actions taken by the owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall keep records for that event that demonstrate that the procedures specified in the plan were followed. These records may take the form of a "checklist," or other effective form of recordkeeping, that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator shall keep records of these events as specified in § 63.10(b) (and elsewhere in this part), including records of the occurrence and duration of each startup, shutdown, or malfunction of operation and each malfunction of the air pollution control equipment. Furthermore, the owner or operator shall confirm that actions taken during the relevant reporting period during periods of startup, shutdown, and malfunction were consistent with the affected source's startup, shutdown and malfunction plan in the semiannual (or more frequent) startup, shutdown, and malfunction report required in § 63.10(d)(5).

(iv) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall record the actions taken for that event and shall report such actions within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator [see § 63.10(d)(5)(ii)].

(v) The owner or operator shall keep the written startup, shutdown, and malfunction plan on record after it is developed to be made available for inspection, upon request, by the Administrator for the life of the affected source or until the affected source is no longer subject to the provisions of this part. In addition, if the startup, shutdown, and malfunction plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the startup, shutdown, and malfunction plan on record, to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan.

(vi) To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the affected source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans

meet all the requirements of this section and are made available for inspection when requested by the Administrator.

(vii) Based on the results of a determination made under paragraph (e)(2) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

(A) Does not address a startup, shutdown, or malfunction event that has occurred;

(B) Fails to provide for the operation of the source (including associated air pollution control equipment) during a startup, shutdown, or malfunction event in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards; or

(C) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable.

(viii) If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control equipment.

(f) *Compliance with nonopacity emission standards*—(1) *Applicability.* The nonopacity emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.* (i) The Administrator will determine compliance with nonopacity emission standards in this part based on the results of performance tests conducted according to the procedures in § 63.7, unless otherwise specified in an applicable subpart of this part.

(ii) The Administrator will determine compliance with nonopacity emission standards in this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in § 63.6(e) and applicable subparts of this part.

(iii) If an affected source conducts performance testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if—

(A) The performance test was conducted within a reasonable amount of time before an initial performance test is required to be conducted under the relevant standard;

(B) The performance test was conducted under representative operating conditions for the source;

(C) The performance test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e) of this subpart; and

(D) The performance test was appropriately quality-assured, as specified in § 63.7(c) of this subpart.

(iv) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards in this part by review of records, inspection of the source, and other procedures specified in applicable subparts of this part.

(v) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards in this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, as specified in paragraph (e) of this section and applicable subparts of this part.

(3) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with a nonopacity emission standard, as specified in paragraphs (f)(1) and (f)(2) of this section, upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(g) *Use of an alternative nonopacity emission standard.* (1) If, in the Administrator's judgment, an owner or operator of an affected source has established that an alternative means of emission limitation will achieve a reduction in emissions of a hazardous air pollutant from an affected source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative emission standard for purposes of compliance with the promulgated standard. Any **Federal Register** notice under this paragraph shall be published only after the public is notified and given the opportunity to comment. Such notice will restrict the permission to the stationary source(s) or category(ies) of sources from which the alternative emission standard will achieve equivalent emission reductions. The Administrator will condition permission in such notice on requirements to assure the proper operation and maintenance of equipment and practices required for compliance with the alternative emission standard and other requirements, including appropriate quality assurance and quality control requirements, that are deemed necessary.

(2) An owner or operator requesting permission under this paragraph shall, unless otherwise specified in an applicable subpart, submit a proposed test plan or the results of testing and monitoring in accordance with § 63.7 and § 63.8, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring. Any testing or monitoring conducted to request permission to use an alternative nonopacity emission standard shall be appropriately quality assured and quality controlled, as specified in § 63.7 and § 63.8.

(3) The Administrator may establish general procedures in an applicable subpart that accomplish the requirements of paragraphs (g)(1) and (g)(2) of this section.

(h) *Compliance with opacity and visible emission standards*—(1) *Applicability.* The opacity and visible emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.* (i) The Administrator will determine compliance with opacity and visible emission standards in this part based on the results of the test method specified in an applicable subpart. Whenever a continuous opacity monitoring system (COMS) is required to be installed to determine compliance with numerical opacity emission

standards in this part, compliance with opacity emission standards in this part shall be determined by using the results from the COMS. Whenever an opacity emission test method is not specified, compliance with opacity emission standards in this part shall be determined by conducting observations in accordance with Test Method 9 in appendix A of part 60 of this chapter or the method specified in paragraph (h)(7)(ii) of this section. Whenever a visible emission test method is not specified, compliance with visible emission standards in this part shall be determined by conducting observations in accordance with Test Method 22 in appendix A of part 60 of this chapter.

(ii) [Reserved]

(iii) If an affected source undergoes opacity or visible emission testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if—

(A) The opacity or visible emission test was conducted within a reasonable amount of time before a performance test is required to be conducted under the relevant standard;

(B) The opacity or visible emission test was conducted under representative operating conditions for the source;

(C) The opacity or visible emission test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e) of this subpart; and

(D) The opacity or visible emission test was appropriately quality-assured, as specified in § 63.7(c) of this section.

(3) [Reserved]

(4) *Notification of opacity or visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting opacity or visible emission observations in accordance with § 63.9(f), if such observations are required for the source by a relevant standard.

(5) *Conduct of opacity or visible emission observations.* When a relevant standard under this part includes an opacity or visible emission standard, the owner or operator of an affected source shall comply with the following:

(i) For the purpose of demonstrating initial compliance, opacity or visible emission observations shall be conducted concurrently with the initial performance test required in § 63.7 unless one of the following conditions applies:

(A) If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 60 days after achieving the maximum production rate at which a new or reconstructed source will be operated, but not later than 120 days after initial startup of the source, or within 120 days after the effective date of the relevant standard in the case of new sources that start up before the standard's effective date. If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 120 days after the compliance date for an existing or modified source; or

(B) If visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, or within the time period specified in paragraph (h)(5)(i)(A) of this section, the source's owner or operator shall reschedule the opacity or visible emission observations as soon after the initial performance test, or time period, as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. The rescheduled opacity or visible emission observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under § 63.7. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity or visible emission observations from being made concurrently with the initial performance test in accordance with procedures contained in Test Method 9 or Test Method 22 in Appendix A of part 60 of this chapter.

(ii) For the purpose of demonstrating initial compliance, the minimum total time of opacity observations shall be 3 hours (30 6-minute averages) for the performance test or other required set of observations (e.g., for fugitive-type emission sources subject only to an opacity emission standard).

(iii) The owner or operator of an affected source to which an opacity or visible emission standard in this part applies shall conduct opacity or visible emission observations in accordance with the provisions of this section, record the results of the evaluation of emissions, and report to the Administrator the opacity or visible emission results in accordance with the provisions of § 63.10(d).

(iv) [Reserved]

(v) Opacity readings of portions of plumes that contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity emission standards.

(6) *Availability of records.* The owner or operator of an affected source shall make available, upon request by the Administrator, such records that the Administrator deems necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification.

(7) *Use of a continuous opacity monitoring system.*

(i) The owner or operator of an affected source required to use a continuous opacity monitoring system (COMS) shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results in accordance with the provisions of § 63.10(e)(4).

(ii) Whenever an opacity emission test method has not been specified in an applicable subpart, or an owner or operator of an affected source is required to conduct Test Method 9 observations (see Appendix A of part 60 of this chapter), the owner or operator may submit, for compliance purposes, COMS data results produced during any performance test required under § 63.7 in lieu of Method 9 data. If the owner or operator elects to submit COMS data for compliance with the opacity emission standard, he or she shall notify the Administrator of that decision, in writing, simultaneously with the notification under § 63.7(b) of the date the performance test is scheduled to begin. Once the owner or operator of an affected source has notified the Administrator to that effect, the COMS data results will be used to determine opacity compliance during subsequent performance tests required under § 63.7, unless the owner or operator notifies the Administrator in writing to the contrary not later than with the notification under § 63.7(b) of the date the subsequent performance test is scheduled to begin.

(iii) For the purposes of determining compliance with the opacity emission standard during a performance test required under § 63.7 using COMS data, the COMS data shall be reduced to 6-minute averages over the duration of the mass emission performance test.

(iv) The owner or operator of an affected source using a COMS for compliance purposes is responsible for demonstrating that he/she has complied with the performance evaluation requirements of § 63.8(e), that the COMS has been properly maintained, operated, and data quality-assured, as specified in § 63.8(c) and § 63.8(d), and that the resulting data have not been altered in any way.

(v) Except as provided in paragraph (h)(7)(ii) of this section, the results of continuous monitoring by a COMS that indicate that the opacity at the time visual observations were made was not in excess of the emission standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the affected source proves that, at the time of the alleged violation, the instrument used was properly maintained, as specified in § 63.8(c), and met Performance Specification 1 in Appendix B of part 60 of this chapter, and that the resulting data have not been altered in any way.

(8) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with an opacity or visible emission standard upon obtaining all the compliance information required by the relevant standard (including the written reports of the results of the performance tests required by § 63.7, the results of Test Method 9 or another required opacity or visible emission test method, the observer certification required by paragraph (h)(6) of this section, and the continuous opacity monitoring system results, whichever is/are applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(9) *Adjustment to an opacity emission standard.*

(i) If the Administrator finds under paragraph (h)(8) of this section that an affected source is in compliance with all relevant standards for which initial performance tests were conducted under § 63.7, but during the time such performance tests were conducted fails to meet any relevant opacity emission standard, the owner or operator of such source may petition the Administrator to make appropriate adjustment to the opacity emission standard for the affected source. Until the Administrator notifies the owner or operator of the appropriate adjustment, the relevant opacity emission standard remains applicable.

(ii) The Administrator may grant such a petition upon a demonstration by the owner or operator that—

(A) The affected source and its associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests;

(B) The performance tests were performed under the conditions established by the Administrator; and

(C) The affected source and its associated air pollution control equipment were incapable of being adjusted or operated to meet the relevant opacity emission standard.

(iii) The Administrator will establish an adjusted opacity emission standard for the affected source meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity emission standard at all times during which the source is meeting the mass or concentration emission standard. The Administrator will promulgate the new opacity emission standard in the **Federal Register.**

(iv) After the Administrator promulgates an adjusted opacity emission standard for an affected source, the owner or operator of such source shall be subject to the new opacity emission standard, and the new opacity emission standard shall apply to such source during any subsequent performance tests.

(i) *Extension of compliance with emission standards.* (1) Until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph, the owner or operator of an affected source subject to the requirements of this section shall comply with all applicable requirements of this part.

(2) *Extension of compliance for early reductions and other reductions*—(i) *Early reductions.* Pursuant to section 112(i)(5) of the Act, if the owner or operator of an existing source demonstrates that the source has achieved a reduction in emissions of hazardous air pollutants in accordance with the provisions of subpart D of this part, the Administrator (or the State with an approved permit program) will grant the owner or operator an extension of compliance with specific requirements of this part, as specified in subpart D.

(ii) *Other reductions.* Pursuant to section 112(i)(6) of the Act, if the owner or operator of an existing source has installed best available control technology (BACT) [as defined in section 169(3) of the Act] or technology required to meet a lowest achievable emission rate (LAER) (as defined in section 171 of the Act) prior to the promulgation of an emission standard in this part applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to the BACT or LAER installation, the Administrator will grant the owner or operator an extension of compliance with such emission standard that will apply until the date 5 years after the date on which such installation was achieved, as determined by the Administrator.

(3) *Request for extension of compliance.* Paragraphs (i)(4) through (i)(7) of this section concern requests for an extension of compliance with a relevant standard under this part [except requests for an extension of compliance under paragraph (i)(2)(i) of this section will be handled through procedures specified in subpart D of this part].

(4)(i)(A) The owner or operator of an existing source who is unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator (or a State, when the State has an approved part 70 permit program and the source is required to obtain a part 70 permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 1-year extension of compliance is insufficient to dry and cover mining waste in order to reduce emissions of any hazardous air pollutant. The owner or operator of an affected source who has requested an extension of compliance under this paragraph and who is otherwise required to obtain a title V permit shall apply for such permit or apply to have the source's title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph will be incorporated into the affected source's title V permit according to the provisions of part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.

(B) Any request under this paragraph for an extension of compliance with a relevant standard shall be submitted in writing to the appropriate authority not later than 12 months before the affected source's compliance date [as specified in paragraphs (b) and (c) of this section] for sources that are not including emission points in an emissions average, or not later than 18 months before the affected source's compliance date [as specified in paragraphs (b) and (c) of this section] for sources that are including emission points in an emissions average. Emission standards established under this part may specify alternative dates for the submittal of

requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards, e.g., a compliance date specified by the standard is less than 12 (or 18) months after the standard's effective date.

(ii) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(f) of the Act may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard. The Administrator may grant such an extension if he/she finds that such additional period is necessary for the installation of controls and that steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 15 calendar days after the effective date of the relevant standard.

(5) The owner or operator of an existing source that has installed BACT or technology required to meet LAER [as specified in paragraph (i)(2)(ii) of this section] prior to the promulgation of a relevant emission standard in this part may request that the Administrator grant an extension allowing the source 5 years from the date on which such installation was achieved, as determined by the Administrator, to comply with the standard. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 120 days after the promulgation date of the standard. The Administrator may grant such an extension if he or she finds that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(6)(i) The request for a compliance extension under paragraph (i)(4) of this section shall include the following information:

(A) A description of the controls to be installed to comply with the standard;

(B) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(*1*) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(*2*) The date by which on-site construction, installation of emission control equipment, or a process change is to be initiated;

(*3*) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

(*4*) The date by which final compliance is to be achieved;

(C) A description of interim emission control steps that will be taken during the extension period, including milestones to assure proper operation and maintenance of emission control and process equipment; and

(D) Whether the owner or operator is also requesting an extension of other applicable requirements (e.g., performance testing requirements).

(ii) The request for a compliance extension under paragraph (i)(5) of this section shall include all information needed to demonstrate to the Administrator's satisfaction that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(7) Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(8) *Approval of request for extension of compliance.* Paragraphs (i)(9) through (i)(14) of this section concern approval of an extension of compliance requested under paragraphs (i)(4) through (i)(6) of this section.

(9) Based on the information provided in any request made under paragraphs (i)(4) through (i)(6) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with an emission standard, as specified in paragraphs (i)(4) and (i)(5) of this section.

(10) The extension will be in writing and will—

(i) Identify each affected source covered by the extension;

(ii) Specify the termination date of the extension;

(iii) Specify the dates by which steps toward compliance are to be taken, if appropriate;

(iv) Specify other applicable requirements to which the compliance extension applies (e.g., performance tests); and

(v)(A) Under paragraph (i)(4), specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of the health of persons during the extension period; or

(B) Under paragraph (i)(5), specify any additional conditions that the Administrator deems necessary to assure the proper operation and maintenance of the installed controls during the extension period.

(11) The owner or operator of an existing source that has been granted an extension of compliance under paragraph (i)(10) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress reports and the dates by which they shall be submitted will be specified in the written extension of compliance granted under paragraph (i)(10) of this section.

(12)(i) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(i) or (i)(5) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing,

within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(iv) The Administrator's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(13)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(ii) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 15 calendar days after receipt of the original application and within 15 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 15 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator will notify the owner or operator in writing of the Administrator's intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(14) The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraphs (i)(10)(iii) or (i)(10)(iv) of this section is not met.

(15) [Reserved]

(16) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Act.

(j) *Exemption from compliance with emission standards.* The President may exempt any stationary source from compliance with any relevant standard established pursuant to section 112 of the Act for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years.

§ 63.7 Performance testing requirements.

(a) *Applicability and performance test dates.* (1) Unless otherwise specified, this section applies to the owner or operator of an affected source required to do performance testing, or another form of compliance demonstration, under a relevant standard.

(2) If required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source shall perform such tests as follows—

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date; or

(ii) Within 180 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in an applicable subpart of this part for an existing source subject to an emission standard established pursuant to section 112(d) of the Act, or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance for an existing source that obtains an extension of compliance under § 63.6(i); or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) [see § 63.6(b)(4)]; or

(vii) [Reserved]; or

(viii) [Reserved]; or

(ix) When an emission standard promulgated under this part is more stringent than the standard proposed [see § 63.6(b)(3)], the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date, or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

(3) The Administrator may require an owner or operator to conduct performance tests at the affected source at any other time when the action is authorized by section 114 of the Act.

(b) *Notification of performance test.* (1) The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin to allow the Administrator, upon request, to review and approve the site-specific test plan required under paragraph (c) of this section and to have an observer present during the test. Observation of the

performance test by the Administrator is optional.

(2) In the event the owner or operator is unable to conduct the performance test on the date specified in the notification requirement specified in paragraph (b)(1) of this section, due to unforeseeable circumstances beyond his or her control, the owner or operator shall notify the Administrator within 5 days prior to the scheduled performance test date and specify the date when the performance test is rescheduled. This notification of delay in conducting the performance test shall not relieve the owner or operator of legal responsibility for compliance with any other applicable provisions of this part or with any other applicable Federal, State, or local requirement, nor will it prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(c) *Quality assurance program.* (1) The results of the quality assurance program required in this paragraph will be considered by the Administrator when he/she determines the validity of a performance test.

(2)(i) *Submission of site-specific test plan.* Before conducting a required performance test, the owner or operator of an affected source shall develop and, if requested by the Administrator, shall submit a site-specific test plan to the Administrator for approval. The test plan shall include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pretest expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of test data precision; an example of internal QA is the sampling and analysis of replicate samples.

(iii) The external QA program shall include, at a minimum, application of plans for a test method performance audit (PA) during the performance test. The PA's consist of blind audit samples provided by the Administrator and analyzed during the performance test in order to provide a measure of test data bias. The external QA program may also include systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iv) The owner or operator of an affected source shall submit the site-specific test plan to the Administrator upon the Administrator's request at least 60 calendar days before the performance test is scheduled to take place, that is, simultaneously with the notification of intention to conduct a performance test required under paragraph (b) of this section, or on a mutually agreed upon date.

(v) The Administrator may request additional relevant information after the submittal of a site-specific test plan.

(3) *Approval of site-specific test plan.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the site-specific test plan (if review of the site-specific test plan is requested) within 30 calendar days after receipt of the original plan and within 30 calendar days after receipt of any supplementary information that is submitted under paragraph (c)(3)(i)(B) of this section. Before disapproving any site-specific test plan, the Administrator will notify the applicant of the Administrator's intention to disapprove the plan together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present, within 30 calendar days after he/she is notified of the intended disapproval, additional information to the Administrator before final action on the plan.

(ii) In the event that the Administrator fails to approve or disapprove the site-specific test plan within the time period specified in paragraph (c)(3)(i) of this section, the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the test method(s) specified in the relevant standard, the owner or operator shall conduct the performance test within the time specified in this section using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator shall refrain from conducting the performance test until the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan (if review of the site-specific test plan is requested) or until after the alternative method is approved [see paragraph (f) of this section]. If the Administrator does not approve the site-specific test plan (if review is requested) or the use of the alternative method within 30 days before the test is scheduled to begin, the performance test dates specified in paragraph (a) of this section may be extended such that the owner or operator shall conduct the performance test within 60 calendar days after the Administrator approves the site-specific test plan or after use of the alternative method is approved. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

(iii) Neither the submission of a site-specific test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall—

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4)(i) *Performance test method audit program.* The owner or operator shall analyze performance audit (PA) samples during each performance test. The owner or operator shall request performance audit materials 45 days prior to the test date. Cylinder audit gases may be obtained by contacting the Cylinder Audit Coordinator, Quality Assurance Division (MD–77B), Atmospheric Research and Exposure Assessment Laboratory (AREAL), U.S. EPA, Research Triangle Park, North Carolina 27711. All other audit materials may be obtained by contacting the Source Test Audit Coordinator, Quality Assurance Division (MD–77B), AREAL, U.S. EPA, Research Triangle Park, North Carolina 27711.

(ii) The Administrator will have sole discretion to require any subsequent remedial actions of the owner or operator based on the PA results.

(iii) If the Administrator fails to provide required PA materials to an owner or operator of an affected source in time to analyze the PA samples during a performance test, the requirement to conduct a PA under this paragraph shall be waived for such source for that performance test. Waiver under this paragraph of the requirement to conduct a PA for a particular performance test does not constitute a waiver of the requirement to conduct a PA for future required performance tests.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new source and, at the request of the Administrator, the owner or operator of each existing

source, shall provide performance testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to such source. This includes:

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

(e) *Conduct of performance tests.* (1) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test, nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, and malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under § 63.6(e). Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this section, in each relevant standard, and, if required, in applicable appendices of parts 51, 60, 61, and 63 of this chapter unless the Administrator—

(i) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or

(ii) Approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or

(iii) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or

(iv) Waives the requirement for performance tests because the owner or operator of an affected source has demonstrated by other means to the Administrator's satisfaction that the affected source is in compliance with the relevant standard.

(3) Unless otherwise specified in a relevant standard or test method, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. Upon receiving approval from the Administrator, results of a test run may be replaced with results of an additional test run in the event that—

(i) A sample is accidentally lost after the testing team leaves the site; or

(ii) Conditions occur in which one of the three runs must be discontinued because of forced shutdown; or

(iii) Extreme meteorological conditions occur; or

(iv) Other circumstances occur that are beyond the owner or operator's control.

(4) Nothing in paragraphs (e)(1) through (e)(3) of this section shall be construed to abrogate the Administrator's authority to require testing under section 114 of the Act.

(f) *Use of an alternative test method*—(1) *General.* Until permission to use an alternative test method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) The owner or operator of an affected source required to do performance testing by a relevant standard may use an alternative test method from that specified in the standard provided that the owner or operator—

(i) Notifies the Administrator of his or her intention to use an alternative test method not later than with the submittal of the site-specific test plan (if requested by the Administrator) or at least 60 days before the performance test is scheduled to begin if a site-specific test plan is not submitted;

(ii) Uses Method 301 in Appendix A of this part to validate the alternative test method; and

(iii) Submits the results of the Method 301 validation process along with the notification of intention and the justification for not using the specified test method. The owner or operator may submit the information required in this paragraph well in advance of the deadline specified in paragraph (f)(2)(i) of this section to ensure a timely review by the Administrator in order to meet the performance test date specified in this section or the relevant standard.

(3) The Administrator will determine whether the owner or operator's validation of the proposed alternative test method is adequate when the Administrator approves or disapproves the site-specific test plan required under paragraph (c) of this section. If the Administrator finds reasonable grounds to dispute the results obtained by the Method 301 validation process, the Administrator may require the use of a test method specified in a relevant standard.

(4) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative test method for the purposes of demonstrating compliance with a relevant standard, the Administrator may require the use of a test method specified in a relevant standard.

(5) If the owner or operator uses an alternative test method for an affected source during a required performance test, the owner or operator of such source shall continue to use the alternative test method for subsequent performance tests at that affected source until he or she receives approval from the Administrator to use another test method as allowed under § 63.7(f).

(6) Neither the validation and approval process nor the failure to validate an alternative test method shall abrogate the owner or operator's responsibility to comply with the requirements of this part.

(g) *Data analysis, recordkeeping, and reporting.* (1) Unless otherwise specified in a relevant standard or test method, or as otherwise approved by the Administrator in writing, results of a performance test shall include the analysis of samples, determination of emissions, and raw data. A performance test is "completed" when field sample collection is terminated. The owner or operator of an affected source shall report the results of the performance test to the Administrator before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator [see § 63.9(i)]. The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h). Before a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the Administrator. After a title V permit has

been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the appropriate permitting authority.

(2) [Reserved]

(3) For a minimum of 5 years after a performance test is conducted, the owner or operator shall retain and make available, upon request, for inspection by the Administrator the records or results of such performance test and other data needed to determine emissions from an affected source.

(h) *Waiver of performance tests.* (1) Until a waiver of a performance testing requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Individual performance tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) *Request to waive a performance test.* (i) If a request is made for an extension of compliance under § 63.6(i), the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If no extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Administrator is still considering that request, the application for a waiver of an initial performance test shall be submitted at least 60 days before the performance test if the site-specific test plan under paragraph (c) of this section is not submitted.

(ii) If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or excess emissions and continuous monitoring system performance report [such as those required under § 63.6(i), § 63.9(h), and § 63.10(e) or specified in a relevant standard or in the source's title V permit], but it shall be submitted at least 60 days before the performance test if the site-specific test plan required under paragraph (c) of this section is not submitted.

(iii) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

(4) *Approval of request to waive performance test.* The Administrator will approve or deny a request for a waiver of a performance test made under paragraph (h)(3) of this section when he/she—

(i) Approves or denies an extension of compliance under § 63.6(i)(8); or

(ii) Approves or disapproves a site-specific test plan under § 63.7(c)(3); or

(iii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iv) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.8 Monitoring requirements.

(a) *Applicability.* (1)(i) Unless otherwise specified in a relevant standard, this section applies to the owner or operator of an affected source required to do monitoring under that standard.

(ii) Relevant standards established under this part will specify monitoring systems, methods, or procedures, monitoring frequency, and other pertinent requirements for source(s) regulated by those standards. This section specifies general monitoring requirements such as those governing the conduct of monitoring and requests to use alternative monitoring methods. In addition, this section specifies detailed requirements that apply to affected sources required to use continuous monitoring systems (CMS) under a relevant standard.

(2) For the purposes of this part, all CMS required under relevant standards shall be subject to the provisions of this section upon promulgation of performance specifications for CMS as specified in the relevant standard or otherwise by the Administrator.

(3) [Reserved]

(4) Additional monitoring requirements for control devices used to comply with provisions in relevant standards of this part are specified in § 63.11.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and the relevant standard(s) unless the Administrator—

(i) Specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures; or

(ii) Approves the use of alternatives to any monitoring requirements or procedures.

(iii) Owners or operators with flares subject to § 63.11(b) are not subject to the requirements of this section unless otherwise specified in the relevant standard.

(2)(i) When the effluents from a single affected source, or from two or more affected sources, are combined before being released to the atmosphere, the owner or operator shall install an applicable CMS on each effluent.

(ii) If the relevant standard is a mass emission standard and the effluent from one affected source is released to the atmosphere through more than one point, the owner or operator shall install an applicable CMS at each emission point unless the installation of fewer systems is—

(A) Approved by the Administrator; or

(B) Provided for in a relevant standard (e.g., instead of requiring that a CMS be installed at each emission point before the effluents from those points are channeled to a common control device, the standard specifies that only one CMS is required to be installed at the vent of the control device).

(3) When more than one CMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CMS. However, when one CMS is used as a backup to another CMS, the owner or operator shall report the results from the CMS used to meet the monitoring requirements of this part. If both such CMS are used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CMS for the relevant compliance period.

(c) *Operation and maintenance of continuous monitoring systems.* (1) The owner or operator of an affected source shall maintain and operate each CMS as specified in this section, or in a relevant standard, and in a manner consistent with good air pollution control practices.

(i) The owner or operator of an affected source shall ensure the immediate repair or replacement of CMS parts to correct "routine" or otherwise predictable CMS malfunctions as defined in the source's startup, shutdown, and malfunction

plan required by § 63.6(e)(3). The owner or operator shall keep the necessary parts for routine repairs of the affected equipment readily available. If the plan is followed and the CMS repaired immediately, this action shall be reported in the semiannual startup, shutdown, and malfunction report required under § 63.10(d)(5)(i).

(ii) For those malfunctions or other events that affect the CMS and are not addressed by the startup, shutdown, and malfunction plan, the owner or operator shall report actions that are not consistent with the startup, shutdown, and malfunction plan within 24 hours after commencing actions inconsistent with the plan. The owner or operator shall send a follow-up report within 2 weeks after commencing actions inconsistent with the plan that either certifies that corrections have been made or includes a corrective action plan and schedule. The owner or operator shall provide proof that repair parts have been ordered or any other records that would indicate that the delay in making repairs is beyond his or her control.

(iii) The Administrator's determination of whether acceptable operation and maintenance procedures are being used will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturing recommendations and specifications, and inspection of the CMS. Operation and maintenance procedures written by the CMS manufacturer and other guidance also can be used to maintain and operate each CMS.

(2) All CMS shall be installed such that representative measurements of emissions or process parameters from the affected source are obtained. In addition, CEMS shall be located according to procedures contained in the applicable performance specification(s).

(3) All CMS shall be installed, operational, and the data verified as specified in the relevant standard either prior to or in conjunction with conducting performance tests under § 63.7. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(4) Except for system breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level calibration drift adjustments, all CMS, including COMS and CEMS, shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

(i) All COMS shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(ii) All CEMS for measuring emissions other than opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(5) Unless otherwise approved by the Administrator, minimum procedures for COMS shall include a method for producing a simulated zero opacity condition and an upscale (high-level) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of all the analyzer's internal optical surfaces and all electronic circuitry, including the lamp and photodetector assembly normally used in the measurement of opacity.

(6) The owner or operator of a CMS installed in accordance with the provisions of this part and the applicable CMS performance specification(s) shall check the zero (low-level) and high-level calibration drifts at least once daily in accordance with the written procedure specified in the performance evaluation plan developed under paragraphs (e)(3)(i) and (e)(3)(ii) of this section. The zero (low-level) and high-level calibration drifts shall be adjusted, at a minimum, whenever the 24-hour zero (low-level) drift exceeds two times the limits of the applicable performance specification(s) specified in the relevant standard. The system must allow the amount of excess zero (low-level) and high-level drift measured at the 24-hour interval checks to be recorded and quantified, whenever specified. For COMS, all optical and instrumental surfaces exposed to the effluent gases shall be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces shall be cleaned when the cumulative automatic zero compensation, if applicable, exceeds 4 percent opacity.

(7)(i) A CMS is out of control if—

(A) The zero (low-level), mid-level (if applicable), or high-level calibration drift (CD) exceeds two times the applicable CD specification in the applicable performance specification or in the relevant standard; or

(B) The CMS fails a performance test audit (e.g., cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit; or

(C) The COMS CD exceeds two times the limit in the applicable performance specification in the relevant standard.

(ii) When the CMS is out of control, the owner or operator of the affected source shall take the necessary corrective action and shall repeat all necessary tests which indicate that the system is out of control. The owner or operator shall take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour the owner or operator conducts a performance check (e.g., calibration drift) that indicates an exceedance of the performance requirements established under this part. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits. During the period the CMS is out of control, recorded data shall not be used in data averages and calculations, or to meet any data availability requirement established under this part.

(8) The owner or operator of a CMS that is out of control as defined in paragraph (c)(7) of this section shall submit all information concerning out-of-control periods, including start and end dates and hours and descriptions of corrective actions taken, in the excess emissions and continuous monitoring system performance report required in § 63.10(e)(3).

(d) *Quality control program.* (1) The results of the quality control program required in this paragraph will be considered by the Administrator when he/she determines the validity of monitoring data.

(2) The owner or operator of an affected source that is required to use a CMS and is subject to the monitoring requirements of this section and a relevant standard shall develop and implement a CMS quality control program. As part of the quality control program, the owner or operator shall develop and submit to the Administrator for approval upon request a site-specific performance evaluation test plan for the CMS performance evaluation required in paragraph (e)(3)(i) of this section, according to the procedures specified in paragraph (e). In addition, each quality control program shall include, at a minimum, a written protocol that describes procedures for each of the following operations:

(i) Initial and any subsequent calibration of the CMS;

(ii) Determination and adjustment of the calibration drift of the CMS;

(iii) Preventive maintenance of the CMS, including spare parts inventory;

(iv) Data recording, calculations, and reporting;

(v) Accuracy audit procedures, including sampling and analysis methods; and

(vi) Program of corrective action for a malfunctioning CMS.

(3) The owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. Where relevant, e.g., program of corrective action for a malfunctioning CMS, these written procedures may be incorporated as part of the affected source's startup, shutdown, and malfunction plan to avoid duplication of planning and recordkeeping efforts.

(e) *Performance evaluation of continuous monitoring systems*—(1) *General.* When required by a relevant standard, and at any other time the Administrator may require under section 114 of the Act, the owner or operator of an affected source being monitored shall conduct a performance evaluation of the CMS. Such performance evaluation shall be conducted according to the applicable specifications and procedures described in this section or in the relevant standard.

(2) *Notification of performance evaluation.* The owner or operator shall notify the Administrator in writing of the date of the performance evaluation simultaneously with the notification of the performance test date required under § 63.7(b) or at least 60 days prior to the date the performance evaluation is scheduled to begin if no performance test is required.

(3)(i) *Submission of site-specific performance evaluation test plan.* Before conducting a required CMS performance evaluation, the owner or operator of an affected source shall develop and submit a site-specific performance evaluation test plan to the Administrator for approval upon request. The performance evaluation test plan shall include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external QA program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of CMS performance. The external QA program shall include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iii) The owner or operator of an affected source shall submit the site-specific performance evaluation test plan to the Administrator (if requested) at least 60 days before the performance test or performance evaluation is scheduled to begin, or on a mutually agreed upon date, and review and approval of the performance evaluation test plan by the Administrator will occur with the review and approval of the site-specific test plan (if review of the site-specific test plan is requested).

(iv) The Administrator may request additional relevant information after the submittal of a site-specific performance evaluation test plan.

(v) In the event that the Administrator fails to approve or disapprove the site-specific performance evaluation test plan within the time period specified in § 63.7(c)(3), the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the monitoring method(s) specified in the relevant standard, the owner or operator shall conduct the performance evaluation within the time specified in this subpart using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to a monitoring method specified in the relevant standard, the owner or operator shall refrain from conducting the performance evaluation until the Administrator approves the use of the alternative method. If the Administrator does not approve the use of the alternative method within 30 days before the performance evaluation is scheduled to begin, the performance evaluation deadlines specified in paragraph (e)(4) of this section may be extended such that the owner or operator shall conduct the performance evaluation within 60 calendar days after the Administrator approves the use of the alternative method. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in this section (without the Administrator's prior approval of the site-specific performance evaluation test plan) if he/she subsequently chooses to use the specified monitoring method(s) instead of an alternative.

(vi) Neither the submission of a site-specific performance evaluation test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator' failure to approve or disapprove a plan in a timely manner shall—

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4) *Conduct of performance evaluation and performance evaluation dates.* The owner or operator of an affected source shall conduct a performance evaluation of a required CMS during any performance test required under § 63.7 in accordance with the applicable performance specification as specified in the relevant standard. Notwithstanding the requirement in the previous sentence, if the owner or operator of an affected source elects to submit COMS data for compliance with a relevant opacity emission standard as provided under § 63.6(h)(7), he/she shall conduct a performance evaluation of the COMS as specified in the relevant standard, before the performance test required under § 63.7 is conducted in time to submit the results of the performance evaluation as specified in paragraph (e)(5)(ii) of this section. If a performance test is not required, or the requirement for a performance test has been waived under § 63.7(h), the owner or operator of an affected source shall conduct the performance evaluation not later than 180 days after the appropriate compliance date for the affected source, as specified in § 63.7(a), or as otherwise specified in the relevant standard.

(5) *Reporting performance evaluation results.* (i) The owner or operator shall furnish the Administrator a copy of a written report of the results of the performance evaluation simultaneously with the results of the performance test required under § 63.7 or within 60 days of completion of the performance evaluation if no test is required, unless otherwise specified in a relevant standard. The Administrator may request that the owner or operator submit the raw data from a performance evaluation in the report of the performance evaluation results.

(ii) The owner or operator of an affected source using a COMS to

determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two or, upon request, three copies of a written report of the results of the COMS performance evaluation under this paragraph. The copies shall be provided at least 15 calendar days before the performance test required under § 63.7 is conducted.

(f) *Use of an alternative monitoring method*—(1) *General.* Until permission to use an alternative monitoring method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring methods or procedures of this part including, but not limited to, the following:

(i) Alternative monitoring requirements when installation of a CMS specified by a relevant standard would not provide accurate measurements due to liquid water or other interferences caused by substances within the effluent gases;

(ii) Alternative monitoring requirements when the affected source is infrequently operated;

(iii) Alternative monitoring requirements to accommodate CEMS that require additional measurements to correct for stack moisture conditions;

(iv) Alternative locations for installing CMS when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements;

(v) Alternate methods for converting pollutant concentration measurements to units of the relevant standard;

(vi) Alternate procedures for performing daily checks of zero (low-level) and high-level drift that do not involve use of high-level gases or test cells;

(vii) Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified by any relevant standard;

(viii) Alternative CMS that do not meet the design or performance requirements in this part, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements as specified in the relevant standard. The Administrator may require that such demonstration be performed for each affected source; or

(ix) Alternative monitoring requirements when the effluent from a single affected source or the combined effluent from two or more affected sources is released to the atmosphere through more than one point.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in this section or in the relevant standard. If the results of the specified and alternative method, requirement, or procedure do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(4)(i) *Request to use alternative monitoring method.* An owner or operator who wishes to use an alternative monitoring method shall submit an application to the Administrator as described in paragraph (f)(4)(ii) of this section, below. The application may be submitted at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring method is to be used to demonstrate compliance with a relevant standard, the application shall be submitted not later than with the site-specific test plan required in § 63.7(c) (if requested) or with the site-specific performance evaluation plan (if requested) or at least 60 days before the performance evaluation is scheduled to begin.

(ii) The application shall contain a description of the proposed alternative monitoring system and a performance evaluation test plan, if required, as specified in paragraph (e)(3) of this section. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.

(iii) The owner or operator may submit the information required in this paragraph well in advance of the submittal dates specified in paragraph (f)(4)(i) above to ensure a timely review by the Administrator in order to meet the compliance demonstration date specified in this section or the relevant standard.

(5) *Approval of request to use alternative monitoring method.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of his or her intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(ii) The Administrator may establish general procedures and criteria in a relevant standard to accomplish the requirements of paragraph (f)(5)(i) of this section.

(iii) If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (f)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until he or she receives approval from the Administrator to use another monitoring method as allowed by § 63.8(f).

(6) *Alternative to the relative accuracy test.* An alternative to the relative accuracy test for CEMS specified in a relevant standard may be requested as follows:

(i) *Criteria for approval of alternative procedures.* An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50 percent of the relevant standard. The owner or operator of an affected source may petition the Administrator under paragraph (f)(6)(ii) of this section to substitute the relative accuracy test in section 7 of Performance Specification 2 with the procedures in section 10 if the results of a performance test conducted according to the requirements in § 63.7, or other tests performed following the criteria in § 63.7, demonstrate that the emission rate of the pollutant of interest in the units of the relevant standard is less than 50 percent of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Administrator to substitute the relative accuracy test with the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed

to meet the control efficiency requirement. The alternative procedures do not apply if the CEMS is used continuously to determine compliance with the relevant standard.

(ii) *Petition to use alternative to relative accuracy test.* The petition to use an alternative to the relative accuracy test shall include a detailed description of the procedures to be applied, the location and the procedure for conducting the alternative, the concentration or response levels of the alternative relative accuracy materials, and the other equipment checks included in the alternative procedure(s). The Administrator will review the petition for completeness and applicability. The Administrator's determination to approve an alternative will depend on the intended use of the CEMS data and may require specifications more stringent than in Performance Specification 2.

(iii) *Rescission of approval to use alternative to relative accuracy test.* The Administrator will review the permission to use an alternative to the CEMS relative accuracy test and may rescind such permission if the CEMS data from a successful completion of the alternative relative accuracy procedure indicate that the affected source's emissions are approaching the level of the relevant standard. The criterion for reviewing the permission is that the collection of CEMS data shows that emissions have exceeded 70 percent of the relevant standard for any averaging period, as specified in the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the criterion for reviewing the permission is that the collection of CEMS data shows that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for any averaging period, as specified in the relevant standard. The owner or operator of the affected source shall maintain records and determine the level of emissions relative to the criterion for permission to use an alternative for relative accuracy testing. If this criterion is exceeded, the owner or operator shall notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increased emissions. The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

(g) *Reduction of monitoring data.* (1) The owner or operator of each CMS shall reduce the monitoring data as specified in this paragraph. In addition, each relevant standard may contain additional requirements for reducing monitoring data. When additional requirements are specified in a relevant standard, the standard will identify any unnecessary or duplicated requirements in this paragraph that the owner or operator need not comply with.

(2) The owner or operator of each COMS shall reduce all data to 6-minute averages calculated from 36 or more data points equally spaced over each 6-minute period. Data from CEMS for measurement other than opacity, unless otherwise specified in the relevant standard, shall be reduced to 1-hour averages computed from four or more data points equally spaced over each 1-hour period, except during periods when calibration, quality assurance, or maintenance activities pursuant to provisions of this part are being performed. During these periods, a valid hourly average shall consist of at least two data points with each representing a 15-minute period. Alternatively, an arithmetic or integrated 1-hour average of CEMS data may be used. Time periods for averaging are defined in § 63.2.

(3) The data may be recorded in reduced or nonreduced form (e.g., ppm pollutant and percent O_2 or ng/J of pollutant).

(4) All emission data shall be converted into units of the relevant standard for reporting purposes using the conversion procedures specified in that standard. After conversion into units of the relevant standard, the data may be rounded to the same number of significant digits as used in that standard to specify the emission limit (e.g., rounded to the nearest 1 percent opacity).

(5) Monitoring data recorded during periods of unavoidable CMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any data average computed under this part.

§ 63.9 Notification requirements.

(a) *Applicability and general information.* (1) The requirements in this section apply to owners and operators of affected sources that are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a notice that contains all the information required in a notification listed in this section, the owner or operator may send the Administrator a copy of the notice sent to the State to satisfy the requirements of this section for that notification.

(4)(i) Before a State has been delegated the authority to implement and enforce notification requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit notifications to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13).

(ii) After a State has been delegated the authority to implement and enforce notification requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit notifications to the delegated State authority (which may be the same as the permitting authority). In addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each notification submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any notifications at its discretion.

(b) *Initial notifications.* (1)(i) The requirements of this paragraph apply to the owner or operator of an affected source when such source becomes subject to a relevant standard.

(ii) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source shall be subject to the notification requirements of this section.

(iii) Affected sources that are required under this paragraph to submit an initial notification may use the application for approval of construction or reconstruction under § 63.5(d) of this subpart, if relevant, to fulfill the initial notification requirements of this paragraph.

(2) The owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under this part shall notify the Administrator in writing that the source is subject to the relevant

standard. The notification, which shall be submitted not later than 120 calendar days after the effective date of the relevant standard (or within 120 calendar days after the source becomes subject to the relevant standard), shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (i.e., physical location) of the affected source;

(iii) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date;

(iv) A brief description of the nature, size, design, and method of operation of the source, including its operating design capacity and an identification of each point of emission for each hazardous air pollutant, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each hazardous air pollutant; and

(v) A statement of whether the affected source is a major source or an area source.

(3) The owner or operator of a new or reconstructed affected source, or a source that has been reconstructed such that it is an affected source, that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is not required under § 63.5(d), shall notify the Administrator in writing that the source is subject to the relevant standard no later than 120 days after initial startup. The notification shall provide all the information required in paragraphs (b)(2)(i) through (b)(2)(v) of this section, delivered or postmarked with the notification required in paragraph (b)(5).

(4) The owner or operator of a new or reconstructed major affected source that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is required under § 63.5(d) shall provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new major affected source, reconstruct a major affected source, or reconstruct a major source such that the source becomes a major affected source with the application for approval of construction or reconstruction as specified in § 63.5(d)(1)(i);

(ii) A notification of the date when construction or reconstruction was commenced, submitted simultaneously with the application for approval of construction or reconstruction, if construction or reconstruction was commenced before the effective date of the relevant standard;

(iii) A notification of the date when construction or reconstruction was commenced, delivered or postmarked not later than 30 days after such date, if construction or reconstruction was commenced after the effective date of the relevant standard;

(iv) A notification of the anticipated date of startup of the source, delivered or postmarked not more than 60 days nor less than 30 days before such date; and

(v) A notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.

(5) After the effective date of any relevant standard established by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, an owner or operator who intends to construct a new affected source or reconstruct an affected source subject to such standard, or reconstruct a source such that it becomes an affected source subject to such standard, shall notify the Administrator, in writing, of the intended construction or reconstruction. The notification shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard promulgated in this part. The notification shall be submitted as soon as practicable before startup but no later than 60 days after the effective date of a relevant standard promulgated in this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date. The notification shall include all the information required for an application for approval of construction or reconstruction as specified in § 63.5(d). For major sources, the application for approval of construction or reconstruction may be used to fulfill the requirements of this paragraph.

(c) *Request for extension of compliance.* If the owner or operator of an affected source cannot comply with a relevant standard by the applicable compliance date for that source, or if the owner or operator has installed BACT or technology to meet LAER consistent with § 63.6(i)(5) of this subpart, he/she may submit to the Administrator (or the State with an approved permit program) a request for an extension of compliance as specified in § 63.6(i)(4) through § 63.6(i)(6).

(d) *Notification that source is subject to special compliance requirements.* An owner or operator of a new source that is subject to special compliance requirements as specified in § 63.6(b)(3) and § 63.6(b)(4) shall notify the Administrator of his/her compliance obligations not later than the notification dates established in paragraph (b) of this section for new sources that are not subject to the special provisions.

(e) *Notification of performance test.* The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin to allow the Administrator to review and approve the site-specific test plan required under § 63.7(c), if requested by the Administrator, and to have an observer present during the test.

(f) *Notification of opacity and visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting the opacity or visible emission observations specified in § 63.6(h)(5), if such observations are required for the source by a relevant standard. The notification shall be submitted with the notification of the performance test date, as specified in paragraph (e) of this section, or if no performance test is required or visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, the owner or operator shall deliver or postmark the notification not less than 30 days before the opacity or visible emission observations are scheduled to take place.

(g) *Additional notification requirements for sources with continuous monitoring systems.* The owner or operator of an affected source required to use a CMS by a relevant standard shall furnish the Administrator written notification as follows:

(1) A notification of the date the CMS performance evaluation under § 63.8(e) is scheduled to begin, submitted simultaneously with the notification of the performance test date required under § 63.7(b). If no performance test is required, or if the requirement to conduct a performance test has been waived for an affected source under § 63.7(h), the owner or operator shall notify the Administrator in writing of the date of the performance evaluation

at least 60 calendar days before the evaluation is scheduled to begin;

(2) A notification that COMS data results will be used to determine compliance with the applicable opacity emission standard during a performance test required by § 63.7 in lieu of Method 9 or other opacity emissions test method data, as allowed by § 63.6(h)(7)(ii), if compliance with an opacity emission standard is required for the source by a relevant standard. The notification shall be submitted at least 60 calendar days before the performance test is scheduled to begin; and

(3) A notification that the criterion necessary to continue use of an alternative to relative accuracy testing, as provided by § 63.8(f)(6), has been exceeded. The notification shall be delivered or postmarked not later than 10 days after the occurrence of such exceedance, and it shall include a description of the nature and cause of the increased emissions.

(h) *Notification of compliance status.* (1) The requirements of paragraphs (h)(2) through (h)(4) of this section apply when an affected source becomes subject to a relevant standard.

(2)(i) Before a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit to the Administrator a notification of compliance status, signed by the responsible official who shall certify its accuracy, attesting to whether the source has complied with the relevant standard. The notification shall list—

(A) The methods that were used to determine compliance;

(B) The results of any performance tests, opacity or visible emission observations, continuous monitoring system (CMS) performance evaluations, and/or other monitoring procedures or methods that were conducted;

(C) The methods that will be used for determining continuing compliance, including a description of monitoring and reporting requirements and test methods;

(D) The type and quantity of hazardous air pollutants emitted by the source (or surrogate pollutants if specified in the relevant standard), reported in units and averaging times and in accordance with the test methods specified in the relevant standard;

(E) An analysis demonstrating whether the affected source is a major source or an area source (using the emissions data generated for this notification);

(F) A description of the air pollution control equipment (or method) for each emission point, including each control device (or method) for each hazardous air pollutant and the control efficiency (percent) for each control device (or method); and

(G) A statement by the owner or operator of the affected existing, new, or reconstructed source as to whether the source has complied with the relevant standard or other requirements.

(ii) The notification shall be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard (unless a different reporting period is specified in a relevant standard, in which case the letter shall be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked). For example, the notification shall be sent before close of business on the 60th (or other required) day following completion of the initial performance test and again before the close of business on the 60th (or other required) day following the completion of any subsequent required performance test. If no performance test is required but opacity or visible emission observations are required to demonstrate compliance with an opacity or visible emission standard under this part, the notification of compliance status shall be sent before close of business on the 30th day following the completion of opacity or visible emission observations.

(3) After a title V permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's title V permit, including reports required under this part. After a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit the notification of compliance status to the appropriate permitting authority following completion of the relevant compliance demonstration activity specified in the relevant standard.

(4) [Reserved]

(5) If an owner or operator of an affected source submits estimates or preliminary information in the application for approval of construction or reconstruction required in § 63.5(d) in place of the actual emissions data or control efficiencies required in paragraphs (d)(1)(ii)(H) and (d)(2) of § 63.5, the owner or operator shall submit the actual emissions data and other correct information as soon as available but no later than with the initial notification of compliance status required in this section.

(6) Advice on a notification of compliance status may be obtained from the Administrator.

(i) *Adjustment to time periods or postmark deadlines for submittal and review of required communications.* (1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (i)(2) and (i)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (i)(2) and (i)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

(j) *Change in information already provided.* Any change in the information already provided under this section shall be provided to the Administrator in writing within 15 calendar days after the change.

§ 63.10 Recordkeeping and reporting requirements.

(a) *Applicability and general information.* (1) The requirements of this section apply to owners or operators of affected sources who are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a report that contains all the information required in a report listed in this section, an owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.

(4)(i) Before a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13).

(ii) After a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the delegated State authority (which may be the same as the permitting authority). In addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each report submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any reports at its discretion.

(5) If an owner or operator of an affected source in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has an established timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. For each relevant standard established pursuant to section 112 of the Act, the allowance in the previous sentence applies in each State beginning 1 year after the affected source's compliance date for that standard. Procedures governing the implementation of this provision are specified in § 63.9(i).

(6) If an owner or operator supervises one or more stationary sources affected by more than one standard established pursuant to section 112 of the Act, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required for each source shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the latest compliance date for any relevant standard established pursuant to section 112 of the Act for any such affected source(s). Procedures governing the implementation of this provision are specified in § 63.9(i).

(7) If an owner or operator supervises one or more stationary sources affected by standards established pursuant to section 112 of the Act (as amended November 15, 1990) and standards set under part 60, part 61, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required by each relevant (i.e., applicable) standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the relevant section 112 standard, or 1 year after the stationary source is required to be in compliance with the applicable part 60 or part 61 standard, whichever is latest. Procedures governing the implementation of this provision are specified in § 63.9(i).

(b) *General recordkeeping requirements.* (1) The owner or operator of an affected source subject to the provisions of this part shall maintain files of all information (including all reports and notifications) required by this part recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

(2) The owner or operator of an affected source subject to the provisions of this part shall maintain relevant records for such source of—

(i) The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

(ii) The occurrence and duration of each malfunction of the air pollution control equipment;

(iii) All maintenance performed on the air pollution control equipment;

(iv) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan [see § 63.6(e)(3)];

(v) All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan [see § 63.6(e)(3)] when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events);

(vi) Each period during which a CMS is malfunctioning or inoperative (including out-of-control periods);

(vii) All required measurements needed to demonstrate compliance with a relevant standard (including, but not limited to, 15-minute averages of CMS data, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to report);

(viii) All results of performance tests, CMS performance evaluations, and opacity and visible emission observations;

(ix) All measurements as may be necessary to determine the conditions of performance tests and performance evaluations;

(x) All CMS calibration checks;

(xi) All adjustments and maintenance performed on CMS;

(xii) Any information demonstrating whether a source is meeting the requirements for a waiver of

recordkeeping or reporting requirements under this part, if the source has been granted a waiver under paragraph (f) of this section;

(xiii) All emission levels relative to the criterion for obtaining permission to use an alternative to the relative accuracy test, if the source has been granted such permission under § 63.8(f)(6); and

(xiv) All documentation supporting initial notifications and notifications of compliance status under § 63.9.

(3) Recordkeeping requirement for applicability determinations. If an owner or operator determines that his or her stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants is not subject to a relevant standard or other requirement established under this part, the owner or operator shall keep a record of the applicability determination on site at the source for a period of 5 years after the determination, or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination shall include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) shall be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with regard to the relevant standard or other requirement. If relevant, the analysis shall be performed in accordance with requirements established in subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any.

(c) *Additional recordkeeping requirements for sources with continuous monitoring systems.* In addition to complying with the requirements specified in paragraphs (b)(1) and (b)(2) of this section, the owner or operator of an affected source required to install a CMS by a relevant standard shall maintain records for such source of—

(1) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods);

(2)–(4) [Reserved]

(5) The date and time identifying each period during which the CMS was inoperative except for zero (low-level) and high-level checks;

(6) The date and time identifying each period during which the CMS was out of control, as defined in § 63.8(c)(7);

(7) The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occurs during startups, shutdowns, and malfunctions of the affected source;

(8) The specific identification (i.e., the date and time of commencement and completion) of each time period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occurs during periods other than startups, shutdowns, and malfunctions of the affected source;

(9) [Reserved]

(10) The nature and cause of any malfunction (if known);

(11) The corrective action taken or preventive measures adopted;

(12) The nature of the repairs or adjustments to the CMS that was inoperative or out of control;

(13) The total process operating time during the reporting period; and

(14) All procedures that are part of a quality control program developed and implemented for CMS under § 63.8(d).

(15) In order to satisfy the requirements of paragraphs (c)(10) through (c)(12) of this section and to avoid duplicative recordkeeping efforts, the owner or operator may use the affected source's startup, shutdown, and malfunction plan or records kept to satisfy the recordkeeping requirements of the startup, shutdown, and malfunction plan specified in § 63.6(e), provided that such plan and records adequately address the requirements of paragraphs (c)(10) through (c)(12).

(d) *General reporting requirements.* (1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

(2) *Reporting results of performance tests.* Before a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of any performance test under § 63.7 to the Administrator. After a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of a required performance test to the appropriate permitting authority. The owner or operator of an affected source shall report the results of the performance test to the Administrator (or the State with an approved permit program) before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator. The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h).

(3) *Reporting results of opacity or visible emission observations.* The owner or operator of an affected source required to conduct opacity or visible emission observations by a relevant standard shall report the opacity or visible emission results (produced using Test Method 9 or Test Method 22, or an alternative to these test methods) along with the results of the performance test required under § 63.7. If no performance test is required, or if visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the performance test required under § 63.7, the owner or operator shall report the opacity or visible emission results before the close of business on the 30th day following the completion of the opacity or visible emission observations.

(4) *Progress reports.* The owner or operator of an affected source who is required to submit progress reports as a condition of receiving an extension of compliance under § 63.6(i) shall submit such reports to the Administrator (or the State with an approved permit program) by the dates specified in the written extension of compliance.

(5)(i) *Periodic startup, shutdown, and malfunction reports.* If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan [see § 63.6(e)(3)], the owner or operator shall state such information in a startup, shutdown, and malfunction report. Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period. The startup, shutdown, and malfunction report shall consist of a letter, containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, that shall be submitted to the Administrator semiannually (or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's title V permit). The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day

following the end of each calendar half (or other calendar reporting period, as appropriate). If the owner or operator is required to submit excess emissions and continuous monitoring system performance (or other periodic) reports under this part, the startup, shutdown, and malfunction reports required under this paragraph may be submitted simultaneously with the excess emissions and continuous monitoring system performance (or other) reports. If startup, shutdown, and malfunction reports are submitted with excess emissions and continuous monitoring system performance (or other periodic) reports, and the owner or operator receives approval to reduce the frequency of reporting for the latter under paragraph (e) of this section, the frequency of reporting for the startup, shutdown, and malfunction reports also may be reduced if the Administrator does not object to the intended change. The procedures to implement the allowance in the preceding sentence shall be the same as the procedures specified in paragraph (e)(3) of this section.

(ii) *Immediate startup, shutdown, and malfunction reports.* Notwithstanding the allowance to reduce the frequency of reporting for periodic startup, shutdown, and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. The immediate report required under this paragraph shall consist of a telephone call (or facsimile [FAX] transmission) to the Administrator within 2 working days after commencing actions inconsistent with the plan, and it shall be followed by a letter, delivered or postmarked within 7 working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph are specified in § 63.9(i).

(e) *Additional reporting requirements for sources with continuous monitoring systems*—(1) *General.* When more than one CEMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CEMS.

(2) *Reporting results of continuous monitoring system performance evaluations.* (i) The owner or operator of an affected source required to install a CMS by a relevant standard shall furnish the Administrator a copy of a written report of the results of the CMS performance evaluation, as required under § 63.8(e), simultaneously with the results of the performance test required under § 63.7, unless otherwise specified in the relevant standard.

(ii) The owner or operator of an affected source using a COMS to determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two or, upon request, three copies of a written report of the results of the COMS performance evaluation conducted under § 63.8(e). The copies shall be furnished at least 15 calendar days before the performance test required under § 63.7 is conducted.

(3) *Excess emissions and continuous monitoring system performance report and summary report.* (i) Excess emissions and parameter monitoring exceedances are defined in relevant standards. The owner or operator of an affected source required to install a CMS by a relevant standard shall submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator semiannually, except when—

(A) More frequent reporting is specifically required by a relevant standard;

(B) The Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source; or

(C) The CMS data are to be used directly for compliance determination and the source experienced excess emissions, in which case quarterly reports shall be submitted. Once a source reports excess emissions, the source shall follow a quarterly reporting format until a request to reduce reporting frequency under paragraph (e)(3)(ii) of this section is approved.

(ii) *Request to reduce frequency of excess emissions and continuous monitoring system performance reports.* Notwithstanding the frequency of reporting requirements specified in paragraph (e)(3)(i) of this section, an owner or operator who is required by a relevant standard to submit excess emissions and continuous monitoring system performance (and summary) reports on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(A) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected source's excess emissions and continuous monitoring system performance reports continually demonstrate that the source is in compliance with the relevant standard;

(B) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the relevant standard; and

(C) The Administrator does not object to a reduced frequency of reporting for the affected source, as provided in paragraph (e)(3)(iii) of this section.

(iii) The frequency of reporting of excess emissions and continuous monitoring system performance (and summary) reports required to comply with a relevant standard may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the 5-year recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based. In the

absence of a notice of disapproval within 45 days, approval is automatically granted.

(iv) As soon as CMS data indicate that the source is not in compliance with any emission limitation or operating parameter specified in the relevant standard, the frequency of reporting shall revert to the frequency specified in the relevant standard, and the owner or operator shall submit an excess emissions and continuous monitoring system performance (and summary) report for the noncomplying emission points at the next appropriate reporting period following the noncomplying event. After demonstrating ongoing compliance with the relevant standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard, as provided for in paragraphs (e)(3)(ii) and (e)(3)(iii) of this section.

(v) *Content and submittal dates for excess emissions and monitoring system performance reports.* All excess emissions and monitoring system performance reports and all summary reports, if required, shall be delivered or postmarked by the 30th day following the end of each calendar half or quarter, as appropriate. Written reports of excess emissions or exceedances of process or control system parameters shall include all the information required in paragraphs (c)(5) through (c)(13) of this section, in § 63.8(c)(7) and § 63.8(c)(8), and in the relevant standard, and they shall contain the name, title, and signature of the responsible official who is certifying the accuracy of the report. When no excess emissions or exceedances of a parameter have occurred, or a CMS has not been inoperative, out of control, repaired, or adjusted, such information shall be stated in the report.

(vi) *Summary report.* As required under paragraphs (e)(3)(vii) and (e)(3)(viii) of this section, one summary report shall be submitted for the hazardous air pollutants monitored at each affected source (unless the relevant standard specifies that more than one summary report is required, e.g., one summary report for each hazardous air pollutant monitored). The summary report shall be entitled "Summary Report—Gaseous and Opacity Excess Emission and Continuous Monitoring System Performance" and shall contain the following information:

(A) The company name and address of the affected source;

(B) An identification of each hazardous air pollutant monitored at the affected source;

(C) The beginning and ending dates of the reporting period;

(D) A brief description of the process units;

(E) The emission and operating parameter limitations specified in the relevant standard(s);

(F) The monitoring equipment manufacturer(s) and model number(s);

(G) The date of the latest CMS certification or audit;

(H) The total operating time of the affected source during the reporting period;

(I) An emission data summary (or similar summary if the owner or operator monitors control system parameters), including the total duration of excess emissions during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of excess emissions expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total duration of excess emissions during the reporting period into those that are due to startup/shutdown, control equipment problems, process problems, other known causes, and other unknown causes;

(J) A CMS performance summary (or similar summary if the owner or operator monitors control system parameters), including the total CMS downtime during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of CMS downtime expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total CMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes;

(K) A description of any changes in CMS, processes, or controls since the last reporting period;

(L) The name, title, and signature of the responsible official who is certifying the accuracy of the report; and

(M) The date of the report.

(vii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, and CMS downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report shall be submitted, and the full excess emissions and continuous monitoring system performance report need not be submitted unless required by the Administrator.

(viii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, or the total CMS downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, both the summary report and the excess emissions and continuous monitoring system performance report shall be submitted.

(4) *Reporting continuous opacity monitoring system data produced during a performance test.* The owner or operator of an affected source required to use a COMS shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results. The report of COMS data shall be submitted simultaneously with the report of the performance test results required in paragraph (d)(2) of this section.

(f) *Waiver of recordkeeping or reporting requirements.* (1) Until a waiver of a recordkeeping or reporting requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Recordkeeping or reporting requirements may be waived upon written application to the Administrator if, in the Administrator's judgment, the affected source is achieving the relevant standard(s), or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under § 63.6(i), any required compliance progress report or compliance status report required under this part [such as under § 63.6(i) and § 63.9(h)] or in the source's title V permit, or an excess emissions and continuous monitoring system performance report required under paragraph (e) of this section, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(4) The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements under this paragraph when he/she—

(i) Approves or denies an extension of compliance; or

(ii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iii) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) A waiver of any recordkeeping or reporting requirement granted under this paragraph may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(6) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.11 Control device requirements.

(a) *Applicability.* This section contains requirements for control devices used to comply with provisions in relevant standards. These requirements apply only to affected sources covered by relevant standards referring directly or indirectly to this section.

(b) *Flares.* (1) Owners or operators using flares to comply with the provisions of this part shall monitor these control devices to assure that they are operated and maintained in conformance with their designs. Applicable subparts will provide provisions stating how owners or operators using flares shall monitor these control devices.

(2) Flares shall be steam-assisted, air-assisted, or non-assisted.

(3) Flares shall be operated at all times when emissions may be vented to them.

(4) Flares shall be designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. Test Method 22 in Appendix A of part 60 of this chapter shall be used to determine the compliance of flares with the visible emission provisions of this part. The observation period is 2 hours and shall be used according to Method 22.

(5) Flares shall be operated with a flame present at all times. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(6) Flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.45 MJ/scm (200 Btu/scf) or greater if the flare is non-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\sum_{i=1}^{n} C_i H_i$$

Where:

H_T=Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C.

K=Constant =

$$1.740\times10^{-7}\left(\frac{1}{\text{ppmv}}\right)\left(\frac{\text{g-mole}}{\text{scm}}\right)\left(\frac{\text{MJ}}{\text{kcal}}\right)$$

where the standard temperature for (g-mole/scm) is 20 °C.

C_i=Concentration of sample component i in ppmv on a wet basis, as measured for organics by Test Method 18 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 63.14).

H_i=Net heat of combustion of sample component i, kcal/g-mole at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382–76 (incorporated by reference as specified in § 63.14) if published values are not available or cannot be calculated.

n=Number of sample components.

(7)(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity less than 18.3 m/sec (60 ft/sec), except as provided in paragraphs (b)(7)(ii) and (b)(7)(iii) of this section. The actual exit velocity of a flare shall be determined by dividing by the volumetric flow rate of gas being combusted (in units of emission standard temperature and pressure), as determined by Test Methods 2, 2A, 2C, or 2D in Appendix A to 40 CFR part 60 of this chapter, as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(ii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in paragraph (b)(7)(i) of this section, equal to or greater than 18.3 m/sec (60 ft/sec) but less than 122 m/sec (400 ft/sec), are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in paragraph (b)(7)(i) of this section, less than the velocity V_{max}, as determined by the method specified in this paragraph, but less than 122 m/sec (400 ft/sec) are allowed. The maximum permitted velocity, V_{max}, for flares complying with this paragraph shall be determined by the following equation:

$\text{Log}_{10}(V_{max})=(H_T+28.8)/31.7$

Where:

V_{max}=Maximum permitted velocity, m/sec.

28.8=Constant.

31.7=Constant.

H_T=The net heating value as determined in paragraph (b)(6) of this section.

(8) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity V_{max}. The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

$V_{max}=8.706+0.7084(H_T)$

Where:

V_{max}=Maximum permitted velocity, m/sec.

8.706=Constant.

0.7084=Constant.

H_T=The net heating value as determined in paragraph (b)(6) of this section.

§ 63.12 State authority and delegations.

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from—

(1) Adopting and enforcing any standard, limitation, prohibition, or other regulation applicable to an affected source subject to the requirements of this part, provided that such standard, limitation, prohibition, or regulation is not less stringent than any requirement applicable to such source established under this part;

(2) Requiring the owner or operator of an affected source to obtain permits, licenses, or approvals prior to initiating construction, reconstruction, modification, or operation of such source; or

(3) Requiring emission reductions in excess of those specified in subpart D of this part as a condition for granting the extension of compliance authorized by section 112(i)(5) of the Act.

(b)(1) Section 112(l) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce standards and

other requirements pursuant to section 112 for stationary sources located in that State. Because of the unique nature of radioactive material, delegation of authority to implement and enforce standards that control radionuclides may require separate approval.

(2) Subpart E of this part establishes procedures consistent with section 112(l) for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(c) All information required to be submitted to the EPA under this part also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act, provided that each specific delegation may exempt sources from a certain Federal or State reporting requirement. The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to the EPA and the State agency.

§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted to the appropriate Regional Office of the U.S. Environmental Protection Agency indicated in the following list of EPA Regional Offices.

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Air, Pesticides and Toxics Division, J.F.K. Federal Building, Boston, MA 02203–2211.

EPA Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Air and Waste Management Division, 26 Federal Plaza, New York, NY 10278.

EPA Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Director, Air, Radiation and Toxics Division, 841 Chestnut Street, Philadelphia, PA 19107.

EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air, Pesticides and Toxics, Management Division, 345 Courtland Street, NE., Atlanta, GA 30365.

EPA Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air and Radiation Division, 77 West Jackson Blvd., Chicago, IL 60604–3507.

EPA Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Director, Air, Pesticides and Toxics, 1445 Ross Avenue, Dallas, TX 75202–2733.

EPA Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101.

EPA Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Director, Air and Toxics Division, 999 18th Street, 1 Denver Place, Suite 500, Denver, CO 80202–2405.

EPA Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam), Director, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

EPA Region X (Alaska, Idaho, Oregon, Washington), Director, Air and Toxics Division, 1200 Sixth Avenue, Seattle, WA 98101.

(b) All information required to be submitted to the Administrator under this part also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act. The owner or operator of an affected source may contact the appropriate EPA Regional Office for the mailing addresses for those States whose delegation requests have been approved.

(c) If any State requires a submittal that contains all the information required in an application, notification, request, report, statement, or other communication required in this part, an owner or operator may send the appropriate Regional Office of the EPA a copy of that submittal to satisfy the requirements of this part for that communication.

§ 63.14 Incorporations by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, 800 North Capital Street, NW, suite 700, Washington, DC, at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC, and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(b) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 63.11(b)(6).

(2) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter [High-Precision Method], IBR approved for § 63.11(b)(6).

§ 63.15 Availability of information and confidentiality.

(a) *Availability of information.* (1) With the exception of information protected through part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), notification of compliance status, excess emissions and continuous monitoring systems performance report, and title V permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(2) The availability to the public of information provided to or otherwise obtained by the Administrator under this part shall be governed by part 2 of this chapter.

(b) *Confidentiality.* (1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a title V permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a title V permit may be entitled to protection from disclosure.

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Federal Register

Wednesday
March 16, 1994

Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Placement of Nutrition Labeling and Other Mandatory Labeling on Meat and Poultry Products; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 93–020P]

RIN 0583–AB72

Placement of Nutrition Labeling and Other Mandatory Labeling on Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations by defining the information panel on the labeling of meat and poultry products; allowing mandatory labeling information to be shown in the information panel, in addition to the principal display panel; allowing nutrition information to be shown on other than the principal display panel or the informational panel of meat and poultry products; and allowing final labeling bearing nutrition information, which has been approved by FSIS in sketch form, to be generically approved. This action would provide increased flexibility in the placement of nutrition information and other mandatory information on the labeling of meat and poultry products and streamline the nutrition labeling approval process. Portions of this proposal parallel a Food and Drug Administration (FDA) proposal concerning placement of the nutrition information on food packages.

DATES: Comments must be received on or before May 16, 1994.

ADDRESSES: Written comments to: Policy Office, ATTN: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Charles Edwards at (202) 254–2565. (See also "Comments" under "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed under Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirement on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this proposed rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant effect on small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed rule would provide official establishments with additional flexibility in placing nutrition labeling and other mandatory information on the labeling of meat and poultry products. Small meat and poultry establishments are exempt from nutrition labeling, provided the labels of their products bear no nutrition claims or nutrition information. Therefore, most small establishments would not be affected by the portion of this proposed rule pertaining to the placement of nutrition information on the labeling.

The other portion of this proposed rule would provide regulatory flexibility in placing other mandatory information, such as the ingredients statement or the name of the company, on the labeling. Such flexibility is already provided to all establishments under current labeling regulations and policy. Therefore, small establishments would see minimal, if any, impact from this portion of the proposed rule.

Small businesses referred to as label expeditors, however, would be affected by the portion of the proposed rule pertaining to the generic approval of nutrition labeling which has been approved in sketch form. While such entities would be affected because the number of labels requiring the existing expediting service would decrease, the number of firms expediting label approvals is not substantial. Moreover, the Agency believes that since the proposed rule would only affect that category of labeling bearing nutrition information, the economic impact on the expediting service may not be significant because many of the existing label expeditors are likely to modify the services they offer and provide consulting services to their existing clients. This portion of the proposed rule would have a positive, but not significant, impact on a large number of small meat and poultry processors because it would reduce their direct labeling application costs.

Paperwork Requirements

This proposed rule would require the category of labels addressed in this rule to be approved only once by FSIS's Food Labeling Division (FLD) in sketch, and if no changes are made, no additional approval would be necessary (generic approval). Therefore, to receive final approval, establishments would not have to complete FSIS Form 7234, "Application for Approval of Labels, Marking or Device," which transmits labels to FLD for review and approval. This would eliminate duplication in the labeling approval system and reduce the number of labels reviewed and processed by FLD. Therefore, this proposal would expedite the labeling approval process for the specific category of labeling addressed in this rule and would also reduce official establishments' paperwork burden.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office and refer to Docket No. 93–020P. Any person desiring an opportunity for an oral presentation of views, as provided by

the Poultry Products Inspection Act, should make such a request to Mr. Charles Edwards, so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposal will be available for public inspection at the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

FSIS published its final nutrition labeling regulations in the Federal Register on January 6, 1993 (58 FR 632). Corrections and technical amendments to this final rule were published on August 18, 1993 (58 FR 43787) and September 10, 1993 (58 FR 47624), respectively. The final rule permits voluntary nutrition labeling on single-ingredient, raw meat and poultry products, and establishes mandatory nutrition labeling for all other meat and poultry products, with certain exceptions. The rule also specifies a new format for nutrition information and the location of nutrition information on the label of packaged products. Nutrition information on a label of packaged meat or poultry products must appear on the label's principal display panel or on the information panel, except for gift packs. Nutrition information for gift packs may be displayed at a location other than on the product label, such as label inserts.

Recognizing label space constraints, FSIS included provisions in the final rule that allow a modified nutrition label on products in packages that have a total surface area available to bear labeling of 40 or less square inches, so that the required nutrition information could be presented on any label panel. The flexibility provided by these provisions reflects FSIS's recognition that is more important that the nutrition information be presented on the immediate package than in any particular place. In addition, FSIS, stated in the preamble to the final rule that it will consider, on a case-by-case basis, allowing the modified nutrition label for packages larger than 40 square inches that have a surface area which precludes the presentation of the full nutrition label. Such determinations are made by FSIS at the time meat and poultry manufacturers obtain prior approval for the content and design if labeling for their products before the products may be marketed.

Following publication of its final rule on nutrition labeling, FSIS received many comments from the meat and poultry industry requesting greater flexibility in the placement of nutrition information on the product label. The commenters stated that the type size and spacing requirements for the display of the nutrition information prevented its placement in compliance with current labeling regulations and policy. FSIS agrees that new nutrition information displays often require more space on the label than current nutrition information displays, and that it is sometimes difficult to fit all required information on the information panel. FSIS has concluded that increased flexibility in regard to the placement of nutrition information is necessary to ensure that mandatory information on labels is readable and not overcrowded. FSIS believes this flexibility can be achieved without hindering consumer use of labeling information. FDA reached similar conclusions based on its review of layouts to implement its nutrition labeling regulations, as well as its review of comments received after publication of its final rule. Based on its conclusion that greater flexibility in the placement of nutrition information is needed, FDA published a proposed rule in the Federal Register on August 18, 1993 (58 (FR 44091), to permit such flexibility.

Under the nutrition labeling regulations, most meat and poultry product labels, with certain exceptions, must be revised and resubmitted for review and approval by FSIS. FSIS anticipates that approximately 120,000 labels would require nutrition labeling under the final nutrition labeling regulations. FSIS has acknowledged the extensive economic impact of the nutrition labeling requirements, as well as the need for substantive Agency resources to review all such revised labels. The volume of labels bearing nutrition labeling, compounded by the routine submittal of labels requiring approval, is expected to place a tremendous burden upon the current prior label approval system. FSIS believes this burden would be reduced without loss of information to consumers by allowing the labeling to be generically approved once it has been approved by FSIS in sketch form.

Current Regulations and Agency Policy

Currently, 9 CFR 317.2(d) and 381.116(b) define the "principal display panel" as the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale. Under 9 CFR 317.2(c), 381.117, 381.118, 381.121, 381.121a, 381.122, and 381.123, this panel must include the name of the product; the ingredients statement, if the product is fabricated from two or more ingredients; the name and place of business of the manufacturer, packer, or distributor; the net quantity of contents; an official inspection legend and the number of the official establishment; and any other information required by the regulations.

Section 381.116(a) of the poultry products inspection regulations (9 CFR 381.116(a)) prescribes that information required to appear on the principal display panel, except as otherwise permitted in the regulations, shall be in distinctly legible form, read in the same general direction, generally parallel to each other, and appear in the English language, except that Spanish may be substituted for English, under certain cases, for all information except the inspection legend. The Federal meat inspection regulations contain similar provisions, except that mandatory information on the principal display panel is not required to read in the same general direction and be generally parallel to each other.

In August 1980, the Food Labeling Division of FSIS issued Policy Memo 7, Information Panel, which permits the use of an information panel, in addition to the principal display panel, for providing mandatory labeling information on meat and poultry products.[1] This policy memo was issued because establishments were experiencing difficulty in providing all required information on the principal display panel. Policy Memo 7 provides that the mandatory information that may appear on an information panel includes nutrition information, an ingredients statement, and the firm's name and address. The inspection legend and number on cylindrical cans may also appear on the information panel, but must be placed on the 20 percent area immediately to the right of the principal display panel.

Policy Memo 7 also defines an information panel as the first usable surface to the right of the principal display panel. Usable surfaces exclude those having folded flaps, tear strips, opening flaps, heat-sealed type flaps, or less than adequate space to accommodate the mandatory information. Surfaces having information, such as vignettes, UPC codes, preparation instructions, and serving suggestions are considered usable and such information should be displaced if an information panel is used. The policy memo specifies that where a surface is larger than needed to accommodate the mandatory information, the information panel is a

[1] A copy of this policy memo is available for public inspection in the office of the FSIS Hearing Clerk.

section of that surface and must contain all mandatory information in one place without intervening nonmandatory information. The information panel must be located on the left side of any such large surface.

Sections 317.4, 327.14, 327.15, 381.132, and 381.205 of the regulations describes FSIS's prior label approval program. Under this program, official establishments may submit labeling in sketch form (i.e., printer's proof or other version that clearly shows all required features, size, location, and indication of final color) to the Food Labeling Division for approval. After official establishments print final labels based on approved sketches, the final labeling must be resubmitted for approval by either the Food Labeling Division or an inspector-in-charge, depending on the modification made to the final labeling. In addition, §§ 317.5 and 381.134 of the regulations provide that labeling can be generically approved for use without additional authorization, provided the labeling shows all mandatory information in a sufficiently prominent manner and is not otherwise false or misleading in any particular.

The Proposal

FSIS is proposing to amend the Federal meat and poultry products inspection regulations by allowing mandatory labeling information to be placed on the information panel and by defining "information panel." This action is necessary to specify in the regulations the location of mandatory information which cannot be accommodated on the principal display panel due to insufficient space. These new provisions would replace current directions on use of the information panel and would rescind Policy Memo 7. Accordingly, FSIS proposes to add a new paragraph (m) to 9 CFR 317.2 and a new paragraph (c) to 9 CFR 381.116 to define the information panel as the first usable surface to the right of the principal display panel or alternate principal display panel that can be readily seen by consumers. These added provisions would also require that all information required to appear on the principal display panel or permitted to appear on the information panel shall appear on the same panel unless there is insufficient space. In determining whether sufficient space is available, any vignettes, designs, and other nonmandatory information shall not be considered. If either panel cannot accommodate all mandatory information, the information may be divided between the principal display panel or the information panel. However, information required by any single regulation, such as the ingredients statement, must appear complete on a single panel. All information on the information panel shall appear in one place without intervening material, such as vignettes. FSIS proposes to add the information panel as a location for the ingredients statement and the name and place of business of the manufacturer, packer, or distributor, except as otherwise specified in the regulations, by amending 9 CFR 317.2(f), 317.2(g)(2), 381.118, and 381.122 to this effect.

FSIS is aware that, in certain instances, such as when only a principal display panel is used on a package with no other surface area to place a label, it is not always possible for all mandatory information to fit and read in the same direction on the principal display panel. In such cases, it is necessary to provide some information perpendicular to the other mandatory information on the panel to fit all information on the panel. Therefore, FSIS proposes to delete the wording from 9 CFR 381.116 that requires all mandatory information on the principal display panel to read in the same general direction for the reasons discussed in the preceding section of the preamble.

FSIS is proposing to allow the nutrition information to be placed on any panel that can be readily seen by consumers when a package has a total surface area available to bear labeling of greater than 40 square inches, but its principal display and information panels cannot accommodate all mandatory information. Thus, if the first panel to the right of the principal display panel, such as the right side of a box, can accommodate all mandatory information other than the nutrition information, the nutrition information may be placed on any other panel, such as the left side or the top of the box. The establishment would also have the option of placing all mandatory information, including the nutrition information, on the next usable right panel big enough to accommodate all information, such as the back of the box. This action would provide increased flexibility by allowing establishments to position the nutrition information to reduce crowding of mandatory information. FSIS believes that providing this flexibility would not produce any loss of comprehensibility, understandability, or information for consumers.

Current rules for determining the space available to bear mandatory labeling information in 9 CFR 317.2(d) and 381.116(b) are that the principal display panel be large enough to accommodate all mandatory information with clarity and conspicuousness without it being obscured by nonmandatory label information or crowding. Thus, nonmandatory labeling information on the principal display panel must be counted as usable space for mandatory information in determining sufficiency of space. The purpose of these provisions is to ensure that mandatory labeling information is prominently displayed on meat or poultry product labels, so that consumers can easily locate such information. FSIS believes that a different treatment of nonmandatory information on the principal display panel is appropriate in deciding where nutrition information is to be presented because the graphic requirements for nutrition information required by 9 CFR 317.309(e) and 381.409(e) result in a "Nutrition Facts" panel that is easy to locate regardless of its placement on the label. Given the demand for labeling space made by nutrition information, FSIS is proposing to exclude designs, vignettes, and other nonmandatory information on the principal display panel in calculating the amount of available space for determining the panel on which nutrition information should appear. To displace these items could significantly affect the appearance of many packages with little gain in comprehensibility for consumers. In addition, current industry practice almost never places the nutrition information on the principal display panel unless there is no alternative panel on the package.

These proposed actions would require an accompanying modification to the nutrition labeling regulations pertaining to relative nutrient content claims. The specific provisions to be modified would be provisions of FDA's final nutrition labeling regulations of January 6, 1993 (58 FR 2302) (as corrected at 58 FR 17341, April 2, 1993, and adopted by FSIS at 58 FR 43787, August 18, 1993), that FSIS cross-referenced in its codified language. To incorporate the modifications into its codified language, FSIS would subdivide existing paragraphs and add new paragraphs. The existing portions of text are included only to define the subdivisions, place the proposed requirements in the framework of existing provisions, and make the revised sections easier to interpret.

In its final rule, FSIS cross-referenced 21 CFR 101.13(j)(2)(iv)(B), which requires that when a relative nutrient content claim is made, clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving with that in the reference food shall appear adjacent

to the most prominent claim or on the information panel. FDA repeated this requirement in each regulation in 21 CFR part 101 pertaining to relative claims (i.e., claims about "more," "light," calories, sodium, and fat, fatty acids, and cholesterol) and FSIS cross-referenced most of these provisions. FSIS is proposing to amend these provisions to require that the comparative quantitative information be placed adjacent to the most prominent claim or to the nutrition information. Likewise, FSIS is proposing to modify the provision that pertains to the placement of the statement "not a sodium free food" on products that are not sodium free and yet whose label bears a claim of "unsalted." FSIS is proposing to require that the statement be placed adjacent to the nutrition information.

FSIS finds that these comparative statements and the statements about the sodium content of products provide information about the nutritional content of the product. They are of the greatest value to consumers when presented in conjunction with other nutrition information about the product. Because nutrition information may or may not appear on the principal display panel or the information panel, FSIS believes that the location of the comparative statements and the statement on sodium content should be tied to the placement of the nutrition information rather than placed on the principal display panel or the information panel.

The nutrition labeling regulations require extensive revision of existing meat and poultry product labels. All labels modified to meet the nutrition labeling regulations must be submitted to FSIS for review and approval prior to use. FSIS anticipates that approximately 120,000 labels would require nutrition labeling under the final nutrition labeling regulations. Since publication of the nutrition labeling regulations on January 6, 1993, only about 5,000 labels designed to implement the nutrition labeling regulations have been approved by FSIS. The projected increase in the volume and complexity of labeling applications submitted to FSIS for approval from companies seeking to comply with the nutrition labeling regulations, compounded by the routine submittal of labels requiring approval, but exempt from nutrition labeling, is expected to place a tremendous burden on the current prior labeling approval system.

On November 23, 1993, FSIS published a proposed rule in the **Federal Register** (58 FR 62014) which proposes to change the prior labeling approval system, in part, by allowing final labeling, which was approved by FSIS in sketch form, to be used without further FSIS authorization. However, because the prior labeling approval proposal encompasses various labeling issues, a final rule may not be issued in a timely manner to alleviate the anticipated burden on the prior labeling approval system resulting from nutrition labeling applications. Therefore, FSIS is proposing to allow final labeling bearing nutrition information to be generically approved.

Under the proposed system, official establishments would be permitted to use final labeling bearing nutrition information, which has been approved by FSIS in sketch form, without additional authorization, provided the final labeling has been prepared without modifications or with modifications permitted in 9 CFR 317.5(b) and 381.134(b), and the final labeling is not false or misleading. Such labeling must be designed in accordance with 9 CFR part 317, subpart B, and 381, subpart Y. FSIS believes it is an unnecessary burden on industry to require the submission of final labeling when the sketch has been previously approved. Because the labeling would have been reviewed and approved by FSIS in the sketch form, the proposed action would not compromise the truthfulness and accuracy of the meat and poultry product labeling.

The proposal would eliminate unnecessary duplication in the labeling approval system and reduce the number of labels reviewed and processed by FSIS. Consequently, the proposal would improve the efficiency of FSIS by expediting the label approval process for a specific category of labeling, and would also reduce the paperwork burden on official establishments. Since only 5,000 labeling applications have been approved during the first 11 months of the 18-month implementation period for the nutrition labeling regulations, the majority of meat and poultry product manufacturers would benefit from timely implementation of measures to ease compliance with the regulations.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Proposed Rule

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations to read as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2 would be amended by adding paragraphs (f)(4), (g)(2)(iv), and (m), and revising paragraph (g)(2)(iii) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f) * * *

(4) The ingredient statement may be placed on the information panel, except as otherwise permitted in the subchapter.

(g) * * *

(2) * * *

(iii) On the front riser panel of frozen food cartons, or

(iv) On the information panel.

* * * * *

(m)(1) The information panel is that part of a label that is the first surface to the right of the principal display panel as observed by an individual facing the principal display panel, with the following exceptions:

(i) If the first surface to the right of the principal display panel is too small to accommodate the required information or is otherwise unusable label space, e.g., folded flaps, tear strips, opening flaps, heat-sealed flaps, the next panel to the right of this part of the label may be used.

(ii) If the package has one or more alternate principal display panels, the information panel is to the right of any principal display panel.

(iii) If the top of the container is the principal display panel and the package has no alternate principal display panel, the information panel is any panel adjacent to the principal display panel.

(2)(i) Except as otherwise permitted in this part, all information required to appear on the principal display panel or permitted to appear on the information panel shall appear on the same panel unless there is insufficient space. In determining the sufficiency of the available space, except as otherwise prescribed in this part, any vignettes, designs, and any other nonmandatory information shall not be considered. If there is insufficient space for all required information to appear on a single panel, it may be divided between the principal display panel and the information panel, provided that the

information required by any given provision of this part, such as the ingredients statement, is not divided and appears on the same panel.

(ii) All information appearing on the information panel pursuant to this section shall appear in one place without intervening material, such as designs or vignettes.

3. Section 317.5 would be amended by adding paragraph (c) to read as follows:

§ 317.5 Generically approved labeling.

* * * * *

(c) Labeling bearing nutrition information which has been approved by the Food Labeling Division, Washington, DC, in sketch form (i.e., printer's proof or other version that clearly shows all required features, size, location, and indication of final color) is approved for use without additional authorization by the Administrator: *Provided,*

(1) That the final label has not been modified, except as permitted in paragraph (b) of this section; and

(2) That the final label is not false or misleading.

4. Section 317.302 would be amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 317.302 Location of nutrition information.

(a) Nutrition information on a label of a packaged meat product shall appear on the label's principal display panel or on the information panel, except as provided in paragraphs (b) and (c) of this section.

(b) * * *

(c) Meat products in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required information may use any alternate panel that can be readily seen by consumers for the nutrition information. In determining the sufficiency of available space for the nutrition information, the space needed for vignettes, designs, and other nonmandatory label information on the principal display panel may be considered.

5. Section 317.313 would be amended by revising paragraph (j) to read as follows:

§ 317.313 Nutrient content claims; general principles.

* * * * *

(j)(1) Products may bear a statement that compares the level of a nutrient in the product with the level of a nutrient in a reference food in accordance with 21 CFR 101.13(j), except:

(i) Comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B); and

(ii) The placement of the comparison statement on the product label at 21 CFR 101.13(j)(2)(iv)(B).

(2) This statement shall appear adjacent to the most prominent claim or to the nutrition information.

* * * * *

6. Section 317.354 would be revised to read as follows:

§ 317.354 Nutrient content claims for "good source," "high," and "more."

(a) Nutrient content claims about a nutrient in a product in relation to the Reference Daily Intake (RDI) established for that nutrient in 21 CFR 101.9(c)(8)(iv) or Daily Reference Value (DRV) established for that nutrient in 21 CFR 101.9(c)(9), excluding total carbohydrate, may be used on the label or in labeling, in accordance with 21 CFR 101.54, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.54(e)(1)(iii)(B) and (e)(2)(iii)(B); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the nutrient in the individual food product per labeled serving, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference food' is 1 g per serving; 'this product' contains 4 g per serving").

(c) Quantitative information comparing the level of the nutrient in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference product' is 2 g per 3 oz; 'this product' contains 5 g per 3 oz").

7. Section 317.356 would be amended by revising paragraph (a) and adding paragraphs (c), (d), and (e) to read as follows:

§ 317.356 Nutrient content claims for "light" or "lite."

(a) *General requirements.* The following nutrient content claims using the term "light" or "lite" to describe a product may be used on the label and in labeling, provided that the product is labeled in compliance with 21 CFR 101.56, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.56 (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) * * *

(c) Quantitative information comparing the level of calories and fat content in the product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'—200 calories, 4 g fat; regular 'reference product'—300 calories, 8 g fat per serving"); and

(d) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food it replaces, regardless of the level of calories and fat content in the reference food, is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'—500 mg sodium per serving; regular 'reference product'—1,000 mg per serving"; or "lite 'this product'—170 mg sodium per serving; regular 'reference product'—350 mg per serving").

(e) The term "lightly salted" may be used on a product to which has been added 50 percent less sodium than is normally added to the reference food as described in 21 CFR 101.13(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not "low in sodium" as defined in 21 CFR 101.61(b)(4), the statement "not a low sodium food" shall appear adjacent to the nutrition information and the information required to accompany a relative claim shall appear on the label or labeling as specified in 21 CFR 101.13(j)(2).

8. Section 317.360 would be revised to read as follows:

§ 317.360 Nutrient content claims for calorie content.

(a) Nutrient content claims about the calorie content of a product may be used on the label on in labeling in accordance with 21 CFR 101.60, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.60(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of calories and sugars in the individual food product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information

(e.g., "calorie content has been reduced from 150 to 100 calories per serving"; or "sugar content has been lowered from 8 g to 6 g per serving").

(c) Quantitative information comparing the level of calories and sugars in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "calorie content has been reduced from 110 calories per 3 oz to 80 calories per 3 oz"; or "sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz").

9. Section 317.361 would be revised to read as follows:

§ 317.361 Nutrient content claims for the sodium content.

(a) Nutrient content claims about the sodium content of a product may be used on the label and in labeling in accordance with 21 CFR 101.61, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.61(b)(6)(ii)(B), (b)(7)(ii)(B), and (c)(2)(iii); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the sodium in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been lowered from 300 to 150 mg per serving").

(c) Quantitative information comparing the level of sodium in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been reduced from 220 mg per 3 oz to 150 mg per 3 oz").

(d) If the product is not sodium free, the statement "not a sodium free food" or "not for control of sodium in the diet" appears adjacent to the nutrition information of the product bearing the claim.

10. Section 317.362 would be amended by revising paragraphs (a)(2), (a)(3), (a)(5), (a)(11), (a)(13), and (a)(16), and adding paragraphs (d) through (f) to read as follows:

§ 317.362 Nutrient content claims for fat, fatty acids, and cholesterol content of meat products.

(a) * * *

(2) 21 CFR 101.62(b), except: (i) The placement of the comparison statement on the product label at 21 CFR 101.62(b)(4)(ii)(B) and (5)(ii)(B), and

(ii) The meal products definition shall be as prescribed in § 317.313(l), there will be no provision for main dish products, and the following provision shall be added: A synonym for the term "_____ percent fat free" is "_____ percent lean";

(3) 21 CFR 101.62(c), except:

(i) The placement of the comparison statement on the product label at 21 CFR 101.62(c)(4)(ii)(B) and (5)(ii)(B); and

(ii) There will be no disclosure of the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made, the meal products definition shall be as prescribed in § 317.313(l), and there will be no provision for main dish products;

(4) * * *

(5) 21 CFR 101.62(d)(1)(i)(A) through (D) and (d)(1)(ii)(F), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(1)(ii)(F)(*2*), and there will be no provision for main dish products;

* * * * *

(11) 21 CFR 101.62(d)(2)(iii)(E), except the placement of the comparison statement at 21 CFR 101.62(d)(2)(iii)(E)(*2*);

(12) * * *

(13) 21 CFR 101.62(d)(4)(i)(A) through (C), except the placement of the comparison statement at 21 CFR 101.62(d)(4)(i)(C)(*2*);

* * * * *

(16) 21 CFR 101.62(d)(5)(i)(A) through (C), except the placement of the comparison statement at 21 CFR 101.62(d)(5)(1)(C)(*2*).

* * * * *

(d)(1) Quantitative information comparing the level of fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fat content has been reduced from 8 g to 4 g per serving").

(2) Quantitative information comparing the level of fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent such claim or to the nutrition information (e.g., "fat content has been reduced from 8 g per 3 oz to 5 g per 3 oz").

(e)(1) Quantitative information comparing the level of saturated fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat reduced from 3 g to 1.5 g per serving").

(2) Quantitative information comparing the level of saturated fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat content has been reduced from 2.5 g per 3 oz to 1.5 g per 3 oz").

(f)(1) Quantitative information for claims of cholesterol free, low cholesterol or reduced cholesterol comparing the level of cholesterol in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "contains no cholesterol compared with 30 mg in one serving of 'reference food'; contains 11 g of fat per serving"; or "cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving").

(2) Quantitative information comparing the level of cholesterol in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz").

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

11. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

12. Section 381.116 would be amended by revising the second sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

§ 381.116 Wording on labels of immediate containers.

(a) * * *. Such items of information shall be in distinctly legible form and shall be generally parallel to each other.* * *

(b) * * *

(c)(1) The information panel is that part of a label that is the first surface to the right of the principal display panel as observed by an individual facing the principal display panel, with the following exceptions:

(i) If the first surface to the right of the principal display panel is too small to accommodate the required information or is otherwise unusable label space, e.g., folded flaps, tear strips, opening flaps, heat-sealed flaps, the next panel to the right of this part of the label may be used.

(ii) If the package has one or more alternate principal display panels, the

information panel is to the right of any principal display panel.

(iii) If the top of the container is the principal display panel and the package has no alternate principal display panel, the information panel is any panel adjacent to the principal display panel.

(2)(i) Except as otherwise permitted in this part, all information required to appear on the principal display panel or permitted to appear on the information panel shall appear on the same panel unless there is insufficient space. In determining the sufficiency of the available space, except as otherwise prescribed in this part, any vignettes, designs, and any other nonmandatory information shall not be considered. If there is insufficient space for all required information to appear on a single panel, it may be divided between the principal display panel and the information panel, provided that the information required by any given provision of this part, such as the ingredients statement, is not divided and appears on the same panel.

(ii) All information appearing on the information panel pursuant to this section shall appear in one place without intervening material, such as designs or vignettes.

13. Section 381.118 would be amended by adding a new paragraph (e) to read as follows:

§ 381.118 Ingredients statement.

* * * * *

(e) The ingredients statement may be placed on the information panel, except as otherwise permitted in this subchapter.

14. Section 381.122 would be amended by revising the last sentence of the paragraph to read as follows:

§ 381.122 Identification of manufacturer, packer, or distributor.

* * *. The name and place of business of the manufacturer, packer, or distributor may be shown on the principal display panel, on the 20-percent panel of the principal display panel reserved for required information, on the front riser panel of frozen food cartons, or on the information panel.

15. Section 381.134 would be amended by adding paragraph (c) to read as follows:

§ 381.134 Generically approved labeling.

* * * * *

(c) Labeling bearing nutrition information which has been approved by the Food Labeling Division, Washington, DC, in sketch form (i.e., printer's proof or other version that clearly shows all required features, size, location, and indication of final color) is approved for use without additional authorization by the Administrator: *Provided,*

(1) That the final label has not been modified, except as permitted in paragraph (b) of this section; and

(2) That the final label is not false or misleading.

16. Section 381.402 would be amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 381.402 Location of nutrition information.

(a) Nutrition information on a label of a packaged poultry product shall appear on the label's principal display panel or on the information panel, except as provided in paragraphs (b) and (c) of this section.

(b) * * *

(c) Poultry products in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required information may use any alternate panel that can be readily seen by consumers for the nutrition information. In determining the sufficiency of available space for the nutrition information, the space needed for vignettes, designs, and other nonmandatory label information on the principal display panel may be considered.

17. Section 381.413 would be amended by revising paragraph (j) to read as follows:

§ 381.413 Nutrient content claims; general principles.

* * * * *

(j)(1) Products may bear a statement that compares the level of a nutrient in the product with the level of a nutrient in a reference food in accordance with 21 CFR 101.13(j), except:

(i) Comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B); and

(ii) The placement of the comparison statement on the product label at 21 CFR 101.13(j)(2)(iv)(B).

(2) This statement shall appear adjacent to the most prominent claim or to the nutrition information.

* * * * *

18. Section 381.454 would be revised to read as follows:

§ 381.454 Nutrient content claims for "good source," "high," and "more."

(a) Nutrient content claims about a nutrient in a product in relation to the Reference Daily Intake (RDI) established for that nutrient in 21 CFR 101.9(c)(8)(iv) or Daily Reference Value (DRV) established for that nutrient in 21 CFR 101.9(c)(9), excluding total carbohydrate, may be used on the label or in labeling, in accordance with 21 CFR 101.54, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.54(e)(1)(iii)(B) and (e)(2)(iii)(B); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the nutrient in the individual food product per labeled serving, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference food' is 1 g per serving; 'this product' contains 4 g per serving").

(c) Quantitative information comparing the level of the nutrient in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference product' is 2 g per 3 oz; 'this product' contains 5 g per 3 oz").

19. Section 381.456 would be amended by revising paragraph (a) and adding paragraphs (c), (d), and (e) to read as follows:

§ 381.456 Nutrient content claims for "light" or "lite."

(a) *General requirements.* The following nutrient content claims using the term "light" or "lite" to describe a product may be used on the label and in labeling, provided that the product is labeled in compliance with 21 CFR 101.56, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.56 (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) * * *

(c) Quantitative information comparing the level of calories and fat content in the product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'—200 calories, 4 g fat; regular 'reference product'—300 calories, 8 g fat per serving"); and

(d) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food it replaces, regardless of

the level of calories and fat content in the reference food, is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'—500 mg sodium per serving; regular 'reference product'—1,000 mg per serving"; or "lite 'this product'—170 mg sodium per serving; regular 'reference product'—350 mg per serving").

(e) The term "lightly salted" may be used on a product to which has been added 50 percent less sodium than is normally added to the reference food as described in 21 CFR 101.13(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not "low in sodium" as defined in 21 CFR 101.61(b)(4), the statement "not a low sodium food" shall appear adjacent to the nutrition information and the information required to accompany a relative claim shall appear on the label or labeling as specified in 21 CFR 101.13(j)(2).

20. Section 381.460 would be revised to read as follows:

§ 381.460 Nutrient content claims for calorie content.

(a) Nutrient content claims about the calorie content of a product may be used on the label or in labeling in accordance with 21 CFR 101.60, except:

(1) The placement of the comparison statement at 21 CFR 101.60(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of calories and sugars in the individual food product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "calorie content has been reduced from 150 to 100 calories per serving"; or "sugar content has been lowered from 8 g to 6 g per serving").

(c) Quantitative information comparing the level of calories and sugars in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "calorie content has been reduced from 110 calories per 3 oz to 80 calories per 3 oz"; or "sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz").

21. Section 381.461 would be revised to read as follows:

§ 381.461 Nutrient content claims for the sodium content.

(a) Nutrient content claims about the sodium content of a product may be used on the label and in labeling in accordance with 21 CFR 101.61, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.61(b)(6)(ii)(B), (b)(7)(ii)(B), and (c)(2)(iii); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the sodium in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been lowered from 300 to 150 mg per serving").

(c) Quantitative information comparing the level of sodium in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been reduced form 220 mg per 3 oz to 150 mg per 3 oz").

(d) If the product is not sodium free, the statement "not a sodium free food" or "not for control of sodium in the diet" appears adjacent to the nutrition information of the product bearing the claim.

22. Section 381.462 would be amended by revising paragraphs (a)(2), (a)(3), (a)(5), (a)(11), (a)(13), and (a)(16), and adding paragraphs (d) through (f) to read as follows:

§ 381.462 Nutrient content claims for fat, fatty acids, and cholesterol content of meat products.

(a) * * *

(2) 21 CFR 101.62(b), except:

(i) The placement of the comparison statement on the product label at 21 CFR 101.62(b)(4)(ii)(B) and (5)(ii)(B); and

(ii) The meal products definition shall be as prescribed in § 381.413(l), there will be no provision for main dish products, and the following provision shall be added: A synonym for the term "_____ percent fat free" is "_____ percent lean";

(3) 21 CFR 101.62(c), except:

(i) The placement of the comparison statement on the product label at 21 CFR 101.62(c)(4)(ii)(B) and (5)(ii)(B); and

(ii) There will be no disclosure of the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made, the meal products definition shall be as prescribed in § 381.413(l), and there will be no provision for main dish products;

(4) * * *

(5) 21 CFR 101.62(d)(1)(i) (A) through (D) and (d)(1)(ii)(F), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(1)(ii)(F)(*2*), and there will be no provision for main dish products;

* * * * *

(11) 21 CFR 101.62(d)(2)(iii)(E), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(2)(iii)(E)(*2*);

(12) * * *

(13) 21 CFR 101.62(d)(4)(i) (A) through (C), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(4)(i)(C)(*2*);

* * * * *

(16) 21 CFR 101.62(d)(5)(i) (A) through (C), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(5)(i)(C)(*2*).

* * * * *

(d)(1) Quantitative information comparing the level of fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fat content has been reduced from 8 g to 4 g per serving").

(2) Quantitative information comparing the level of fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent such claim or to the nutrition information (e.g., "fat content has been reduced from 8 g per 3 oz to 5 g per 3 oz").

(e)(1) Quantitative information comparing the level of saturated fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat reduced from 3 g to 1.5 g per serving").

(2) Quantitative information comparing the level of saturated fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat content has been reduced from 2.5 g per 3 oz to 1.5 g per 3 oz").

(f)(1) Quantitative information for claims of cholesterol free, low cholesterol, or reduced cholesterol comparing the level of cholesterol in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "contains no cholesterol compared with 30 mg in one

serving of 'reference food'; contains 11 g of fat per serving"; or "cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving").

(2) Quantitative information comparing the level of cholestrol in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz").

Done at Washington, DC, on March 9, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing & Inspection Services.

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Part IV

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Nutrition Labeling of Meat and Poultry Products; Technical Amendments; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 93–022P]

Nutrition Labeling of Meat and Poultry Products; Technical Amendments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its final nutrition labeling regulations, which permit voluntary nutrition labeling on single-ingredient, raw meat and poultry products and establish mandatory nutrition labeling for all other meat and poultry products, with certain exceptions. FSIS is taking this action to address inconsistencies in the regulations, improve their accuracy, and correct unintended technical consequences of the regulations, in order to provide consumers with the most informative labeling system possible. Most of the changes FSIS is proposing are designed to parallel technical amendments the Food and Drug Administration (FDA) made to its regulations that require nutrition labeling on most foods under its jurisdiction.

DATES: Comments must be received on or before May 16, 1994.

ADDRESSES: Written comments to: Policy Office, ATTN: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Charles Edwards at (202) 254–2565. (See also "Comments" under SUPPLEMENTARY INFORMATION.)

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed under Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry in the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this proposed rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule with respect to labeling decisions.

Effect on Small Entities

The Administrator, FSIS, has determined that this proposed rule will not have a significant effect on small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed rule would clarify and improve understanding of certain provisions of the nutrition labeling regulations. The Administrator finds that this proposed rule would result in positive benefits because it would enable official establishments to more easily comprehend the regulations and facilitate their implementation. The proposal would not impose any new requirements on the affected establishments. Small meat and poultry establishments are exempt from nutrition labeling, provided the labels of their products bear no nutrition claims or information. Therefore, most small establishments would not be affected by this proposed rule.

Comments

Interested persons are invited to submit comments concerning this proposed rule. Written comments should be sent to the Policy Office and refer to Docket No. 93–022P. Any person desiring an opportunity for an oral presentation of views, as provided by the Poultry Products Inspection Act, should make such a request to Mr. Charles Edwards, so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposed rule will be available for public inspection at the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

On January 6, 1993, FSIS published in the **Federal Register** final regulations on nutrition labeling for meat and poultry products (58 FR 632). FSIS's nutrition labeling regulations are designed to parallel, to the extent possible, FDA's final regulations on nutrition labeling. FDA's regulations were published in the **Federal Register** simultaneously with FSIS's publication.

Following publication of its final regulations, FSIS received comments from various interested parties contending that portions of its regulations were unclear, contained technical unintended consequences in a specific provision, or were not parallel to FDA's nutrition labeling regulations. After considering these comments and conducting an in-depth review of FDA's final nutrition labeling regulations, FSIS issued technical amendments to its final regulations in an interim final rule published on September 10, 1993 (58 FR 47624).

On August 18, 1993, FDA published corrections and technical amendments (58 FR 44020, 44039, and 44063) to its final regulations in response to comments received on its final rule. Many of the provisions amended in the August 18, 1993, publication were cross-referenced by FSIS in its final nutrition labeling regulations. The provisions related to nutrient declarations, label format, serving sizes, equivalent metric quantity, servings per container, reference amounts, nutrient content claims, saturated fat free claims, foods for infants and children under 4 years of age, and packages with less than 12 square inches of space. FSIS conducted a thorough review of FDA's amendments and comments received and concluded that additional amendments to the FSIS nutrition labeling regulations were necessary to provide greater clarity, accuracy, and consistency with FDA's regulations, and to satisfy concerns of commenters.

Accordingly, FSIS is proposing to amend its final nutrition labeling regulations by adopting certain changes made by FDA in cross-referenced provisions and amending certain of its own provisions to be consistent with those changes. In addition, FSIS is proposing to correct the terminology for extra lean ground beef in a provision of the final nutrition labeling regulations and to correct an oversight in the Federal poultry products inspection regulations related to product analyses.

Elements of Proposed Rule

Serving Sizes

FSIS acknowledges that the variety of specifications for products in discrete units which is contained in a single paragraph at 9 CFR 317.309(a)(3) and 381.409(a)(3) may be confusing. For this reason, FSIS is proposing to subdivide the single paragraphs of 9 CFR 317.309(a)(3) and 381.409(a)(3) into 9 CFR 317.309(a)(3)(i) through (iv) and 381.409(a)(3)(i) through (iv), reorder some of the information, and make minor editorial changes to improve clarity. For example, the proposed revisions at 9 CFR 317.309(a)(3)(ii) and 381.409(a)(3)(ii) make it explicit that for products in discrete units that contain between 50 and 67 percent of the reference amount, the manufacturer may declare the serving size as either one or two units.

In its final nutrition labeling rule, FSIS inadvertently omitted provisions on how to declare serving sizes for products made up of distinct and separate foods packaged together in the same container and intended to be consumed together when the manufacturer chooses to list the nutrition information separately for each component. These products include "complete" products, such as chow mein components in multiple cans and pizza mix with a prepared crust, and mixes and kits with separate packets that require the addition of water or other ingredients, such as soups and stir-fry kits. Also included are products that are distinct and separate foods packaged together in the same container and intended to be consumed together, e.g., chicken wings with a dipping sauce, turkey with gravy packet, and ham with glaze packet.

For a number of these products, the serving size can be expressed as the amount of the main ingredient plus proportioned minor ingredients based on the "reference amount for the combined product." An example of the "reference amount for the combined product" calculated for a package of six chicken nuggets weighing 170 grams (g) and barbecue sauce weighing 100 grams is 135 grams; i.e., 85 grams for nuggets and 50 grams for sauce. The serving size for the composite product could be expressed as "3 chicken nuggets with sauce (135g)," and the serving size for each component could be expressed as "3 nuggets (85g)" and either "barbecue sauce for 3 nuggets (50g)" or "3 tbsp sauce (50g)," if 50 grams of sauce makes 3 tablespoons. The number of servings for this package would be two. FSIS is proposing to add new paragraphs at 9 CFR 317.309(a)(3)(vi) and 381.409(a)(3)(vi) to provide the option described above for serving sizes for products that consist of two or more foods that are packaged and presented to be consumed together. FDA amended provisions at 21 CFR 101.9(b)(2) (ii) and (iii) to provide the same option for products in large discrete units usually divided for consumption and nondiscrete bulk products, respectively. In order to accommodate this option in 21 CFR 101.9(b)(5), as well as other changes, FDA revised the section considerably. For clarity, FSIS is proposing to delete its cross-reference to 21 CFR 101.9(b)(5) at 9 CFR 317.309(a)(1) and 381.409(a)(1) and incorporate the pertinent provisions into 9 CFR 317.309(a)(6) and 381.409(a)(6). The option to specifically allow proportioning of minor ingredients to the major ingredients appears at 9 CFR 317.309(a)(6)(vi) and 381.409(a)(6)(vi). Also, FSIS is proposing to delete reference to the term "portion" at 9 CFR 317.309(a)(1), 381.409(a)(1), 317.312(a), and 381.412(a) because it is no longer defined in the nutrition labeling regulations.

At 9 CFR 317.309(a) and 381.409(a), FSIS cross-referenced provisions pertaining to serving sizes at 21 CFR 101.9(b) (1) and (2) except (2)(i), and 21 CFR 101.9(b) (5) through (9) except (b)(5)(iii). By cross-referencing 21 CFR 101.9(b)(6), FSIS provided that single-serving containers of products with large reference amounts, i.e., equal to or greater than 100 grams or milliliters, may declare one or two servings per container if they contain more than 150 percent but less than 200 percent of the reference amount. This provision applies to products that are "packaged and sold individually." Similar provisions at 9 CFR 317.309(a)(3) and 381.409(a)(3) for products within multi-serving packages were inadvertently omitted. This unintended inconsistency would allow individual units packaged and sold separately to be labeled as one or two servings while not permitting the same label declaration on the same product when sold as part of a multi-serving package. To correct this oversight FSIS is proposing to add a new paragraph at 9 CFR 317.309(a)(3)(v) and 381.409(a)(3)(v) to permit products within multi-serving packages to be declared as one or two servings if they meet the criteria described above.

FSIS also realizes that the provisions for single-serving containers at 21 CFR 101.9(b)(6) and the provisions for individually packaged products within multi-serving containers at 9 CFR 317.309(a)(3) and 381.409(a)(3) could produce inconsistent labeling on the inner and outer packaging of these products. For example, if labeled and sold individually, mini pizzas weighing 50 grams could be considered single-serving packages, and the serving size would be one mini pizza. However, if several mini pizzas were packaged within a multi-serving package, the serving size, when determined in accordance with 9 CFR 317.309(a)(3) and 381.409(a)(3), is the number of whole units that most closely approximates the reference amount for the product category, which is 140 grams. Therefore, the serving size for a multi-serving package would be three mini pizzas, and a box containing 15 mini pizzas would be labeled with five servings per container. If each of the mini pizzas in the multi-serving package is labeled as a single serving, the outer and inner labeling would have inconsistent nutrient values on a per serving basis. To prevent this ambiguity, FSIS is proposing to add a new paragraph at 9 CFR 317.309(a)(3)(vii) and 381.409(a)(3)(vii) to provide for a serving size declaration of one unit for products containing several individual single-serving containers that are fully labeled, and to adopt the change to 21 CFR 101.9(b)(8)(iv) on the number of servings when a product contains such individually labeled containers. All of these provisions require that each of the individual units bears all required labeling information, including nutrition labeling.

FSIS and FDA also determined that for products requiring further preparation, where the entire contents of the package, e.g., a pizza kit, are used to prepare a large discrete unit usually divided into fractional slices for consumption, e.g., a pizza, the most appropriate household measure for the serving size is the fraction of the box that makes the "reference amount for the unprepared product." The provision at 21 CFR 101.9(b)(2)(ii) has been amended to incorporate this change. FSIS is proposing to cross-reference this provision, as amended. FSIS is also proposing to add new paragraphs at 9 CFR 317.309(a)(6)(v) and

381.409(a)(6)(v) to provide that, in these circumstances, the fraction of the package is to be used to express the serving size.

FSIS acknowledges that allowing for only whole numbers of tablespoons poses a significant problem for concentrated products that require further preparation, especially those reconstituted with water. Consideration of the 1 to 2 tablespoon range was inadvertently omitted in the final rule and FSIS is correcting this omission. FSIS is proposing to amend 9 CFR 317.309(a)(6) and 381.409(a)(6) to allow use of the fractions ⅓, ½, and ⅔ tablespoons between 1 and 2 tablespoons. This action is consistent with an FDA amendment to make the same allowance.

FSIS is proposing to add new paragraphs at 9 CFR 317.309(a)(6)(iv) and 381.409(a)(6)(iv) which state that household units for serving sizes of single-serving containers, meal-type products, and individually packaged products within multi-serving containers must be stated using a description of the container, e.g., can, box, package, meal, or dinner, and that the serving sizes of other discrete units must be stated using a description of the individual unit; e.g., wing, slice, link, or patty. These provisions would alleviate any ambiguity between 9 CFR 317.309(a)(3) and 381.409(a)(3) and 9 CFR 317.309(a)(6) and 381.409(a)(6), and add requirements that were inadvertently omitted from the final rule.

Equivalent Metric Quantity

FSIS noted in its final rule that two different values for the gram equivalent weight of a product could appear on labels of single-serving containers and meal-type products when the net quantity of contents statement bearing the metric equivalent and the serving size refer to the same amount of product in the containers. For example, the net quantity of contents for a 5-ounce burrito would be 142 grams, which is obtained by multiplying 28.35 grams by 5, while the serving size declaration for the same burrito would be expressed as "1 burrito (140g)," which is obtained by multiplying 28 grams by 5. If a manufacturer chose to declare the metric equivalent weight for this single serving of burrito, the two discrepant values could potentially cause consumer confusion. A manufacturer is not required to declare the metric equivalent weight on single-serving containers and meal-type products if it appears in the net quantity of contents statement, but FSIS has determined that, if a manufacturer optionally declares the metric equivalent, the serving size declaration should agree with the net contents declaration. FDA created a new provision at 21 CFR 101.9(b)(7)(i) that ensures agreement between serving size and net quantity values. FSIS is proposing to adopt this new provision.

To achieve greater consistency with FDA provisions, FSIS is proposing to adopt the change made at 21 CFR 101.9(b)(7)(ii), to correct for the omission of rounding rules for milliliters for liquids. The proposal would require that, when it is necessary to round the parenthetical milliliter equivalent of the household measure, the equivalent should be rounded to the nearest whole number, except for quantities that are less than 5 milliliters. Milliliter amounts between 2 and 5 should be rounded to the nearest 0.5 milliliter, and amounts less than 2 should be expressed in 0.1-milliliter increments.

Also, FDA divided 21 CFR 101.9(b)(7) into subparagraphs and made minor editorial changes to improve clarity. FSIS agrees with the changes made at 21 CFR 101.9(b)(7) and is proposing to cross-reference 21 CFR 101.9(b)(7), except the new provision at (b)(7)(v) which pertains to additional descriptive information.

Servings Per Container

To improve the clarity of the provisions on servings per container, FDA divided 21 CFR 101.9(b)(8) into subparagraphs and made minor editorial changes. FSIS agrees with these changes and is proposing to cross-reference this section, as amended.

FSIS noted a problem in the provisions of its final regulations for declaring the number of servings per container for some individually packaged products containing at least 200 percent of the reference amount and packaged within multi-serving packages. For example, if a bulk package of sausage contains three inner packages, each of which makes 5.2 servings, each inner package label would have to declare the servings per container as "about 5." That declaration implies the total package contains 15 servings (5 times 3). However, if the amount of sausage in all three packages were counted, the total package actually contains 15.6 servings (5.2 times 3), and its label would declare the servings per container as "about 16."

To correct this problem and avoid consumer confusion, FSIS is proposing to cross-reference a new provision at 21 CFR 101.9(b)(8)(v) which provides that the number of servings be determined by multiplying the number of servings per individual inner unit by the total number of inner units. In the sausage example, the serving size would be approximately 1/5 of an individual unit, and each unit would carry a servings-per-container statement of "about 5." The number of servings in the entire package would be "about 15" (3 packages times "about 5" servings per package).

Nutrient Declarations

At 9 CFR 317.309(b) and 381.409(b), FSIS cross-referenced provisions pertaining to nutrient declarations at 21 CFR 101.9(c)(1) through (c)(9), except (c)(1)(i)(E), bomb calorimetry, and (c)(7)(ii), use of nitrogen conversion factors other than 6.25. At 21 CFR 101.9(c)(1), requirements were included for calorie content calculations using general or specific factors without specifying whether only the final calorie determination should be rounded, or whether the actual quantitative values for protein, total carbohydrate, total fat, and ingredients with specific food factors should be rounded before the calculation is performed. FSIS and FDA concluded that calorie declaration should be calculated with as much precision as possible up to the point of final rounding. FDA amended 21 CFR 101.9(c)(1) to state that where specific or general food factors are used, the factors should be applied to the unrounded amounts of the food components. FSIS is proposing to cross-reference this provision, as amended.

Both FSIS and FDA received comments concerning the definition of "lean" that convinced them to change the saturated fat criterion in the definition of this term to a maximum of 4.5 grams or less of saturated fat. FSIS included this change in its interim rule on technical amendments published on September 10, 1993, and FDA included the same change in its rule on August 18, 1993. As a consequence of the change, both agencies believe it is necessary to require that levels of fat, saturated fat, and poly- and monounsaturated fat below 5 grams per serving be declared in half-gram increments rather than below 3 grams. This action would prevent consumer confusion because the declared values on labels would be consistent with the definitions of nutrient content claims. Provisions at 21 CFR 101.9(c)(2)(i), (ii), and (iii) have been amended to require half-gram reporting increments below 5 grams for the four nutrients. FSIS is proposing to cross-reference these provisions, as amended. In addition, FSIS is proposing to amend 9 CFR 317.309(d) and 381.409(d) to provide the same consistency in declared values for stearic acid, a component of

saturated fat. The proposal would require that stearic acid content below 5 grams per serving be declared in half-gram increments.

FSIS believes that the required disclosure of poly- and monounsaturated fat in the nutrition labeling of a "fat free" food serves no useful purpose because no additional information would be provided to consumers. FDA has revised 21 CFR 101.9(c)(2) (ii) and (iii) to remove the required disclosure of poly- and monounsaturated fat when fatty acid or cholesterol claims are made on products that meet the criteria for a "fat free" claim. FSIS is proposing to cross-reference these provisions, as amended.

To provide consistency with the incremental rounding at 2, 5, and 10-percent increments required for vitamins and minerals, 21 CFR 101.9(c)(8)(vi) has been revised to require that the vitamin A that is present as *beta*-carotene is to be declared in the same increments as provided for vitamins and minerals instead of to the nearest 10-percent increment. FSIS believes this change will provide more precise information about *beta*-carotene contents, and compatible declaration of vitamin A and *beta*-carotene would assist consumers to understand the nutrition labeling. FSIS is proposing to cross-reference this provision, as amended.

Inadvertently, this provision failed to provide expressly how the declaration of *beta*-carotene is to be presented. FSIS and FDA believe it is necessary to require that information on *beta*-carotene be formatted to convey to the consumer that it is a subcomponent of vitamin A. FDA has amended 21 CFR 101.9(c)(8)(vi) to include this requirement. FSIS is proposing to cross-reference this provision, as amended, to require that, when vitamins and minerals are arranged in a single column, the information on *beta*-carotene is to be indented under the information on vitamin A, and, when vitamins and minerals are arrayed horizontally, the declaration of *beta*-carotene is to be placed in parenthesis after the declaration of vitamin A.

Format

At 9 CFR 317.309(e) and 381.409(e), FSIS cross-referenced format elements as provided at 21 CFR 101.9(d). Section 101.9(d)(1)(ii)(D) of FDA's regulations limited the proximity of one letter to another with a numeric kerning value of −4 setting, which was intended to apply to all type systems. However, there is no single numeric kerning value applicable to all type systems. For this reason FDA has replaced the requirement to state instead that "Letters should never touch." FSIS is proposing to cross-reference this provision, as amended.

Type size specifications at 21 CFR 101.9(d)(1)(iii) did not address several statements that may be declared within the display of nutrition information, such as the declaration of percent of vitamin A present as *beta*-carotene and the statement "Not a significant source of _____." In apparent conflict, the last sentence of 21 CFR 101.9(c)(8)(iii), which pertained to vitamin and mineral declarations, required that the "Not a significant source of _____." Statement be in the same type size as nutrients that are indented; i.e., in 8-point type, while FDA's sample labels showed the statement in 6-point type. The provision at 21 CFR 101.9(d)(1)(iii) has been amended to correct this technical error. The corrected provision specifies that 6-point type shall be used for all information contained within the nutrition information display, except for the heading "Nutrition Facts" which must be set in a type that is larger than all other print in the display, and for the information required at 21 CFR 101.9(d)(3), (5), (7), and (8) which must be no smaller than 8-point type. FSIS is proposing to cross-reference this provision, as amended. FSIS is also proposing to adopt the change made to 21 CFR 101.9(c)(8)(iii) that removes the conflicting sentence.

FSIS agrees with FDA that 21 CFR 101.9(d)(7) needed to be corrected to be inclusive of all nutrients that can be declared in the nutrition information display, not only those that are required. The wording of the provision has been changed from "nutrients required by paragraph (c) of this section" to "nutrient information for both mandatory and any voluntary nutrients listed in paragraph (c) of this section that are to be declared in the nutrition label." FSIS is proposing to cross-reference the provision, as amended, which clarifies that the listing of some nutrients is required, and the listing of others is voluntary by inserting the word "as" before "specified."

FSIS and FDA received comments concerning inconsistences between quantitative amounts and percent Daily Values (DV) caused by dividing the actual amount of a nutrient before rounding, as required, by the Daily Reference Value (DRV) for the nutrient. For example, saturated fat in an amount of 0.4 gram would be declared as 0 gram, but its percent DV would be declared as 2 percent. FSIS acknowledges this apparent discrepancy while recognizing there are legitimate advantages and disadvantages for using either rounded or unrounded values. FSIS is proposing to adopt 21 CFR 101.9(d)(7)(ii) which has been amended to correct this technical inconsistency. FSIS would require that the percent DV for all nutrients, other than protein, be calculated by dividing either the rounded amount of the nutrient declared on the label or the actual, unrounded amount of the nutrient by the DRV for that nutrient. Manufacturers should use whichever value will provide the greatest consistency on the product labeling. Where quantitative amounts must be declared as zero, the rounded values should be used to calculate percent DV. When unrounded values support the basis for nutrient content claims, they should be used.

FSIS believes the footnote required by 21 CFR 101.9(d)(10) stating that fat, carbohydrate, and protein furnish 9, 4, and 4 calories per gram, respectively, can create consumer confusion because the regulations allow for different methods of calculating calorie content. Although FSIS believes the public can benefit from having the caloric conversion factors, the Agency is convinced that there is no real need to make the information mandatory because consumers do not have to calculate calories. The regulations require that declarations of calories and calories from fat be stated on the labeling. The provision at 21 CFR 101.9(d)(10) has been amended to make use of the footnote voluntary and 21 CFR 101.9(d)(1) (iii) and (11)(i) has been amended to delete the reference to the footnote with caloric conversion information as a requirement. For consistency, FSIS is proposing to cross-reference these provisions, as amended, and adopt changes to 21 CFR 101.9(d)(11)(ii) which allow for the presentation of the information described above. FSIS is also proposing to amend 9 CFR 317.309(f)(3) and 381.409(f)(3) to delete reference to the footnote as required information.

In response to many requests for greater flexibility in presenting required nutrition information, especially for the display on packages that have more than 40 square inches of space available to bear labeling but do not have sufficient space to place the full vertical format, 21 CFR 101.9(d)(11) has been modified as follows. The provision has been redesignated as 21 CFR 101.9(d)(11)(i) and a new provision has been added at 21 CFR 101.9(d)(11)(iii) to state that when there is insufficient continuous vertical label space, i.e., approximately 3 inches, to accommodate the required components of the nutrition information up to and including the mandatory

declaration of iron, the nutrition information may be presented in a tabular display. In this display, the footnote listing DRV's for 2,000 and 2,500 calorie diets is given to the far right of the display, and additional vitamins and minerals beyond vitamin A, vitamin C, calcium, and iron are arrayed horizontally following the required vitamin and mineral declarations. A new provision has been added at 21 CFR 101.9(d)(11)(ii) that provides for an additional break to allow the continuation of the list of vitamins and minerals beyond the declaration of iron to be moved to the right, just above the footnote listing the DRV's. FSIS is proposing to adopt these changes and cross-reference the amended provisions discussed above.

Because the format requirements in its final rule did not provide for listing of nutrition information within a single nutrition display for packages containing more than one food product, FSIS is proposing to correct this oversight by providing for the use of an aggregate display of nutrition information in new provisions at 9 CFR 317.309(e)(2) and 381.409(e)(2). This aggregate display is the same as that shown by FDA at 21 CFR 101.9(d)(13)(ii). A new provision has been added at 21 CFR 101.9(d)(14) to provide for the inclusion and display of two languages under a single "Nutrition Facts" heading. FSIS agrees with the change and is proposing to adopt the new provision.

Modified Format

Both FSIS and FDA allowed format modifications for products in packages that have a surface area available to bear labeling of 40 or less square inches to include tabular and linear displays of information. At 9 CFR 317.309(f)(1) and and 381.409(f)(1), FSIS permitted nutrition information to be given in a linear fashion only when the tabular display could not be accommodated. FSIS inadvertently used the term "label" as the basis for determining whether the accommodation could be made. FSIS intended for package shape or size to be the determining factor. Therefore, FSIS is proposing to amend these provisions to clarify this fact and to maintain consistency with FDA's requirements for use of a linear display. The proposal would add new paragraphs at 9 CFR 317.309(f)(1)(ii) and 381.409(f)(1)(ii) to define the linear display and would remove the former direction that any subcomponents declared may be listed parenthetically after principal components. Many commenters requested that FSIS and FDA provide examples of linear displays. Both agencies worked together to develop such examples.

In its final rule, FSIS provided for abbreviations for mandatory nutrients whose name exceeds 10 characters. FSIS believes it should also allow abbreviations for voluntary nutrients because they become mandatory if claims are made. FSIS is proposing to amend 9 CFR 317.309(f)(2) and 381.409(f)(2) to include new abbreviations as follows: Calories from saturated fat—Sat fat cal; Monounsaturated fat—Monounsat fat; Polyunsaturated fat—Polyunsat fat; Soluble fiber—Sol fiber; Insoluble fiber—Insol fiber; Sugar alcohol—Sugar alc; and Other carbohydrate—Other carb. This action parallels an identical FDA allowance.

Reference Amounts

In its final rule, FSIS cross-referenced 21 CFR 101.12(c) pertaining to reference amounts for products requiring further preparation. FDA changed the terms used in this section to improve clarity and require manufacturers to use reference amounts for unprepared forms of products, if those reference amounts are contained in the tables at 21 CFR 101.12(b). The FSIS tables of reference amounts are contained at 9 CFR 317.312(b) and 381.412(b). These sections contain reference amounts for ready-to-cook forms of bacon-type products, sausages, and raw cuts of meat and poultry. FSIS never intended to limit manufacturers to those amounts and allows them to use product-specific yields, such as their own or the extensive listings in USDA's Agriculture Handbook No. 8, when determining the "reference amount for the unprepared product." Therefore, FSIS is proposing to cross-reference 21 CFR 101.12(c), as amended, to improve clarity, except for the words "but not the unprepared" referring to the form of a reference amount.

At 9 CFR 317.312(b) and 381.412(b), Table 2.—Reference Amounts Customarily Consumed—General Food Supply, FSIS erred by listing bagel dogs and poultry bagel dogs as examples under the product category of entrees without sauce, and at 9 CFR 317.312(b), erred by listing freeze dry, dehydrated, concentrated soup mixes as an example under the product category of seasoning mixes dry. FSIS is proposing to remove these examples because the products are not deemed amenable to FSIS inspection.

FSIS found that, when products are used to make foods that are consumed in small discrete units, the prescribed approach to determining a "reference amount for the unprepared product" results in discrepancies between the number of servings declared per package, e.g., "about 5," and the number of discrete units prepared in accordance with package directions, e.g., "makes 8 patties." Also, for products that prepare large discrete units, discrepancies can occur between the number of servings declared per package, e.g., "about 9," and the declaration of a fraction of a large discrete unit, e.g., "⅛ pizza," for use in an optional second column for the prepared form of the product.

When a product, such as a pizza kit, is used to prepare a large discrete unit, FSIS determined that the discrepancies can be remedied by providing for a reference amount for the unprepared product that reflects the fraction of the prepared product closest to the reference amount for the prepared product for the specific product category. For example, the reference amount for the unprepared product would be the amount of the pizza kit needed to make ⅛ pizza, the optional second column could provide nutrition information for ⅛ pizza, and the number of servings would be listed as 8. This approach is consistent with that for arriving at the serving size for ready-to-serve products; that is, the fraction of a large discrete unit that comes closest to the reference amount for the prepared product for the specific product category. FSIS is proposing to cross-reference a new provision at 21 CFR 101.12(c)(2) that allows for this approach.

To ensure that the serving size declaration will not be improperly influenced by minor dense ingredients, and that the number of servings will be consistent for all ingredients, FSIS is proposing to amend 9 CFR 317.312(c) and 381.412(c) by adding new paragraphs at (c)(1) and (c)(2) for bulk products and discrete units, respectively. The proposed paragraphs would clarify that a "reference amount for the combined product" that consists of two or more distinct foods packaged separately within the same container, intended to be consumed together, and without established reference amounts, be derived based on the reference amount of the ingredient that is represented as the main ingredient. Other ingredients within the container are proportioned to fit the serving size of the main ingredient.

FSIS noted that a procedure for determining reference amounts for products packaged and presented to be consumed together and for which there is no established reference amount was not adequately provided for in the final rule. FSIS is proposing to amend 9 CFR 317.312(c) and 381.412(c) to provide for

this procedure. This modification affects only products intended to be combined and consumed together and for which the combination is not listed as a reference amount at 9 CFR 317.312(b) and 381.412(b). For products with reference amounts in compatible units, the units can be directly summed. For products with incompatible units that cannot be directly summed, i.e., grams and milliliters, FSIS is proposing to add a new paragraph at 9 CFR 317.312(c)(3) and 381.412(c)(3) to incorporate the approach of summing the weights of the relevant amounts of the foods that are combined to make the "reference amount for the combined product." This approach has been selected because amounts that are provided as volume measures can easily be expressed as weights and summed. However, the opposite is not the case because weights cannot be readily expressed as volumes.

Nutrient Content Claims; General Principles

At 9 CFR 317.313(b) and 381.413(b), FSIS cross-referenced 21 CFR 101.13(b) in its final rule. Both FSIS and FDA later determined that reasonable alternate spellings of various descriptive terms defined by regulations are reasonable and may be used. This allowance, however, was not incorporated into 21 CFR 101.13(b). The provision at 21 CFR 101.13(b) has been amended to include a new paragraph at (b)(4), which states that the use of reasonable variations in the spelling of the various descriptive terms and their synonyms, such as "hi" and "lo," are permitted provided that these variations are not misleading. FSIS is proposing to cross-reference 21 CFR 101.13(b), as amended.

In its final rule, FSIS provided that a nutrient content claim be in type size and style no larger than two times that of the statement of identity in 9 CFR 317.313(b) and 381.413(b) by cross-referencing 21 CFR 101.13(f). FDA clarified these provisions in 21 CFR 101.13(f) to require that a nutrient content claim be in type size no larger than two times the statement of identity and not be unduly prominent in type style compared to the statement of identity. FSIS is proposing to cross-reference 21 CFR 101.13(f), as amended.

In its final rule, FSIS prescribed minimum type size requirements for nutrient content claims at 9 CFR 317.313 and 381.413 by cross-referencing various provisions in 21 CFR 101.13 that included these requirements. However, minimum type sizes were not specified for all the accompanying information for relative claims; e.g., in cross-referenced provisions at 21 CFR 101.13(j)(2)(iv). To correct this oversight, FDA amended 21 CFR 101.2(b) to include the nutrient content claims sections in its scope so that all information appearing on the principal display panel or the information panel will appear in letters and/or numbers not less than 1/16 inch minimum height unless otherwise specified in the nutrient content claims regulations. FSIS is proposing to amend 9 CFR 317.313 and 381.413 by adding a new paragraph (g) to include the same requirement in its regulations.

As discussed in this document under the section on nutrient declarations, FSIS determined that when unrounded values support the basis for nutrient content claims, they should be used in labeling. Requirements for comparative claims other than "light" are contained at 9 CFR 317.313(j) and 381.413(j) that cross-references 21 CFR 101.13(j), except comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B). The cross-referenced section states that when comparing a single manufacturer's product to the labeled product, the nutrient value for the single manufacturer's product shall be the value declared in the nutrition labeling of the product. The provision at 21 CFR 101.13(j) has been amended to permit comparisons to a single manufacturer's product using either the values declared in the nutrition labeling or the actual nutrient values, provided that the values stated in the nutrition information, the nutrient values in the accompanying information, and the declaration of the percentage of nutrient by which the product has been modified are consistent and will not cause confusion when compared, and that the actual modification is at least equal to the percentage specified in the definition of the claim. FSIS is proposing to cross-reference 21 CFR 101.13(j)(1)(ii)(B), as amended, except comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B). FSIS is also clarifying that its restriction on comparison to the product of another manufacturer is to the use of the name of the competitor as opposed to a complete restriction on comparison to product of another manufacturer.

Extra Lean Ground Beef

FSIS identified 35 major cuts of meat products at 9 CFR 317.344 that would be used in evaluating significant participation for voluntary nutrition labeling of single-ingredient, raw meat products. The cuts included extra lean ground beef, which, according to USDA's Agriculture Handbook No. 8, is a product averaging approximately 17 percent fat by weight on an uncooked basis as it is currently marketed. The final rule allows the term "extra lean" to be used on individual food products containing, among other criteria, less than 5 grams of fat per reference amount customarily consumed and per 100 grams. Effective July 6, 1994, the term "extra lean" will no longer be applicable to the product listed at 9 CFR 317.344. For this reason, FSIS is proposing to amend this section by changing the name "ground beef extra lean without added seasoning" to "ground beef about 17% fat without added seasoning."

Nutrient Content Claims About Sugars and Salt

In its final nutrition labeling regulations, FSIS specified requirements for nutrient content claims for calories and sugars at 9 CFR 317.360 and 381.460, which cross-references 21 CFR 101.60 for the requirements, and for sodium and salt at 9 CFR 317.361 and 381.461, which cross-references 21 CFR 101.61 for the requirements. The requirement that sugars and salt defined in these sections meet the general requirements for nutrient content claims was inadvertently omitted from 21 CFR 101.61 and 101.62. FDA has added explicit mention of sugars at 21 CFR 101.60(a) and salt at 21 CFR 101.61(a) to clarify that the general requirements also apply to sugars and salt. FSIS agrees with these modifications and is proposing to cross-reference 21 CFR 101.60 and 101.61, as amended.

Criteria for Free Claims

The FSIS provisions on nutrient content claims contained in its final nutrition labeling regulations at 9 CFR 317.360, 317.361, 317.362, 381.460, 381.461, and 381.462 cross-reference the following provisions for the definition of "free": 21 CFR 101.60 for calories and sugars; 21 CFR 101.61 for sodium; and 21 CFR 101.62 for fat, fatty acids, and cholesterol. The criterion for "free" claims was based on the amount of nutrient per reference amount customarily consumed. FDA amended this criterion to include a per-labeled-serving basis. This amendment avoids the confusion that may be created should products bear "free" claims when the nutrition labeling could contain a nutrient value other than zero, which is the amount considered to be nutritionally trivial and is the basis for the term "free." Provisions at 21 CFR 101.60, 101.61, and 101.62 have been amended to restrict the amount of nutrient per labeled serving, as well as per reference amount customarily consumed. The specific modifications

appear at 21 CFR 101.60 (b)(1)(i) and (c)(1)(i); 101.61(b)(1)(i); and 101.62 (b)(1)(i), (c)(1)(i), (d)(1)(i)(A), and (d)(1)(ii)(A). FSIS agrees with these changes and is proposing to cross-reference 21 CFR 101.60, 101.61, and 101.62, as amended, for the definition of "free" for calories, sugars, sodium, fat, fatty acids, and cholesterol.

Criterion for Saturated Fat Free Claims

In its final nutrition labeling regulations, FSIS defined the term "saturated fat free" at 9 CFR 317.362 and 381.462 by cross-referencing 21 CFR 101.62(c)(1). A criterion for the definition of the term is that the level of trans fatty acids in the product not exceed 1 percent of the total fat. FDA changed the criterion at 21 CFR 101.62(c)(1) to require that the product contain less than 0.5 grams trans fatty acids, because this is an amount that can be analyzed and is consistent with the definition of "free" for fat and saturated fat. FSIS agrees with this change and is proposing to cross-reference 21 CFR 101.62(c), as amended.

Nutrient Content Claims for Rehydrated Products

The nutrient content claim requirements in FSIS's final nutrition labeling regulations specify that for products that have a reference amount customarily consumed of 30 grams or less or 2 tablespoons or less, the criteria for claims are based on 50 grams of product, as well as per reference amount. For dehydrated products that typically must be rehydrated with water before consumption, FSIS at 9 CFR 317.360, 317.361, 317.362, 381.460, 381.461, and 381.462 provides that the 50-gram criterion be based on the "as prepared" form by cross-referencing applicable provisions in 21 CFR 101.60, 101.61, and 101.62. FDA amended its regulations to extend to rehydration with diluents, such as vinegar, that have insignificant amounts of all nutrients per reference amount. The specific FDA provisions which have been amended to this effect are the following: 21 CFR 101.60(b)(2)(i)(B); 101.61(b) (2)(i)(B) and (4)(i)(B); and 101.62 (b)(2)(i)(B) and (d)(2)(ii)(A). FSIS is proposing to cross-reference 21 CFR 101.60, 101.61, and 101.62, as amended.

Foods for Infants and Children Under 4 Years of Age

To address a conflict in nutrition labeling rules for foods intended for infants and children less than 4 years of age, FSIS is proposing to amend 9 CFR 317.400(c) and 381.500(c) to state that foods represented or purported to be specifically for infants and children less than 4 years of age shall not include declarations of percent Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber. The percent Daily Values for protein, vitamins, and minerals are to be declared in accordance with the applicable cross-referenced provisions of 21 CFR 101.9(c). FSIS is proposing additional format specifications in the amended provisions. These changes are consistent with FDA's amendments to its provision governing nutrition labeling of products intended for these age groups.

Packages With Less Than 12 Square Inches of Space

In its interim final rule published on September 10, 1993, FSIS added provisions at 9 CFR 317.400(d) and 381.500(d) to permit product manufacturers of packages that have a total surface area available to bear labeling of less than 12 square inches to provide an address or telephone number for consumers to write or call for nutrition information, provided that the labeling for these products bear no nutrition claims or information. FSIS and FDA concluded that a greater selection of type sizes for use on these packages is warranted. Such options would benefit consumers by allowing nutrition information to be presented on more packages and would provide manufacturers flexibility when provision of nutrition information becomes mandatory. FSIS is proposing to redesignate 9 CFR 317.400(d) and 381.500(d) as 9 CFR 317.400(d)(1) and 381.500(d)(1), respectively, and add new paragraphs at 9 CFR 317.400(d)(2) and 381.500(d)(2) to provide for the optional use of 6-point type or all uppercase type of 1/16 inch minimum height for packages with less than 12 square inches available to bear labeling and to permit a type size of 1/32 inch minimum height when packages have a total surface area to bear labeling of 3 square inches or less.

Product Analyses

FSIS is proposing to remove 9 CFR 381.133(b) of the poultry products inspection regulations to correct an oversight relating to product analyses. Generally, 9 CFR 381.133(b) provides that when labels for poultry products bear a chemical analysis, such products must be analyzed on a lot basis by an impartial laboratory to determine whether the products conform to the analysis shown. Under the nutrition labeling regulations, companies are required to maintain records that support nutrient information. Companies may base nutrient information on data bases and on recipe analysis using data bases, as well as on laboratory analyses. FSIS will, in turn, use specific methods to analyze samples for enforcement purposes. Thus, 9 CFR 381.133(b) should have been removed as part of the nutrition labeling rulemaking. There is no similar provision in the Federal meat inspection regulations.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Proposed Rule

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations to read as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.309 would be amended by revising paragraphs (a) (1), (3), (6), (d), (e), and (f) (1), (2), and (3) to read as follows:

§ 317.309 Nutrition label content.

(a)(1) All nutrient and product component quantities shall be declared in relation to a serving as defined at 21 CFR 101.9(b) (1) and (2), except (b)(2)(i), and 21 CFR 101.9(b) (6) through (9), except (b)(7)(v).

(2) * * *

(3) For products in discrete units (e.g., hot dogs, and individually packaged products within a multi-serving package), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., beef fritters and barbecue sauce), the serving size shall be declared as follows:

(i) If a unit weighs 50 percent or less of the Reference Amount, the serving size shall be the number of whole units that most closely approximates the Reference Amount for the product category;

(ii) If a unit weighs more than 50 percent but less than 67 percent of the Reference Amount, the manufacturer may declare one unit or two units as the serving size;

(iii) If a unit weighs 67 percent or more but less than 200 percent of the Reference Amount, the serving size shall be one unit;

(iv) If a unit weighs 200 percent or more of the Reference Amount, the manufacturer may declare one unit as the serving size if the whole unit can reasonably be consumed at a single eating occasion.

(v) For products that have Reference Amounts of 100 grams (or milliliter) or larger and are individual units within a multi-serving package, if a unit contains more than 150 percent but less than 200 percent of the Reference Amount, the manufacturer may decide whether to declare the individual unit as 1 or 2 servings.

(vi) For products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., beef fritters and barbecue sauce), the serving size may be the number of discrete units represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount for the combined product as determined in § 317.312(c).

(vii) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in § 317.309 (that is, are labeled appropriately for individual sale as single-serving containers), the serving size shall be 1 unit.

* * * * *

(6) For labeling purposes, the term "common household unit" means cup, tablespoon, teaspoon, piece, slice, fraction (e.g., ¼ pizza), ounce (oz), or other common household equipment used to package food products (e.g., jar or tray). In expressing serving size in household measures, except as specified in paragraphs (a)(6) (iv), (v), and (vi) of this section, the following rules shall be used:

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate. Cups shall be expressed in ¼- or ⅓-cup increments, tablespoons in whole number of tablespoons for quantities less than ¼ cup but greater than or equal to 2 tablespoons (tbsp), 1, 1⅓, 1½, or 1⅔ tbsp for quantities less than 2 tbsp but greater than or equal to 1 tbsp, and teaspoons in whole number of teaspoons for quantities less than 1 tbsp but greater than or equal to 1 teaspoon (tsp), and in ¼-tsp increments for quantities less than 1 tsp.

(ii) If cups, tablespoons or teaspoons are not applicable, units such as piece, slice, tray, jar, and fraction shall be used.

(iii) If cups, tablespoons and teaspoons, or units such as piece, slice, tray, jar, or fraction are not applicable, ounces may be used. Ounce measurements shall be expressed in 0.5-ounce increments most closely approximating the Reference Amount with rounding indicated by the use of the term "about" (e.g., about 2.5 ounces).

(iv) A description of the individual container or package shall be used for single-serving containers and meal-type products and for individually packaged products within multi-serving containers (e.g., can, box, package, meal, or dinner). A description of the individual unit shall be used for other products in discrete units (e.g., chop, slice, link, or patty).

(v) For unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., pizza kit), the fraction or portion of the package may be used.

(vi) As provided for in § 317.309(c)(1), for products that consist of two or more distinct ingredients or components packaged and presented to be consumed together (e.g., ham with a glaze packet), the nutrition information may be declared for each component or as a composite.The serving size may be provided in accordance with the provisions of paragraph (a)(3) of this section and 21 CFR 101.9(b)(2) (ii) and (iii).

(vii) For nutrition labeling purposes, a teaspoon means 5 milliliters (mL), a tablespoon means 15 mL, a cup means 240 mL, and 1 oz in weight means 28 g.

(viii) When a serving size, determined from the Reference Amount in § 317.312(b) and the procedures described in this section, falls exactly half way between two serving sizes (e.g., 2.5 tbsp), manufacturers shall round the serving up to the next incremental size.

* * * * *

(d) "Stearic Acid" (VOLUNTARY): A Statement of the number of grams of stearic acid may be declared voluntarily, except that when a claim is made about stearic acid, label declaration shall be required. Stearic acid content shall be indented under saturated fat and expressed to the nearest 0.5 (½) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(e)(1) Formats for nutrition labeling shall be in accordance with 21 CFR 101.9 (d) and (e), except for (d)(13) and references to (f), (j)(5), and (j)(13), or in accordance with paragraph (g)(1) of this section.

(2)(i) Nutrition labeling on the outer labeling of packages of meat products that contain two or more meat products in the same package (e.g., variety packs) or of packages that are used interchangeably for the same type of food (e.g., meat salad containers) may use an aggregate display

(ii) Aggregate displays shall comply with format requirements of paragraph (e)(1) of this section to the maximum extent possible, except that the identity of each food shall be specified immediately under the "Nutrition Facts" title, and both the quantitative amount by weight (i.e., g/mg amounts) and the percent Daily Value for each nutrient shall be listed in separate columns under the name of each food.

(f) * * *

(1)(i) Presenting the required nutrition information in a tabular or linear (i.e., string) fashion, rather than in vertical columns, if the product has a total surface area available to bear labeling of less than 12 square inches, or if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size cannot accommodate a standard vertical column or tabular display on any label panel. Nutrition information may be given in a linear fashion only if the package shape or size will not accommodate a tabular display.

(ii) When nutrition information is given in a linear display, the nutrition information shall be set off in a box by the use of a hairline. The percent Daily Value is separated from the quantitative amount declaration by the use of parenthesis, and all nutrients, both principal components and subcomponents, are treated similarly. Bolding is required only on the title "Nutrition Facts" and is allowed for nutrient names for "Calories," "Total fat," "Cholesterol," "Sodium," "Total carbohydrate," and "Protein."

(2) Using any of the following abbreviations:

Serving size	Serv size.
Servings per container	Servings.
Calories from fat	Fat cal.
Calories from saturated fat.	Sat fat cal.
Saturated fat	Sat fat.
Monounsaturated fat	Monounsat fat.
Polyunsaturated fat	Polyunsat fat.
Cholesterol	Cholest.
Total carbohydrate	Total carb.
Dietary fiber	Fiber.
Soluble fiber	Sol fiber.
Insoluble fiber	Insol fiber.
Sugar alcohol	Sugar alc.
Other carbohydrate	Other carb.

(3) Omitting the footnote required in 21 CFR 101.9(d)(9) and placing another asterisk at the bottom of the label followed by the statement "Percent Daily Values are based on a 2,000 calorie diet" and, if the term "Daily Value" is not spelled out in the heading, a statement that "DV" represents "Daily Value."

* * * * *

3. Section 317.312 would be amended by revising paragraphs (a) and (c) to read as follows:

§ 317.312 Reference amounts customarily consumed per eating occasion.

(a) The general principles followed in arriving at the Reference Amounts for serving sizes set forth in paragraph (b) of this section are found in 21 CFR 101.12(a), (c), except for reference to the unprepared form in the first paragraph, (d), and (g).

(b) * * *

(c) For products that have no Reference Amount listed in paragraph (b) of this section for the unprepared or the prepared form of the product and that consist of two or more foods packaged and presented to be consumed together (e.g., lunch meat or cheese and crackers), the Reference Amount for the combined product shall be determined using the following rules:

(1) For bulk products, the Reference Amount for the combined product shall be the Reference Amount, as established in paragraph (b) of this section, for the ingredient that is represented as the main ingredient plus proportioned amounts of all minor ingredients.

(2) For products where the ingredient represented as the main ingredient is one or more discrete units, the Reference Amount for the combined product shall be either the number of small discrete units or the fraction of the large discrete unit that is represented as the main ingredient that is closest to the Reference Amount for that ingredient as established in paragraph (b) of this section plus proportioned amounts of all minor ingredients.

(3) If the Reference Amounts are in compatible units, they shall be summed (e.g., ingredients in equal volumes such as tablespoons). If the Reference Amounts are in incompatible units, the weights of the appropriate volumes should be used (e.g., grams of one ingredient plus gram weight of tablespoons of a second ingredient).

§ 317.312 [Amended]

4. Table 2 in § 317.312(b) would be amended by removing the words "bagel dog" from the Product Category "Entrees without sauce" and by removing the words "freeze dry," dehydrated," and "concentrated soup mixes" from the Product Category "Seasoning mixes dry."

5. Section 317.313 would be amended by adding paragraph (g) to read as follows:

§ 317.313 Nutrient content claims; general principles.

* * * * *

(g) Labeling information required in §§ 317.313, 317.354, 317.356, 317.360, 317.361, 317.362, and 317.380, whose type size is not otherwise specified, is required to be in letters and/or numbers no less than 1/16 inch in height.

* * * * *

§ 317.344 [Amended]

6. Section 317.344 would be amended by removing the words "ground beef extra lean without added seasoning" and adding the words "ground beef about 17% fat without added seasoning."

7. Section 317.400 would be amended by revising paragraph (c), redesignating paragraph (d) as (d)(1) and by revising the newly designated paragraph (d)(1) and adding paragraph (d)(2) to read as follows:

§ 317.400 Exemption from nutrition labeling.

* * * * *

(c)(1) Foods represented to be specifically for infants and children less than 2 years of age shall bear nutrition labeling as provided in paragraph (c)(2) of this section, except such labeling shall not include calories from fat, calories from saturated fat, saturated fat, stearic acid, polyunsaturated fat, monounsaturated fat, and cholesterol.

(2) Foods represented or purported to be specifically for infants and children less than 4 years of age shall bear nutrition labeling except that:

(i) Such labeling shall not include declarations of percent of Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber;

(ii) Nutrient names and quantitative amounts by weight shall be presented in two separate columns;

(iii) The heading "Percent Daily Value" required in § 317.309(e) shall be placed immediately below the quantitative information by weight for protein;

(iv) The percent of the Daily Value for protein, vitamins, and minerals shall be listed immediately below the heading "Percent Daily Value"; and

(v) Such labeling shall not include the footnote specified at 21 CFR 101.9(d)(9).

(d)(1) Products in packages that have a total surface area available to bear labeling of less than 12 square inches are exempt from nutrition labeling, provided that the labeling for these products bear no nutrition claims or other nutrition information. The manufacturer, packer, or distributor shall provide, on the label of packages that qualify for and use this exemption, an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information call 1–800–123–4567").

(2) When such products bear nutrition labeling, either voluntarily or because nutrition claims or other nutrition information is provided, all required information shall be in a type size no smaller than 6 point or all upper case type of 1/16 inch minimum height, except that individual serving-size packages of meat products that have a total area available to bear labeling of 3 square inches or less may provide all required information in a type size no smaller than 1/32 inch minimum height.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

8. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55

§ 381.133 [Amended]

9. Section 381.133 would be amended by revising the section title to read "Requirement of formulas," by removing the paragraph (a) designation of the first paragraph, and by removing paragraph (b).

10. Section 381.409 would be amended by revising paragraphs (a), (d), (e), and (f) to read as follows:

§ 381.409 Nutrition label content.

(a)(1) All nutrient and product component quantities shall be declared in relation to a serving as defined at 21 CFR 101.9(b) (1) and (2), except (b)(2)(i), and 21 CFR 101.9(b) (6) through (9), except (b)(7)(v).

(2) * * *

(3) For products in discrete units (e.g., chicken wings, and individually packaged products within a multi-serving package), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., chicken wings and barbecue sauce), the serving size shall be declared as follows:

(i) If a unit weighs 50 percent or less of the Reference Amount, the serving size shall be the number of whole units that most closely approximates the

Reference Amount for the product category;

(ii) If a unit weighs more than 50 percent but less than 67 percent of the Reference Amount, the manufacturer may declare one unit or two units as the serving size;

(iii) If a unit weighs 67 percent or more but less than 200 percent of the Reference Amount, the serving size shall be one unit;

(iv) If a unit weighs 200 percent or more of the Reference Amount, the manufacturer may declare one unit as the serving size if the whole unit can reasonably be consumed at a single eating occasion.

(v) For products that have Reference Amounts of 100 grams (or milliliter) or larger and are individual units within a multi-serving package, if a unit contains more than 150 percent but less than 200 percent of the Reference Amount, the manufacturer may decide whether to declare the individual unit as 1 or 2 servings.

(vi) For products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., chicken wings and barbecue sauce), the serving size may be the number of discrete units represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount for the combined product as determined in § 381.412(c).

(vii) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in § 381.409 (that is, are labeled appropriately for individual sale as single-serving containers), the serving size shall be 1 unit.

* * * * *

(6) For labeling purposes, the term "common household unit" means cup, tablespoon, teaspoon, piece, slice, fraction (e.g., ¼ pizza), ounce (oz), or other common household equipment used to package food products (e.g., jar or tray). In expressing serving size in household measures, except as specified in paragraphs (a)(6)(iv), (v), and (vi) of this section, the following rules shall be used:

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate. Cups shall be expressed in ¼- or ⅓-cup increments, tablespoons in whole number of tablespoons for quantities less than ¼ cup but greater than or equal to 2 tablespoons (tbsp), 1, 1⅓, 1½, or 1⅔ tbsp for quantities less than 2 tbsp but greater than or equal to 1 tbsp, and teaspoons in whole number of teaspoons for quantities less than tbsp but greater than or equal to 1 teaspoon (tsp), and in ¼-tsp increments for quantities less than 1 tsp.

(ii) If cups, tablespoons or teaspoons are not applicable, units such as piece, slice, tray, jar, and fraction shall be used.

(iii) If cups, tablespoons and teaspoons, or units such as piece, slice, tray, jar, or fraction are not applicable, ounces may be used. Ounce measurements shall be expressed in 0.5-ounce increments most closely approximating the Reference Amount with rounding indicated by the use of the term "about" (e.g., about 2.5 ounces).

(iv) A description of the individual container or package shall be used for single-serving containers and meal-type products and for individually packaged products within multi-serving containers (e.g., can, box, package, meal, or dinner). A description of the individual unit shall be used for other products in discrete units (e.g., wing, slice, link, or patty).

(v) For unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., pizza kit), the fraction or portion of the package may be used.

(vi) As provided for in § 381.409(c)(1), for products that consist of two or more distinct ingredients or components packaged and presented to be consumed together (e.g., chicken wings and barbecue sauce), the nutrition information may be declared for each component or as a composite. The serving size may be provided in accordance with the provisions of paragraph (a)(3) of this section and 21 CFR 101.9(b)(2) (ii) and (iii).

(vii) For nutrition labeling purposes, a teaspoon means 5 milliliters (mL), a tablespoon means 15 mL, a cup means 240 mL, and 1 oz in weight means 28 g.

(viii) When a serving size, determined from the Reference Amount in § 381.412(b) and the procedures described in this section, falls exactly half way between two serving sizes (e.g., 2.5 tbsp), manufacturers shall round the serving up to the next incremental size.

* * * * *

(d) "Stearic Acid" (VOLUNTARY): A statement of the number of grams of stearic acid may be declared voluntarily, except that when a claim is made about stearic acid, label declaration shall be required. Stearic acid content shall be indented under saturated fat and expressed to the nearest 0.5 (½) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(e)(1) Formats for nutrition labeling shall be in accordance with 21 CFR 101.9 (d) and (e), except for (d)(13) and references to (f), (j)(5), and (j)(13), or in accordance with paragraph (g)(1) of this section.

(2)(i) Nutrition labeling on the outer labeling of packages of poultry products that contain two or more poultry products in the same package (e.g., variety packs) or of packages that are used interchangeably for the same type of food (e.g., poultry salad containers) may use an aggregate display.

(ii) Aggregate displays shall comply with format requirements of paragraph (e)(1) of this section to the maximum extent possible, except that the identity of each food shall be specified immediately under the "Nutrition Facts" title, and both the quantitative amount by weight (i.e., g/mg amounts) and the percent Daily Value for each nutrient shall be listed in separate columns under the name of each food.

(f) * * *

(1)(i) Presenting the required nutrition information in a tabular or linear (i.e., string) fashion, rather than in vertical columns, if the product has a total surface area available to bear labeling of less than 12 square inches, or if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size cannot accommodate a standard vertical column or tabular display on any label panel. Nutrition information may be given in a linear fashion only if the package shape or size will not accommodate a tabular display.

(ii) When nutrition information is given in a linear display, the nutrition information shall be set off in a box by the use of a hairline. The percent Daily Value is separated from the quantitive amount declaration by the use of parenthesis, and all nutrients, both principal components and subcomponents, are treated similarly. Bolding is required only on the title "Nutrition Facts" and is allowed for nutrient names for "Calories," "Total fat," "Cholesterol," "Sodium," "Total carbohydrate," and "Protein."

(2) Using any of the following abbreviations:

Serving size	Serv size.
Servings per container	Servings.
Calories from fat	Fat cal.
Calories from saturated fat.	Sat fat cal.
Saturated fat	Sat fat.
Monounsaturated fat	Monounsat fat.

Polyunsaturated fat	Polyunsat fat.
Cholesterol	Cholest.
Total carbohydrate	Total carb.
Dietary fiber	Fiber.
Soluble fiber	Sol fiber.
Insoluble fiber	Insol fiber.
Sugar alcohol	Sugar alc.
Other carbohydrate	Other carb.

(3) Omitting the footnote required in 21 CFR 101.9(d)(9) and placing another asterisk at the bottom of the label followed by the statement "Percent Daily Values are based on a 2,000 calorie diet" and, if the term "Daily Value" is not spelled out in the heading, a statement that "DV" represents "Daily Value."

* * * * *

11. Section 381.412 would be amended by revising paragraphs (a) and (c) to read as follows:

§ 381.412 Reference amounts customarily consumed per eating occasion.

(a) The general principles followed in arriving at the Reference Amounts for serving sizes set forth in paragraph (b) of this section are found in 21 CFR 101.12 (a), (c), except for reference to the unprepared form in the first paragraph, (d), and (g).

(b) * * *

(c) For products that have no Reference Amount listed in paragraph (b) of this section for the unprepared or the prepared form of the product and that consist of two or more foods packaged and presented to be consumed together (e.g., poultry lunch meat or cheese and crackers), the Reference Amount for the combined product shall be determined using the following rules:

(1) For bulk products, the Reference Amount for the combined product shall be the Reference Amount, as established in paragraph (b) of this section, for the ingredient that is represented as the main ingredient plus proportioned amounts of all minor ingredients.

(2) For products where the ingredient represented as the main ingredient is one or more discrete units, the Reference Amount for the combined product shall be either the number of small discrete units or the fraction of the large discrete unit that is represented as the main ingredient that is closest to the Reference Amount for that ingredient as established in paragraph (b) of this section plus proportioned amounts of all minor ingredients.

(3) If the Reference Amounts are in compatible units, they shall be summed (e.g., ingredients in equal volumes such as tablespoons). If the Reference Amounts are in incompatible units, the weights of the appropriate volumes should be used (e.g., grams of one ingredient plus gram weight of tablespoons of a second ingredient).

§ 381.412 [Amended]

12. Table 2 in § 381.412(b) would be amended by removing the words "poultry bagel dogs" from the Product Category "Entrees without sauce."

13. Section 381.413 would be amended by adding paragraph (g) to read as follows:

§ 381.413 Nutrient content claims; general principles.

* * * * *

(g) Labeling information required in §§ 381.413, 381.454, 381.456, 381.460, 381.461, 381.462, and 381.480, whose type size is not otherwise specified, is required to be in letters and/or numbers no less than 1/16 inch in height.

* * * * *

14. Section 381.500 would be amended by revising paragraph (c), redesignating paragraph (d) as (d)(1) and by revising the newly designated paragraph (d)(1) and adding paragraph (d)(2) to read as follows:

§ 381.500 Exemption from nutrition labeling.

* * * * *

(c)(1) Foods represented to be specifically for infants and children less than 2 years of age shall bear nutrition labeling as provided in paragraph (c)(2) of this section, except such labeling shall not include calories from fat, calories from saturated fat, saturated fat, stearic acid, polyunsaturated fat, monounsaturated fat, and cholesterol.

(2) Foods represented or purported to be specifically for infants and children less than 4 years of age shall bear nutrition labeling except that:

(i) Such labeling shall not include declarations of percent of Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber;

(ii) Nutrient names and quantitative amounts by weight shall be presented in two separate columns;

(iii) The heading "Percent Daily Value" required in § 381.409(e) shall be placed immediately below the quantitative information by weight for protein;

(iv) The percent of the Daily Value for protein, vitamins, and minerals shall be listed immediately below the heading "Percent Daily Value"; and

(v) Such labeling shall not include the footnote specified at 21 CFR 101.9(d)(9).

(d)(1) Products in packages that have a total surface area available to bear labeling of less than 12 square inches are exempt from nutrition labeling, provided that the labels for these products bear no nutrition claims or other nutrition information. The manufacturer, packer, or distributor shall provide, on the label of packages that qualify for and use this exemption, an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information call 1–800–123–4567").

(2) When such products bear nutrition labeling, either voluntarily or because nutrition claims or other nutrition information is provided, all required information shall be in a type size no smaller than 6 point or all upper case type of 1/16 inch minimum height, except that individual serving-size packages of poultry products that have a total area available to bear labeling of 3 square inches or less may provide all required information in a type size no smaller than 1/32 inch minimum height.

Done at Washington, DC, on March 9, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 94–6012 Filed 3–15–94; 8:45 am]

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federal register

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March 16, 1994

Part V

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN: 1840–AB97

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs. These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1992.

DATES: Comments must be received on or before April 15, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Pamela A. Moran, Acting Chief, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB–3), Washington, DC 20202–5449.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Patricia Beavan, Senior Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is proposing to revise 34 CFR part 682 of the FFEL Program regulations, published in the Federal Register on December 18, 1992, to implement changes made to the HEA by the Higher Education Amendments of 1992 (Pub. L. 102–325) (the Amendments), enacted July 23, 1992. These regulations would affect the implementation of the program for all participants. The regulations would improve the efficiency of the Federal student aid programs, and by so doing, improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

The student aid programs also enable both current and future workers to have the opportunity to acquire both basic and technologically advanced skills needed for today's and tomorrow's workplace. They provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

Summary of Comments From Regional Meetings

In compliance with section 492(a) of the HEA, the Secretary convened regional meetings during September 1992 to obtain public involvement in the development of proposed regulations. The purpose of the meetings was to "provide for a comprehensive discussion and exchange of information concerning the implementation" of certain parts of the HEA, as amended by Public Law 102–325. In addition, attendees of the regional meetings were asked to nominate individuals to act as negotiators in the negotiated rulemaking process required by section 492(b) of the HEA.

The regional meetings were conducted for two days each in San Francisco, California; New York, New York; Atlanta, Georgia; and Kansas City, Missouri. Each participant at the regional meetings was assigned to one of six groups that were asked to discuss particular issue areas identified by the Department. Each group at the regional meetings prepared a report of its discussion and recommendations and those reports were presented to the Department for consideration during the preparation of the proposed regulations.

Below is a summary of the information received and the proposals made to the Secretary during the regional meetings relating to these proposed regulations:

1. *Guaranty agency limitation of a school's participation*—The attendees of the regional meetings in San Francisco, New York and Atlanta discussed this issue. Attendees at the San Francisco meeting recommended that guaranty agencies be allowed to set limits on loan volume for schools but that a review process should be provided by the guarantor. The attendees at the New York and Atlanta meetings recommended that the guaranty agencies be allowed to set limits for schools that are newly participating with the agency. Attendees at the New York meeting recommended certain criteria that an agency could use to limit a school's participation and recommended that all guarantors be required to comply with the restrictions placed by any agency. Attendees at the Atlanta meeting recommended that an agency's decision on loan limits should be subject to appeal but that the limit should remain in place during the appeal.

2. *Lender-of-last-resort services*—The attendees of the regional meeting in San Francisco recommended that, for schools with default rates exceeding 25 percent, "exceptional mitigating circumstances" for a school's appeal of denial for lender-of-last-resort (LLR) services should be defined to include program completion and job placement rates, if available; default rates; loan volume as a proportion of a school's student population; and other pertinent factors. The attendees also recommended that for a school subject to a limitation, suspension or termination (LST) action, exceptional mitigating circumstances should consider the above factors and the nature of the LST action. The majority of the Kansas City meeting attendees supported use of the definition of "exceptional mitigating circumstances" provided in the cohort default rate regulations published in the Federal Register on July 19, 1991 and the required default management plan to determine if a guaranty agency must offer LLR services to students attending a school with a cohort default rate greater than 25 percent. The minority view at the Kansas City meeting was that the regulatory criteria are too restrictive. Attendees at the New York meeting recommended that other factors be considered in addition to current law to define exceptional mitigating circumstances i.e., two-thirds of registered students actually begin class and the percentage of students receiving loans at schools with 15 percent to 25 percent cohort default rates. The attendees also expressed concern about

the timeliness of the appeal process and their desire that students should not be penalized. The attendees at the New York meeting supported the regulatory definition of exceptional mitigating circumstances with the inclusion of a comparison of student costs of education to post-graduation earnings and consideration of personal mitigating circumstances of students.

3. *Income-contingent repayment*—The attendees at the regional meetings in San Francisco, New York, and Kansas City made recommendations for the Secretary to consider in developing regulations to allow certain defaulted borrowers a repayment schedule that assesses a borrower's debt-to-income ratio and that provides the borrower up to 25 years to repay a loan. The attendees at the San Francisco meeting recommended that consideration be given to the amount of the borrower's educational loan scheduled repayment in relation to his or her anticipated income. They indicated that they believed that a smaller percent of income should probably be expected in loan repayment from low income borrowers. Attendees at the San Francisco meeting also recommended that educational debt should include all educational loans, not just Title IV student loans and that the term (borrower's) "income" needed to be defined for this purpose. They suggested that if "income" includes the borrower's spouse's income, the spouse's educational debts should also be included. Attendees at the New York meeting recommended that guaranty agencies be permitted to exempt loans from mandatory assignment and instead be able to offer their borrowers income-contingent repayment. The attendees at the New York meeting also recommended that income-contingent repayment should take into consideration the impact of negative amortization and the overall cost of repayment, include a requirement for annual review, and allow guaranty agencies to determine the interest rate. Attendees at the Kansas City meeting recommended that factors for the Secretary's evaluation should include whether collection of the note would be enhanced, costs associated with income-contingent collection vs. existing repayment structures, and the cost effectiveness of Federal collection. The Kansas City meeting attendees also recommended that longer repayment periods be allowed. However, they expressed concern that such repayment periods could result in an incentive to default.

4. *Federal Stafford and Federal SLS loan limits*—The attendees at the regional meetings in San Francisco, New York and Atlanta discussed the issue of reduced loan limits for programs of less than an academic year and recommended that if the definition of "less than an academic year" would include students who are in a second or subsequent year of a program of study for a period of enrollment of less than a year, that a technical amendment should be sought to clarify Congress' intent as to which borrowers were covered by the provision.

5. *Federal PLUS loans—determination of adverse credit*—The attendees at the San Francisco, Kansas City and Atlanta meetings generally recommended that adverse credit history should include outstanding tax liens, unpaid judgments, bankruptcy, default on or failure to pay Federal debts or obligations, charge offs, collection accounts, foreclosures and repossessions. The San Francisco meeting attendees also recommended the regulations specify that the lack of a credit history should not be considered adverse credit. The attendees at the San Francisco meeting expressed concern about PLUS borrowers' ability to repay loans given the repeal of the PLUS annual and aggregate loan limits. The attendees recommended that the lender and or guaranty agency counsel borrowers with regard to debt load, repayment obligations, etc. Attendees at the San Francisco meeting also recommended that the lender be allowed to establish additional eligibility criteria, including reviewing situations where potential borrowers are currently 60 days or more delinquent on other consumer accounts. The attendees at the San Francisco and Kansas City meetings recommended that lenders should also exercise discretion in allowing borrowers to provide explanations regarding circumstances that resulted in a determination of adverse credit. Attendees at the San Francisco and Kansas City meetings also recommended that the lender be required to obtain a credit report from a nationally recognized credit reporting agency. The San Francisco, Atlanta, and Kansas City attendees also recommended that in disbursing a PLUS loan the school require one authorization per loan (not disbursement) and allow parents to authorize electronic fund transmission. The attendees at the Kansas City meeting recommended that amounts of less than $100 in charge off or collection accounts not be held against a PLUS applicant when determining adverse credit. The New York meeting attendees recommended that the regulations require credit decisions by the lender using the applicant's credit report.

6. *Default reduction program*—Attendees at the Kansas City meeting recommended that the determination that post-default payments are "reasonable and affordable based upon the borrower's total financial circumstances" be made on a case-by-case basis based on a debt-to-income analysis (including family size) by the guaranty agency. The attendees recommended that payments be at least $5.00 and be voluntary consecutive payments. However, the attendees also expressed concern about accepting less than interest payments. The Kansas City meeting attendees discussed the distinction between the Title IV renewal of eligibility provision in the law that requires six reasonable and affordable consecutive payments and the rehabilitation program that requires 12 reasonable and affordable payments. They recommended that guaranty agencies be given wide discretion to evaluate the defaulter's personal circumstances and history to determine what constitutes reasonable and affordable payments so that if a loan is repurchased under the rehabilitation program, the borrower will be able to meet the lender's repayment terms and not fall into default again. Attendees at the Kansas City meeting also recommended that the guaranty agency be allowed to determine the documentation required to establish the reasonable and affordable payment amounts and that a review of the borrower's circumstances be required semi-annually. The attendees at the San Francisco, New York and Atlanta meetings recommended that guaranty agencies be allowed flexibility in determining if the payment amount is reasonable and affordable by taking into account the borrower's family circumstances, income, size, and by giving special consideration to borrowers receiving public assistance. The San Francisco attendees also recommended that the guaranty agency be required to notify the school in writing when a borrower has regained Title IV eligibility.

7. *Mandatory assignment of loans to the Secretary*—Attendees at the meetings in New York, San Francisco and Kansas City discussed the issue of mandatory assignment. The Kansas City meeting recommended that the Secretary determine the criteria for assignment on a case-by-case basis and recommended consideration of several issues by the Secretary. Attendees at the New York meeting recommended that the Secretary establish a simple set of general rules under which mandatory

assignment would apply to loans on which payments had not been received for a certain period of time. Attendees at the San Francisco meeting recommended that the criteria for mandatory assignment be determined by regulation and not by individual negotiations with each agency and proposed certain specific criteria for the assignment.

8. *Restrictions on guaranty agency incentive payments*—The participants in the New York meeting asked that the regulations clearly define "premium" and "inducement" for purposes of this provision. Attendees at the San Francisco regional meeting concluded that the statute was intended to prohibit cash payments by a guaranty agency to a lender but that agency activities to encourage participation or provide state-of-the-art processing in the loans programs were acceptable. In Kansas City, participants concluded that regulations must ensure that services provided by guarantors which improve a lender's ability to meet the needs of students, schools and the Secretary should not be considered inducements. In addition, the Kansas City participants recommended that services permitted under existing guarantor and lender relationships not be prohibited but that direct fee payments from a guarantor to a lender be prohibited. The attendees to the Atlanta meeting recommended that the regulations define "inducement" as something of value (such as cash, premiums based on loan volume, or gifts) that is given by the guarantor with the intent of causing the lender to choose the guarantor. In addition, the attendees at the Atlanta meeting recommended that computer system connections that allow a lender to utilize a guarantor's procedures not be considered an inducement.

9. *Guaranty reserve level*—Attendees at all of the regional meetings recommended that uniform definitions be developed for determining the required reserve level for each of the guaranty agencies. However, participants at each of the meetings suggested different formulas for the determination of whether a guaranty agency satisfied its minimum requirement. Attendees at all of the regional meetings also recommended that, if a management plan is required because a guaranty agency drops below the minimum reserve level, the guaranty agency, rather than the Secretary, should be responsible for preparing the plan. Finally, the participants at all the meetings recommended that, if a guaranty agency becomes insolvent, the Secretary should first consider a solution in which other agencies assume the insolvent agency's responsibilities rather than have the Secretary take over the agency's role.

10. *Restriction on lender interest subsidy*—Attendees at all of the regional meetings rejected the suggestion that a lender could charge a borrower for the interest not paid by the Secretary because of the restriction on the interest subsidy added to the law. The Atlanta attendees objected to the suggestion that the term "disbursement" in section 428(a)(3) of the HEA meant the delivery of funds to the student and instead asked that the industry's traditional definition of the term as referring to when the funds are available to the school be maintained. The Atlanta attendees also disagreed with the idea of a standardized schedule for the interest billing. The Kansas City attendees recommended that the term "disbursement" be defined as the date the borrower negotiates the loan check or the funds are transferred to the borrower's account. The Kansas City attendees also recommended the adoption of a standardized schedule for interest billings. The San Francisco attendees recommended that the Secretary seek a statutory change that would prohibit schools from requesting funds prior to the deadlines established for interest payment. The New York attendees also recommended that a restriction be placed on the school's authority to request funds and suggested that a standardized schedule for interest billing be developed.

11. *Loans that have not been consummated*—The Amendments prohibit a lender from receiving interest and special allowance payments on loans for which the disbursement checks have not been cashed or the electronic funds transaction is not completed. The Atlanta meeting recommended that this restriction apply to loans when the check is returned or has not been negotiated within 120 days or when the school notifies the lender that the transaction is cancelled. Attendees at the Kansas City meeting concluded that the statute clearly defined the loans on which interest would be restricted but recommended that lenders should be allowed to bill for interest and special allowance until they learn that the loan was not consummated and then adjust future billings. The San Francisco attendees simply expressed their objection to the law.

12. *Prohibition on the sale of loans prior to disbursement*—The Amendments changed section 428G(g) to limit the ability of a lender to sell a loan prior to full disbursement of the loan proceeds. The attendees at the Kansas City meeting recommended that the restriction should not apply as long as the address to which payments are made does not change and the change is "transparent" to the borrower. Attendees at the San Francisco meeting recommended that transfer (which it defined as a sale) of a loan be prohibited until after all disbursements are made. Attendees at the New York meeting recommended that the restriction apply only when the ownership of the loan note is transferred and that the restriction should not apply when a lender is ending its participation in the FFEL Program. The attendees at the Atlanta meeting concluded that the restriction on transfers should not apply if the transfer does not change the borrower's perception of where to send payments.

The Department considered all of the comments received during the regional meetings in preparing draft proposed regulations.

Negotiated Rulemaking

After completion of the regional meetings, the Department prepared draft proposed regulations to implement the provisions of Public Law 102–325 relating to the FFEL Program. In accordance with the requirements of section 492(b) of the HEA, those regulations were submitted to a negotiated rulemaking process. During the weeks of January 4–8 and February 1–5, 1993, the Department met with negotiators selected from among individuals nominated by attendees at the regional meetings.

The discussion below of the proposed regulations reflects those areas where the negotiators reached a consensus and the proposed regulations reflect that agreement. The discussion below also indicates where consensus was not reached during the negotiations. However, the negotiators did not choose to discuss every part of the proposed regulations. Accordingly, the discussion below of those issues not discussed during the negotiations reflects only the views of the Secretary.

Proposed Regulatory Changes

Section 682.100 The Federal Family Education Loan Programs

Section 682.100(a)(3)—The Secretary proposes to amend the regulations to reflect the statutory change that parent PLUS borrowers may no longer borrow on behalf of dependent graduate students.

Section 682.100(a)(4)—The Secretary proposes to amend the regulations to reflect the statutory change that a Consolidation Loan may include Higher

Education Assistant Loan (HEAL) Program loans authorized by Subpart I of Part A of Public Title VII of the Health Services Act, and parent PLUS borrowers whose loans were made on or after October 17, 1986.

Section 682.101(c)—The NPRM is revised to include the statutory change that HEAL loans and parent PLUS borrowers whose loans were made on or after October 17, 1986 may be included in a Consolidation Loan and married couples who have a combined indebtedness of at least $7,500 in eligible loans may borrow under the Consolidation Loan Program.

Section 682.200 Definitions

This section of the regulations is being amended to reflect changes made to various definitions by Public Law 102–325. The Secretary also proposes to change other definitions to ensure clarity and consistency within the FFEL Program. During the negotiations, the following definitions were discussed and changes were made to address the negotiators' concerns.

Co-maker—The Secretary proposes to revise the definition of co-maker in the proposed regulations to include its use in the Consolidation Loan Program. The current regulatory definition only references the PLUS loan program. The Secretary proposes to revise the definition to also describe the status of a married couple who are joint borrowers on a Consolidation loan. The Secretary wishes to point out that a co-maker on a PLUS or Consolidation loan must be an eligible borrower.

Disposable income—The Secretary proposes to revise this section by adding a definition of the term "disposable income." The proposed regulations would provide a uniform standard for guaranty agencies to use in determining what constitutes disposable income in determining a reasonable and affordable payment based on the borrower's total financial circumstances for purposes of reinstatement of borrower eligibility (§ 682.401) and rehabilitating a borrower's defaulted loan (§ 682.405).

Estimated Financial Assistance—During the negotiated rulemaking sessions, discussion ensued regarding the definition of "estimated financial assistance." The definition of estimated financial assistance reiterates the language in the December 18, 1992 regulations that requires a school to include, as estimated financial assistance, Federal Perkins loan or Federal Work-Study awards that were offered to a student and declined, unless an award was declined for an acceptable reason. The negotiators expressed concern that the requirement that aid officers must certify estimated eligibility for these programs regardless of whether (1) the student applies for the aid, (2) the student meets established institutional deadlines for consideration, or (3) the student applies, but funds are not available, is not reasonable or practicable given the deadline that schools have for packaging their campus-based financial aid programs.

The Secretary is concerned that students be considered for more desirable campus-based aid, if available, before they turn to FFELP loans. However, at the request of the negotiators, the Secretary proposes to clarify that a school would be expected to include Federal Perkins Loan or Federal Work-Study award estimates for a student only to the extent funding is available. The Secretary intends that a school need not include hypothetical campus-based awards if those funds are no longer available or cannot be expected to become available at that school. Also, a campus-based award declined by the student would not need to be considered as estimated financial assistance if the institution's packaging policy would not normally make certain types of awards to a particular category of students. For example, if the institution's packaging policy would not normally award a Perkins loan to a freshman student, that aid would not need to be included as part of "estimated financial assistance" when certifying a FFEL Program loan application for the student.

The negotiators also recommended that the definition of estimated financial assistance should be revised to provide a different definition of estimated financial assistance for PLUS loans. They believed a school should be able to certify a PLUS application without taking into consideration the dependent student's eligibility for other Title IV student loan assistance if the parent wishes to take on a loan obligation in lieu of the student becoming obligated. The Secretary strongly encourages students to utilize all financial aid available to them. However, the Secretary recognizes that the statute provides authority for PLUS parent borrowers to borrow up to the cost of education. Given the fact that schools will be participating in both the Federal Direct Loan and FFEL programs, the Secretary believes that the treatment of PLUS loans needs to be consistent across the loan programs. Therefore, the Secretary proposes to revise the definition of estimated financial assistance in the FFEL Program to be consistent with the same definition in the Federal Direct Student Loan Program and to permit a PLUS parent borrower the option of borrowing to cover both parental contribution and the amount of the student's eligibility for Federal loans up to the cost of attendance.

Grace period—The Secretary proposes to revise the definition of grace period to reflect the change in the HEA that allows an SLS borrower who also has a Stafford loan to delay beginning repayment on the SLS loan for a period of time concurrent with the borrower's grace period on the Stafford loan so that repayment begins on the two loans at the same time.

Repayment period—The Secretary proposes to revise the definition of repayment period to reflect section 428H of the HEA, which provides that the repayment period for an Unsubsidized Stafford Loan begins on the day after the grace period expires. The NPRM reflects that payments of interest on an Unsubsidized Stafford Loan during the in-school and grace period are the responsibility of the borrower.

Satisfactory repayment arrangement—The Secretary proposes to revise this section by adding a definition for the term "satisfactory repayment arrangement." Consistent with the effort to standardize and simplify the FFEL Program and the requirements of section 428F of the HEA, the proposed regulations would provide a uniform standard for guaranty agencies to use in determining what constitutes a "satisfactory repayment arrangement" by a defaulted borrower. A borrower would be required to have made satisfactory repayment arrangements on a defaulted loan prior to regaining eligibility for further Title IV assistance or including a defaulted loan in a Consolidation loan. The negotiators expressed concern about the effects of applying the same definition to other aspects of the FFEL Program that they believe go beyond the reinstatement of a defaulted borrower's eligibility for Title IV assistance. For example, a borrower who wishes to consolidate a defaulted loan is required to make a satisfactory repayment arrangement on the defaulted loan and provide evidence of the arrangement to the consolidating lender. The negotiators believed that guaranty agencies should have the discretion to implement a stricter standard for satisfactory repayment arrangements for differing circumstances. The Secretary believes, however, that the Congress intended one uniform standard for satisfactory repayment arrangements to be used nationwide for all FFEL Program purposes.

Stafford Loan Program—The negotiators indicated that the different names used in the Federal Stafford Loan Program confuse borrowers and other program participants. The Secretary is proposing to define the different types of loans involved. The term "Stafford Loan Program" refers to the program authorized by Title IV-B of the HEA, which encourages the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs. The term "Stafford Loan Program" will serve as the umbrella term for all Stafford loans, subsidized, unsubsidized, and nonsubsidized.

Write-off—The Secretary proposes to revise this section by adding a definition for the term "write-off." The proposed regulations would provide a uniform standard for guaranty agencies to use in determining what constitutes a "write-off" for purposes of determining whether a borrower is considered to have an adverse credit history if a credit report reflects that a borrower has been the subject of a write-off.

Section 682.201 Eligible borrowers

Section 682.201(a)(2)—The NPRM proposes to establish a sequence in certification of borrower eligibility in the FFEL Program in response to the negotiators' request that clarification be provided in the regulations. Consistent with the requirements of sections 428H(b)(2) and 484(b)(2) of the HEA, a borrower must first receive a determination of need for a subsidized Stafford loan and, if determined to have need in excess of $200, have submitted an application to a lender. The borrower must next receive a determination of need for an unsubsidized Stafford loan regardless of whether the amount of the need is less than $200. Finally, an eligible borrower may have an SLS loan application certified which contains, under "estimated financial assistance", the full amount of the borrower's Stafford Loan (subsidized and unsubsidized) eligibility. The Secretary notes that the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), enacted on August 10, 1993, provides that no new Federal SLS Loans may be made for a period of enrollment beginning on or after July 1, 1994. The Federal SLS Program will be replaced with increased annual loan amounts available under the unsubsidized component of the Federal Stafford Loan Program.

Section 682.201(b)—The NPRM proposes to reflect the change in the HEA that provides that graduate or professional students are considered independent students, thereby restricting PLUS loan eligibility to parents of dependent undergraduate students.

Section 682.201(b)(7)—The proposed regulations implement section 428B(a) of the HEA that provides the eligibility requirements for the PLUS program. Specifically, in order for a parent to be eligible to borrow a PLUS loan on behalf of a dependent student, the parent must be determined not to have an "adverse credit history." During the negotiations some lenders expressed the need for flexibility to exercise individual judgment in determining adverse credit. The Secretary accepted the negotiators' recommendation that the proposed rules should not preclude a lender from requiring a PLUS applicant to meet more stringent credit criteria. However, the Secretary did not accept other lenders' recommendations that, in exercising this judgment, the lender should be allowed to use more lenient standards on an exceptional basis.

Lenders expressed concern about parent borrowers' ability to repay the loans given the repeal of the PLUS annual and aggregate loan limits. Some lenders recommended that the proposed regulations used to determine borrower eligibility for PLUS loans go beyond a standard to determine adverse credit history to also include a determination of a borrower's ability to repay the debt. Although the Secretary shares the lenders' concerns, he declined to accept the negotiators' recommendation because there is no statutory authority for including such an additional eligibility criterion. However, the Secretary notes that a lender is not prohibited from maintaining a lending policy that would examine parental ability to repay the PLUS loan.

The draft NPRM discussed at the negotiated rulemaking sessions would have required a lender to obtain a credit report on the PLUS applicant from at least one national credit bureau organization not more than 60 days before the first day of the period of enrollment for which the loan was intended. The negotiators believed the time frame for obtaining the credit report was too restrictive. The Secretary, therefore, has removed the proposed time frame and is proposing that the lender determine adverse credit history based on the examination of the required credit report.

The Department also proposed in the draft NPRM that the PLUS applicant would be considered to have an adverse credit history if the borrower is more than 90 days delinquent on a repayment of any debt, 60 or more days delinquent on the repayment of each of two or more debts, or has been, during the five years preceding the date of the credit report, the subject of a default determination, bankruptcy filing, foreclosure, repossession, tax lien, wage garnishment, write-off, or any Federal or state government action to collect a debt. The lender could not consider insufficient or lack of a credit history for the parent borrower to be an adverse credit history. Some negotiators objected to the proposal that a borrower would be considered to have an adverse credit history if the borrower is more than 90-days delinquent on a repayment of any debt or 60 or more days delinquent on the repayment of each of two or more debts because they believed the proposal was overly complicated and too stringent. The Secretary removed the 60-day restriction to simplify the standard; however, the Secretary indicated that the 90-day delinquency requirement would be retained because he believed this to be an appropriate threshold of delinquency for this purpose.

The negotiators believed that the proposed draft regulations also did not provide the lender with enough flexibility to consider extenuating circumstances, such as delinquency on small dollar debts that may have been beyond the control of the borrower. They recommended that lenders be able to apply a tolerance for small dollar debts. The negotiators indicated that delinquent debts of less than $500 are an industry-wide acceptable tolerance. The Department agreed to propose to allow the lender the flexibility in determining adverse credit if the lender retains documentation supporting its basis for determining that extenuating circumstances existed. The documentation may include an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or an acceptable statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

Student advocates requested that the Department clarify that a borrower who has a loan discharged under section 437(b) of the HEA would not be considered to have an adverse credit history. The Department agreed to clarify in the preamble to the regulations that a borrower would not be considered to have an adverse credit history based solely on a loan discharged under this provision appearing on the borrower's credit history.

Section 682.201(c)—The Secretary proposes to amend the regulations to

reflect the new statutory changes to Consolidation loan eligibility. The NPRM would provide that the following borrowers are now eligible for a Consolidation loan: A borrower who has a minimum debt under the eligible loan programs of at least $7,500; a defaulted borrower who will reenter repayment through loan consolidation; a parent PLUS borrower who has loans made after October 17, 1986; and a married couple who will jointly consolidate their individual loans. The NPRM also reflects the statutory provision allowing a borrower to add loans received prior to the date of the consolidation during the 180-day period after the lender has made the Consolidation loan.

The proposed regulations also provide that a borrower who is currently in default on a FFEL loan must, to make the defaulted loan an eligible loan to be consolidated, have made satisfactory repayment arrangements with the holder of the defaulted loan. The negotiators held an in-depth discussion as to whether there should be a separate, stricter criterion for "satisfactory repayment arrangements" for the inclusion of a defaulted loan in a Consolidation loan as provided in the NPRM. The Secretary strongly believes that a single, standard definition of this term, as provided in § 682.200, should be applied consistently throughout FFEL Program regulations. Therefore a borrower would be required to make six consecutive reasonable and affordable monthly payments on the defaulted loan before it was eligible for inclusion in the Consolidation loan.

Section 682.204 Maximum Loan Amounts

The Secretary has proposed to amend the regulations by inserting the new statutory loan limits for the FFEL Program loans that became effective on or after July 1, 1993. Changes in loan limits made by the Amendments that became effective earlier were included in the FFEL regulations that were published in the December 18, 1992 Federal Register. The negotiators indicated that they believe that the NPRM does not reflect the intent of the HEA in regard to the limits for programs of less than one academic year. The Secretary recognizes that the language in the HEA is defective and has recommended to the Congress a technical change to address Stafford loan limits for programs of less than one year when the student is beyond the first year of undergraduate education.

The negotiators believed the Department should provide guidance for schools in certifying a Stafford or SLS loan amount for a borrower enrolled in a program of study of less than an academic year. The Secretary has proposed in § 682.603(f)(3) a formula for the school to use in determining the borrower's annual loan limit based on whether the school meets the academic year standards specified in section 481(d)(2) of the HEA.

The negotiators requested that the Department define "course of study" so that students enrolled in multi-year programs be exempted from prorated loan limits. The Secretary believes, however, that, as the statute is currently written, a borrower enrolled for a period of enrollment that is less than an academic year in length necessary to complete a program of study is subject to reduced annual loan limits for any loan made for that period of enrollment. For term-based schools, this approach applies only if the period of enrollment that is less than an academic year is beyond the normal time frame for completion of the program as determined by the school.

Section 682.207 Due Diligence in Disbursing a Loan

This section of the regulations is being amended to provide that a PLUS loan check from a lender that is co-payable to the institution and the parent borrower must be sent directly to the eligible institution. Some negotiators favored mailing the check to the PLUS borrower for endorsement first and directing the borrower to then forward the check to the school. These negotiators believe that the co-payable check format provides sufficient protection to the Federal government against the misuse of PLUS funds. However, the Department's experience in the PLUS loan program has shown that sending the check directly to the borrower contributes to confusion in the program and may result in funds being made available to PLUS borrowers on behalf of students who are no longer enrolled. The Secretary has proposed that the check be mailed to the school first to verify student eligibility prior to forwarding it to the parent for endorsement.

Section 628.300 Payment of Interest Benefits on Federal Stafford Loans

The HEA provides that a lender may not receive interest on loans for periods earlier than either 10 days prior to the date the proceeds of the loan disbursed by check are delivered to the borrower by the school or 3 days prior to the date the proceeds of the disbursement made by electronic funds transfer are released from the restricted account maintained by the school. The major point of disagreement during the negotiations regarding this provision of the statute was the Department's interpretation of Congress' use of the word "disbursement", as used in section 428(a)(3)(A)(v) of the HEA, to mean "delivery" of loan proceeds to the borrower by the school. The Secretary believes this is the only viable interpretation of the statute as the use of the term disbursement would result in an expansion rather than restriction on interest billed the Secretary.

Considerable discussion occurred during the negotiation sessions regarding the 3-day/10-day interest limitation. The Department pointed out that Congress clearly intended to limit the lender's ability to bill the Department for interest to the period after funds are delivered to the student. The legislative history of this provision indicates that Congress intended to achieve significant savings by this change. The negotiators argued that in developing the regulations, the Department should consider that lenders do not consistently track a student's period of enrollment or the date of delivery of proceeds to the borrower. The negotiators believed the regulations should be written based on a formula driven by the date of disbursement to the school.

The negotiators ultimately recommended that interest be limited to 10 days prior to the first day of the period of enrollment for which the loan check is intended or, if the loan is disbursed after the start of the period of enrollment, 3 days after the disbursement date of the check. For a loan disbursed by electronic funds transfer, interest will be limited to 3 days prior to the first day of the period of enrollment or if the loan is disbursed after the start of the period of enrollment, 3 days after disbursement. To achieve Congress' intent to limit unnecessary interest payments using the date of loan disbursement to the school rather than delivery date to the borrower, the Secretary also believes it is necessary in § 682.603(h) to limit the period during which the school may request the disbursement of loan proceeds for a new borrower who is enrolled in his or her first year of undergraduate study.

The Secretary also proposes to amend the regulations to reflect the provision in section 428(a)(7) in the HEA under which a lender may not receive interest benefits for any disbursement of a loan for which checks have not been cashed or for which electronic funds transfer has not been completed.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

This section of the regulations is being amended to reflect the statutory change that provides that a Consolidation loan borrower whose application was received by the lender on or after January 1, 1993 qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans.

Section 682.302 Payment of Special Allowance on FFEL Loans

The Secretary proposes to amend the regulations to reflect the provision in section 428(a)(7) of the HEA under which a lender may not receive special allowance payments for loans for which checks have not been cashed or for which electronic funds transfers have not been completed.

The Secretary also proposes to amend this section to reflect other changes made by the Amendments. The proposed regulations reflect the change under section 438(b)(2)(C) that special allowance is not paid unless the new variable interest rate calculations produce an interest rate that is greater than the statutory standard interest rate (10 percent for PLUS, 11 percent for SLS). The proposed regulations also reflect the new statutory special allowance formula and a new special allowance "floor" for tax-exempt loans, both of which are effective for loans made on or after October 1, 1992. In addition, the proposed regulations would provide, in accordance with the Amendments, that unsubsidized Federal Stafford loans made pursuant to section 428H of the Act are now eligible for special allowance payments.

Section 682.400 Agreements Between a Guaranty Agency and the Secretary

The Secretary proposes to revise this section of the regulations to implement section 428F of the HEA that requires all guaranty agencies to participate in the loan rehabilitation program.

Section 682.401 Basic Program Agreement

Section 682.401(b)(4)—The proposed regulations implement the requirements of section 428F of the HEA that require a guaranty agency to permit a defaulted borrower to regain eligibility for Title IV assistance once the borrower has made satisfactory repayment arrangements as defined in § 682.200. The HEA provides that a guaranty agency may not demand that a borrower make monthly payments that exceed an amount that is "reasonable and affordable" based upon the borrower's total financial circumstances. In developing criteria to be used by guaranty agencies in determining what constitutes a reasonable and affordable payment amount, the Secretary proposes to require the agency to require income and expense documentation from the borrower to make a determination of a reasonable and affordable amount. The guaranty agency must also document the basis for the determination if it determines that a defaulted borrower cannot make a monthly payment of at least $50 or the monthly accrued interest on the loan, whichever is greater, based on the borrower's total financial circumstances. Several negotiators expressed their belief that the documentation requirement for borrower payments that are less than $50 would be construed as a minimum monthly payment requirement resulting in an adverse impact on low-income borrowers who have defaulted and request reinstatement of eligibility for additional Title IV assistance.

The Secretary does not intend the requirement that the agency document the basis for payments of under $50 to harm defaulted low-income borrowers. The proposed regulations clearly provide that payments of less than $50 are permissible. The proposed regulations merely require the guaranty agency to assess the borrower's disposable income and necessary expenses to determine a reasonable and affordable payment, and to document the borrower's file to substantiate the fact that the borrower's financial circumstances support a smaller payment than is generally required of other FFEL borrowers. The Secretary notes that a borrower's objection to the "affordable and reasonable payment" amount determined by the guaranty agency based on its assessment of the borrower's disposable income and necessary expenses should be made to officials of the guaranty agency. However, if the guaranty agency and the borrower are unable to come to an agreement on the amount identified by the agency following this assessment, the borrower may contact the Department for assistance.

Section 682.401(b)(6)—The proposed regulations implement the requirements of section 428(b)(1)(T) of the HEA that provide a guaranty agency the authority to limit the total number of loans or the volume of loans made to students attending a particular school. During the regional meetings, many commenters expressed the opinion that the limitation should only apply to a school that is a first-time applicant to participate in the guaranty agency's program. However, the Secretary also believes that this new provision should be applicable to schools that are applying to renew their participation in the guaranty agency's program, as well as schools that are applying to participate in the agency's program for the first time. The Secretary believes it is reasonable to treat renewal applicants in the same manner as first-time applicants for purposes of determining a school's eligibility to participate in a guaranty agency program. The application process provides the guaranty agency with an opportunity to review a school's capability in its administration of the FFEL Program. The Secretary proposes that a guaranty agency may establish reasonable criteria approved by the Secretary to implement this authority.

Section 682.401(b)(14)—The Secretary proposes to include § 682.401(b)(14), as published in the July 19, 1991 Student Assistance General Provisions and Guaranteed Student Loan Programs final regulations, which requires a guaranty agency to provide the Secretary's designated Department official a copy of its response to the institution's request for verification of its cohort default rate data. This provision was inadvertently not included in the final FFEL regulations published on December 18, 1992.

Section 682.401(b)(16)—The Secretary proposes to amend this section to prohibit a lender from selling or transferring a promissory note for any FFEL Program until the final disbursement of the loan has been made, unless the sale or transaction does not result in the change in the identity of the party to whom payment on the loan will be made.

Section 682.401(b)(24)—The Secretary proposes to amend the NPRM to reflect the HEA requirement that the guaranty agency must, upon the request of the eligible school, notify the last institution the student attended of any sale, transfer, or assignment of the loan to another holder and the address and telephone number by which contact may be made with the new loan holder concerning repayment of the loan.

Section 682.401(b)(25)—The Secretary proposes to amend this section of the regulations to establish a time frame for a guaranty agency to send the Secretary information on program participants requesting designation as exceptional performers. The Secretary also proposes to amend this section to reflect the statutory requirement that a guaranty agency provide a school with information on any sale or transfer of a loan that results in payments being sent to a different place. This information

will assist the school's efforts to help its students avoid defaulting on their loans.

Section 682.401(c)(1)—The proposed regulations implement the new statutory provisions allowing guaranty agencies to limit access to lender-of-last-resort in certain circumstances and allows a mechanism for the school to appeal to the Secretary if lender-of-last-resort services are to be denied by the designated guaranty agency required to provide those services on this basis. The proposed regulations would require a guaranty agency to ensure that lender-of-last-resort loans are available for attendance at a school with a default rate over 25 percent; has not been eligible for and has not participated in the Federal Stafford Loan Program during the prior 18 months; or is the subject of an emergency action or limitation, suspension, or termination proceeding, if there are exceptional mitigating circumstances that would make the new statutory limitations on the agency's lender-of-last-resort program inequitable. The Secretary proposes to use the definition of exceptional mitigating circumstances in 34 CFR 668.15(g) to evaluate appeals filed by schools under this provision. The public, at the regional meetings, expressed its belief that the current regulatory criteria for exceptional mitigating circumstances were too stringent. However, the Secretary notes that Congress was aware of the Department's interpretation of the term "exceptional mitigating circumstances" in 34 CFR 668.15(g) and used the same term in the amendments to the lender-of-last-resort provision in section 428(j) of the HEA. Therefore, the Secretary believes that it is appropriate to use the existing regulatory definition of "exceptional mitigating circumstances" for appeals of denials of lender-of-last-resort services.

Section 682.401(e)—The Amendments expanded the prohibited inducement provisions relating to guaranty agencies. The Secretary has proposed to modify the regulations to reflect this amendment and include examples of the prohibited inducements. The list of examples is not all-inclusive. For example, offering computer support that it does not make available to all lenders in its program as part of a marketing appeal to a lender with whom an agency does not do business in order to secure that lender's loans would constitute an inducement. Also, any cash payment from a guaranty agency to a lender on a per application basis is strictly prohibited, except as necessary to secure lenders to participate in the agency's lender-of-last-resort program. The Secretary proposes to amend the regulations to reflect that inducements are only those things that are not available to all lenders in the guaranty agency's program or will not be available to all lenders after new enhancements or products have been tested.

Section 682.405 Loan Rehabilitation Agreement

The proposed regulations implement the amendments to the loan rehabilitation provision in section 428F of the HEA, under which guaranty agencies are required to enter into a loan rehabilitation agreement with the Secretary. Previously, the loan rehabilitation program was voluntary for guaranty agencies. The statute provides that, as part of a loan rehabilitation, the Secretary or a guaranty agency may not demand from a defaulted borrower a monthly payment amount more than is "reasonable and affordable" based upon the borrower's total financial circumstances. The Secretary notes that a borrower's objection to the "affordable and reasonable payment" amount determined by the guaranty agency based on its assessment of the borrower's disposable income and necessary expenses should be made to officials of the guaranty agency. However, if the guaranty agency and the borrower are unable to come to an agreement on the amount identified by the agency following this assessment, the borrower may contact the Department for assistance. Some attendees at the regional meetings indicated that they believed that each guaranty agency should be permitted to develop its own criteria for determining a payment amount that is reasonable and affordable. The Secretary disagrees and has proposed regulations that would standardize this requirement for all guaranty agencies to ensure that a defaulted borrower in one state is provided with the same opportunity to rehabilitate his or her defaulted loan as a borrower in another state.

Section 682.406 Conditions of Reinsurance Coverage

The proposed regulations implement the requirement in section 428(c)(2)(G) of the HEA that provides that a guaranty agency may not receive reinsurance unless it demonstrates to the Secretary that diligent attempts have been made to locate the borrower through the use of reasonable skip-tracing techniques. The Secretary believes that it is primarily a lender responsibility in the due diligence process to locate the borrower through the use of reasonable skip-tracing techniques. However, the Secretary will not reimburse a guaranty agency when a default claim is based on an inability to locate the borrower, unless the guaranty agency, at the time of filing a claim, demonstrates that diligent attempts have been made by either the lender or the agency to locate the borrower.

Section 682.407 Administrative Cost Allowance for Guaranty Agencies

The Secretary proposes to implement the provision in section 428(f)(1) of the HEA that provides that administrative cost allowance payments may not be made to a guaranty agency for a loan for which the disbursement check has not been cashed or for which an electronic funds transfer has not been completed.

Section 682.409 Mandatory Assignment By Guaranty Agencies of Defaulted Loans to the Secretary

In a decision memo dated March 14, 1991, the Secretary stated that the Department would require the assignment of certain defaulted FFEL Program loans by guaranty agencies to the Department for collection in two phases. The age-based phase of the assignment policy, Phase I, began in July 1991. This preamble clarifies Phase I and outlines Phase II of the policy—guaranty agency default collection performance standards. The Phase II standards for assignment were developed in accordance with the purposes of section 428(c)(8) of the HEA, as amended by the 1992 Amendments, and are designed to give the Secretary flexibility in resolving existing defaulted FFEL Program loans to maximize collection revenues from the entire defaulted student loan portfolio. Because successful collection of defaulted student loans depends on a number of factors, including the nature, quality and timing of collection efforts and the resources of debtors, the adequacy of collection efforts must be evaluated in terms of process as well as outcomes. Section 682.410 contains the process requirements.

Under these proposed standards, guaranty agencies with recovery rates equal to or higher than the regulatory recovery rate standards will continue collecting all defaulted student loans which have been in their portfolios less than four years. Guaranty agencies with recovery rates lower than the regulatory recovery rate standards will continue collecting defaulted student loans, but their workloads would be reduced to better allow them to collect the loans they retain. These guaranty agencies would be required to assign additional loans to the Department, as well as loans required to be assigned under Phase I of the policy. Any additional

loans required to be assigned in a given fiscal year will be in proportion to the difference between the guaranty agency's actual recovery rate and the regulatory recovery rate standards. Guaranty agencies demonstrating marked improvement in collections by achieving regulatory recovery rate standards the following fiscal year after being required to assign additional loans, will not be required to assign any loan which they have held less than four years.

The performance standards for each separate FFEL Program (i.e. Stafford, SLS, PLUS, Consolidation) will be 80 percent of the average annual recovery rate for that program for all guaranty agencies for the first two years. For subsequent years, the performance standard for each program will increase to 90 percent of the average annual recovery rate for all guaranty agencies. At the same time, the age-based assignment requirement will change from four to five years. Guaranty agencies not meeting these goals will have their defaulted student loan portfolios reduced to levels which will be more conducive to achieving higher recovery rates. The reductions will be in amounts sufficient to cause the affected guaranty agency's recovery rates by loan type to equal the average guaranty agency recovery rate for that loan type when the amount assigned to the Secretary is subtracted from the amount of loans outstanding—the denominator in the recovery rate calculation. This policy will give the Secretary the flexibility to curtail assignments, or select the types of accounts to be assigned if the solvency of a guarantor is threatened. The Secretary will review this standard annually and make adjustments, as appropriate.

In determining the basis for this policy, the Secretary considered the annual defaulted student loan recovery rates of all guaranty agencies over the last five years. The standards for assignment of loans were generally agreed to by the negotiators with only a few objections. The Secretary notes, however, that changes to section 428(c)(8) of the HEA were made by the Omnibus Budget Reconciliation Act (OBRA) of 1993 (Pub. L. 103–66) subsequent to the development and negotiation of the proposed regulations governing mandatory assignment of guaranty agency loans. Specifically, the HEA has been amended to give the Secretary authority to direct a guaranty agency to promptly assign loans to the Secretary if the Secretary determines that action to be necessary for an orderly transition from the FFEL Program to the Federal Direct Student Loan Program. Therefore, the Secretary specifically solicits comments on the proposed standards for assignment in light of the additional changes made to this section of the law. Further, the Secretary reserves the right during the development of the final regulations to make whatever changes he deems necessary to implement the requirements of the OBRA in this area.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

The statute now requires the guaranty agency to maintain a minimum reserve fund level as a percentage of the amount of all outstanding loans guaranteed by the agency. The proposed regulations define the reserve fund level as total sources less total uses of the reserve fund, and defines in detail the amount of outstanding loans guaranteed.

The Secretary notes that the Omnibus Reconciliation Act of 1993 made additional changes to section 428(c) of the HEA. Those changes will be addressed in separate regulations that are currently being developed under negotiated rulemaking.

Section 682.601 Rules for a School That Makes or Originates Loans

Section 682.601(a) of the proposed regulations would provide that an institution may be an eligible lender only if its cohort default rate does not exceed 15 percent. Further, the institution may only use special allowance payments and interest payments received on loans that it originated for need-based grant programs for its students or for reasonable administrative expenses directly related to the FFEL Program. These proposed changes reflect changes made to the HEA in section 435(d)(2)(E).

Section 682.603 Certification By a Participating School in Connection With a Loan Application

Proposed § 682.603(f)(3) provides a formula for a school to use in determining the annual loan amount for a borrower enrolled in a program of study of less than an academic year that meets the standards specified in section 481(d) of the HEA. This change is needed to implement the restriction on the annual limit provided by sections 428(b)(1)(A) and 428A(b)(1) of the HEA.

The Secretary also proposes to amend the NPRM by adding a new paragraph (h) to achieve, in the case of new borrowers subject to delayed delivery of loan proceeds, the appropriate interest limitation Congress intended in § 682.300 using a formula based on the date of loan disbursement. The Secretary believes that restricting the school's request for disbursement of the borrower's loan proceeds to seven days prior to the 31st day of the student's period of enrollment will still provide the school sufficent time to process the new borrower's loan proceeds while ensuring the required interest limitation.

Section 682.604 Processing the Borrower's Loans Proceeds and Counseling Borrowers

Section 682.604(g). Section 485(b) of the Act was amended to delete the requirement that a school counsel borrowers concerning the average indebtedness of FFEL borrowers. The Secretary proposes to remove the previous regulatory requirement. The school must now review with the borrower all conditions under which the borrower may defer repayment. The proposed regulations would simply revise the previous requirement that the school provide information only about three specific deferments. The proposed regulations also list other items that must be updated by the borrower during exit counseling.

Section 682.604(h). Discussion occurred during the negotiated rulemaking sessions regarding the school's treatment of an overaward when proceeds which have not been delivered to a student exceed that amount of assistance for which the student is eligible. Section 428G(d) of the HEA requires the school to return the amount of the overaward to the lender. An overaward can result from aid received from any form of assistance defined as estimated financial assistance pursuant to 34 CFR 682.200 or a recalculation by the institution of a family's Expected Family Contribution (EFC) based on information not considered in the original EFC calculation. The negotiators expressed concern that one of the most time-consuming and frustrating parts of financial aid work, for both aid administrators and students, is resolving small $50 to $200 overawards. The negotiators suggested a tolerance of $500 to relieve some administrative burden. The Department indicated that the treatment of an overaward is a current statutory requirement, not subject to negotiated rulemaking, and that the statute does not provide tolerance language. Therefore, the Secretary cannot arbitrarily insert this provision in the regulations.

The Secretary proposes to revise the NPRM to include the change in the HEA that provides that funds obtained from any need-based employment is not considered an overaward, provided the

amount of the funds does not exceed $300.

Income contingent repayment—The statute provides that the Secretary may issue regulations allowing certain defaulted borrowers a repayment schedule that assesses the borrower's income and provides up to 25 years to repay the loan. The Secretary is to contract with private firms or other government agencies to perform the collection activities on these loans. The Secretary must publish a finding that the collection mechanism selected will provide a high degree of certainty of collection on the defaulted loans and that the use of the repayment option and collection mechanism will result in an increase in the net amount of collections. To be eligible, the borrower's note must provide for this type of repayment option and the note must be assigned to the Secretary following default. The Secretary is currently reviewing the options regarding the establishment of the collection mechanism mandated prior to issuing proposed regulations on this repayment option.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

While the statute requires that the Secretary regulate certain actions that must be taken by various program participants, these requirements would not have a significant impact because they would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal additional requirements to protect the Federal fiscal interest, as well as the interests of the borrowers under the programs.

Paperwork Reduction Act of 1980

Sections 682.401, 682.405 and 682.409 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Under § 682.401, a guaranty agency would be required to permit defaulted borrowers to regain eligibility for Title IV assistance. In doing so, a guaranty agency would be required to collect data to substantiate its determination of a borrower's total financial circumstances. Based on an estimated 4000 applicants, at .08 hours per response, this would result in 320 burden hours.

Under § 682.405, a guaranty agency is required to participate in a loan rehabilitation loan program for the purpose of rehabilitating a defaulted loan so that the loan may be purchased by an eligible lender and removed from default status. In rehabilitating a loan, a guaranty agency would be required to collect data to substantiate its determination of a borrower's total financial circumstances. Based on an estimated 4800 applicants, at .08 hours per response, this would result in 384 burden hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in ROB–3, room 4310, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: March 9, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.100 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 682.100 The Federal Family Education Loan programs.

(a) * * *

(3) The Federal PLUS (PLUS) Program, which encourages making loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students.

(4) The Federal Consolidation Loan (Consolidation) Program, which encourages making loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received while they were students, under the Federal Insured Student Loan (FISL), Stafford loan, SLS, ALAS (as in effect before October 17, 1986), Perkins Loan programs, Health Professions Student Loan (HPSL) Program authorized by Subpart II of part C of Title VII of the Public Health Service Act, and the Higher Education Assistance Loan (HEAL) Program authorized by Subpart I of part A of Public Title VII of the Health Services Act, and for parent PLUS borrowers whose loans were made on or after October 17, 1986.

* * * * *

3. Section 682.101 is amended by revising paragraph (c) to read as follows:

§ 682.101 Participation in the FFEL programs.

* * * * *

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford loan and SLS programs. Parents of eligible dependent students may borrow under the PLUS Program. Student borrowers who have at least $7,500 outstanding in Stafford, SLS, FISL, Perkins, HPSL, HEAL, ALAS, student PLUS loans or married couples who have a combined indebtedness of at least $7,500 under these programs or Parent PLUS loans made on or after October 17, 1986 may borrow under the Consolidation Loan Program.

* * * * *

4. Section 682.102 is amended by adding a new sentence at the end of the second sentence in paragraph (d); by adding a new sentence at the end of paragraph (e)(1); and by revising the last

sentence in paragraph (e)(4) to read as follows:

§ 682.102 Obtaining and repaying a loan.

* * * * *

(d) *Consolidation loan application.* * * * In the case of a married couple seeking a Consolidation loan, only the holder for one of the applicants must be contacted for consolidation. * * *

(e) *Repaying a loan.* (1) * * * The borrower's obligation to repay a PLUS loan is cancelled if the student, on whose behalf the parent borrowed, dies. The borrower's obligation to repay all or a portion of his or her loan may be cancelled if the borrower is unable to complete his or her program of study because the school closed or the borrower's eligibility to borrow was falsely certified by the school. The obligation to repay may be forgiven for borrowers who enter certain areas of the teaching or nursing professions or perform certain kinds of national or community service.

* * * * *

(4) *PLUS loan repayment.* * * * The first payment of principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is disbursed.

5. Section 682.200 is amended by redesignating (a)(1)(i) and (a)(1)(ii) as (a)(1) and (a)(2) respectively; removing "Eligible institution" from redesignated paragraph (a)(2); revising the definition of "Co-maker"; revising the introductory text of the definition of "Default"; revising paragraph (1) of the definition of "Estimated financial assistance"; adding a new sentence at the end of the definition of "Grace period"; revising paragraph (2), and redesignating paragraphs (3) and (4) as paragraphs (4) and (5) respectively, and adding a new paragraph (3), in the definition of "Lender"; revising the definitions of "Repayment period" and "Stafford Loan Program"; adding, in alphabetical order, new definitions of "Disposable income", "Nonsubsidized Stafford loan", "Satisfactory repayment arrangement", "Subsidized Stafford loan", "Unsubsidized Stafford loan", and "Write-off" in paragraph (b) to read as follows:

§ 682.200 Definitions.

* * * * *

Co-maker. One of two parents who are joint borrowers on a PLUS loan or one of two individuals who are joint borrowers on a Consolidation loan, each of whom are eligible and who are jointly and severally liable for repayment of the loan.

Default. The failure of a borrower and endorser, if any, or joint borrowers on a PLUS or Consolidation loan, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary or guaranty agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

* * * * *

Disposable income. That part of a borrower's compensation from an employer or other income from any source that remains after the deduction of any amounts required by law to be withheld.

* * * * *

Estimated financial assistance. (1) The estimated amount of assistance that a student has been or will be awarded for a period of enrollment, beginning on or after July 1, 1993, for which the loan is sought, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Veterans' educational benefits paid under Chapters 30, 31, 32, and 35 of Title 38 of the United States Code;

(ii) Educational benefits paid under Chapters 106 and 107 of Title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under Chapter 2 of Title 10 and Chapter 2 of Title 37 of the United States Code;

(iv) Benefits paid under Pub. L. 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Pub. L. 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including, but not limited to, a Stafford loan, Pell Grant and, to the extent funding is available and according to the school's award packaging policy, campus-based aid the student would be expected to receive if the student applied, whether or not the student has applied for that aid;

(viii) In the case of a PLUS loan, the estimated amount of other Federal student financial aid, including but not limited to, a Stafford loan, Pell Grant and campus-based aid that the student has been or will be awarded.

* * * * *

Grace period. * * * For an SLS borrower who also has a Federal Stafford loan on which the borrower has not yet entered repayment, the grace period is an equivalent period after the borrower ceases to be enrolled as at least a half-time student at an eligible institution.

* * * * *

Lender. * * *

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union—

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender";

(ii) The phrase "does not have as its primary consumer-credit function the making or holding of loans made to students under this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL Program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries.

(3) A bank that is subject to examination and supervision by an agency of the United States, making student loans as a trustee, may be an eligible lender if it makes loans under an express trust, operated as a lender in the FFEL programs prior to January 1, 1975, and met the requirements of this paragraph prior to July 23, 1992.

* * * * *

Nonsubsidized Stafford loan. A Stafford loan made prior to October 1, 1992 that does not qualify for interest benefits under § 682.301(b).

* * * * *

Repayment period. (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(2) For unsubsidized Federal Stafford loans, the period that begins on the day after the expiration of the applicable grace period that follows after the student ceases to be enrolled on at least a half-time basis and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. However, payments of interest are the responsibility of the borrower during the in-school and grace period, but may be capitalized by the lender.

(3) For Federal SLS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date

the last disbursement is made and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(4) For Federal PLUS loans, the period that begins on the date the loan is disbursed and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(5) For Federal Consolidation loans, the period that begins on the date the loan is disbursed and ends no later than 12, 15, 20, 25, or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

Satisfactory repayment arrangement. The making of six (6) consecutive voluntary on-time full monthly payments on a defaulted loan to regain further eligibility for FFEL Program loans. The required full monthly payment amount may not be no more than is reasonable and affordable based on the borrower's total financial circumstances. On-time means a payment made within 15 days of the scheduled due date and voluntary payments are those payments made directly by the borrower, regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution.

* * * * *

Stafford Loan Program. The loan program authorized by Title IV–B of the Act which encourages the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

* * * * *

Subsidized Stafford loan. A loan authorized under section 428(b) of the Act for borrowers who qualify for interest benefits under § 682.301(b).

* * * * *

Unsubsidized Stafford loan. A loan made after October 1, 1992, authorized under section 428H of the Act for borrowers who do not qualify for interest benefits under § 682.301(b).

Write-off. Cessation of collection activity on a defaulted FFEL loan due to a determination in accordance with applicable standards that no further collection activity is warranted.

6. Section 682.201 is amended by revising paragraph (a)(2); revising paragraphs (b) introductory text and (b)(1); removing "and" at the end of paragraph (b)(5); removing the period at the end of paragraph (b)(6), and adding in its place, "; and"; adding a new paragraph (b)(7); revising paragraph (c); and adding a new paragraph (d) to read as follows:

§ 682.201 Eligible borrowers.

(a) * * *

(2) In the case of any student who seeks an SLS loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must have—

(i) Received a determination of need for a subsidized Stafford loan, and if determined to have need in excess of $200, have filed an application with a lender for a subsidized Stafford loan;

(ii) Filed an application with a lender for an unsubsidized Stafford loan up to the Stafford loan annual maximum unless the school declines to certify such an application under section 428(a)(2)(F) of the HEA; and

(iii) Received a certification of graduation from a school providing secondary education or the recognized equivalent;

* * * * *

(b) *Parent borrower.* A parent borrower, and if applicable a parent co-maker, is eligible to receive a PLUS Program loan, other than a loan made under § 682.209(e), if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

* * * * *

(7)(i) In the case of a Federal PLUS loan made on or after July 1, 1993, does not have an adverse credit history.

(ii) For purposes of this section, the lender must obtain a credit report on each applicant from at least one national credit bureau.

(iii) Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history based on the credit report if—

(A) The applicant is considered 90 or more days delinquent on the repayment of a debt;

(B) The applicant has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a title-IV debt, during the five years preceding the date of the credit report.

(iv) Nothing in this paragraph precludes the lender from establishing more restrictive credit standards to determine whether the applicant has an adverse credit history.

(v) The absence of any credit history is not an indication that the applicant has an adverse credit history and is not to be used as a reason to deny a PLUS loan to that applicant.

(vi) The lender must retain documentation demonstrating its basis for determining that extenuating circumstances existed. This documentation may include an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

(c) *Consolidation program borrower.* (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(i) Has an outstanding indebtedness of not less than $7,500 on loans the individual is consolidating that are eligible for consolidation under § 682.100;

(ii)(A) Has ceased, or in the case of a PLUS borrower, the dependent student on whose behalf the parent is borrowing, has ceased at least half-time enrollment at a school;

(B) Is, on the loans being consolidated—

(*1*) In a grace period preceding repayment on the loans being consolidated;

(*2*) Is in repayment status; or

(*3*)(*i*) Is delinquent or has made satisfactory repayment arrangements with the holder on a defaulted loan being consolidated;

(*ii*) Will reenter repayment through consolidation;

(*iii*) Certifies that no other application for a Consolidation loan is pending;

(*iv*) Agrees to notify the holder of any changes in address; and

(*v*) Certifies that he or she has a loan with the consolidating lender or has sought a loan from his or her holder and was unable to secure a Consolidation loan from the holder.

(2) A married couple is eligible to receive a Consolidation loan in accordance with this section if each—

(i) Agrees to be held jointly and severally liable for the repayment of the total amount of the Consolidation loan;

(ii) Agrees to repay the debt regardless of any change in marital status; and

(iii) Meets the requirements of paragraph (c)(1) of this section, except that their combined indebtedness may not be less than $7,500 on loans eligible for consolidation under § 682.100 and only one must have met the requirements of paragraph (c)(1)(v) of this section.

(3) Eligibility for consolidation terminates upon receipt of a Consolidation loan except—

(i) With respect to student loans received after the date the Consolidation loan is made; or

(ii) Loans received prior to the date the Consolidation loan was made can be added to the Consolidation loan during the 180-day period after the making of the Consolidation loan.

(d) *Defaulted FFEL borrower.* In the case of a student, parent, or Consolidation loan borrower who is currently in default on an FFEL Program loan, the borrower has made satisfactory repayment arrangements.

7. Section 682.204 is amended by adding new paragraphs (a)(3), (a)(4), and (a)(5); revising paragraphs (b), (c) and (d); revising paragraph (e)(1) introductory text; redesignating paragraph (e)(2) as paragraph (e)(3); adding a new paragraph (e)(2); and revising paragraph (f) to read as follows:

§ 682.204 Maximum loan amounts.

(a) * * *

(3) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the remainder of an undergraduate program, the total amount the student may borrow may not exceed—

(i) $3,500 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,325 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,175 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(4) In the case of a student who has successfully completed the first and second year of a program of study of undergraduate education but not successfully completed the remainder of the program, the total amount the student may borrow may not exceed—

(i) $5,500 for a program of study of at least an academic year in length;

(ii) $3,675 for enrollment in a program of study of at least two-thirds of an academic year but less than an academic year in length;

(iii) $1,825 for a program of study of at least one-third of an academic year in length but less than two-thirds of an academic year in length; and

(iv) $4,000 for a loan for which the first disbursement is made on or before July 1, 1993.

(5) In the case of a graduate or professional student, the total amount the student may borrow may not exceed—

(i) $7,500 per academic year; or

(ii) $8,500 for loans to cover the cost of instruction for periods of enrollment beginning on or after October 1, 1993.

(b) *Stafford Loan Program aggregate limits.* The aggregate guaranteed unpaid principal amount of all Stafford loans made to a student may not exceed—

(1) For loans for which the first disbursement is made prior to July 1, 1993—

(i) $17,250, in the case of an undergraduate student for programs of study at the undergraduate level; and

(ii) $54,750 in the case of a graduate or professional student, including loans for undergraduate study.

(2) For loans for which the first disbursement is made on or after July 1, 1993—

(i) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(ii) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *PLUS Program annual limit.* The total amount of all PLUS loans that a parent may borrow on behalf of each dependent student for any academic year of study may not exceed—

(1) Except as provided in paragraph (c)(2) of this section, $4,000;

(2) In the case of a loan made on or after July 1, 1993, the cost of education for the student minus other estimated financial assistance.

(d) *PLUS Program aggregate limit.* (1) Except as provided in paragraph (d)(2) of this section, the total guaranteed unpaid principal amount of PLUS program loans that a parent may borrow on behalf of each dependent student may not exceed $20,000.

(2) In the case of loans made on or after July 1, 1993, the total guaranteed unpaid principal amount of PLUS Program loans that a parent may borrow on behalf of each dependent student is unlimited subject to the annual limit in paragraph (c)(2) of this section.

(e) *SLS Program annual limit.* (1) In the case of a loan for which the first disbursement is made prior to July 1, 1993, the total amount of all SLS loans that a student may borrow for any academic year of study may not exceed $4,000 or, if the student is entering or is enrolled in a program of undergraduate education that is less than one academic year in length and the student's SLS loan application is certified pursuant to § 682.603 by the school on or after January 1, 1990—

* * * * *

(2) In the case of a loan for which a first disbursement is made on or after July 1, 1993, the total amount a student may borrow for an academic year of study under the SLS program—

(i) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(A) $4,000 for enrollment in a program of study of at least a full academic year in length;

(B) $2,500 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(C) $1,500 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(ii) In the case of a student who successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program of study, may not exceed—

(A) $5,000 for enrollment in a program of study of at least a full academic year;

(B) $3,325 for enrollment in a program of study of at least two-thirds of an academic year but less than a full academic year in length; and

(C) $1,675 for enrollment in a program of study of at least one-third of an academic year but less than two-thirds of an academic year.

(iii) In the case of a graduate or professional student, may not exceed $10,000.

* * * * *

(f) *SLS Program aggregate limit.* The total unpaid principal amount of SLS Program loans made to—

(1) An undergraduate student may not exceed—

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993, or

(ii) $23,000, for loans for which the first disbursement was made on or after July 1, 1993; and

(2) A graduate student may not exceed—

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993, or

(ii) $73,000, for loans for which the first disbursement was made on or after July 1, 1993 including loans for undergraduate study.

* * * * *

8. Section 682.206 is amended by revising the introductory text in paragraph (c)(2); and revising paragraph (e)(2) to read as follows:

§ 682.206 Due diligence in making a loan.

* * * * *

(c) * * *

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, the lender must review the data on the student's cost of attendance and

estimated financial assistance that is provided by the school. In no case may the loan amount exceed the student's estimated cost of attendance less the sum of—

* * * * *

(e) * * *

(2) A Federal PLUS Program loan and Federal Consolidation Program Loan may be made to two eligible borrowers who agree to be jointly and severally liable for repayment of the loan as co-makers.

* * * * *

9. Section 682.207 is amended by revising paragraph (b)(1)(v)(B) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b)(1) * * *

(v) * * *

(B) In the case of a Federal PLUS loan—

(*1*) By electronic funds transfer from the lender to the eligible institution to a separate account maintained by the school as trustee for the lender; or

(*2*) By a check from the lender that is made co-payable to the institution and the parent borrower directly to the eligible institution.

* * * * *

10. Section 682.209 is amended by revising paragraph (c)(2) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(c) * * *

(2) The provisions of paragraphs (c)(1)(i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance, as described in § 682.211 or deferment described in § 682.210, has been approved.

* * * * *

11. Section 682.300 is amended by revising the section heading; paragraph (a); paragraph (b)(1)(i); and paragraph (c) to read as follows:

§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.

(a) *General.* The Secretary pays a lender a portion of the interest on a Stafford loan and, except for that portion of the loan that represents HEAL loans, on a Consolidation loan on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) * * *

(1) * * *

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraphs (b)(2) and (c) of this section.

* * * * *

(c) *Interest not covered.* The Secretary does not pay—

(1) Interest for which the borrower is not otherwise liable;

(2) Interest paid on behalf of the borrower by a guaranty agency;

(3) Interest that accrues on the first disbursement of a loan for any period that is earlier than—

(i) In the case of a subsidized Stafford loan disbursed by a check, 10 days prior to the first day of the period of enrollment for which the loan is intended or, if the loan is disbursed after the first day of the period of enrollment, 3 days after the disbursement date on the check; or

(ii) In the case of a loan disbursed by electronic funds transfer, 3 days prior to the first day of the period of enrollment or, if the loan is disbursed after the first day of the period of enrollment, 3 days after disbursement.

(4) In the case of a loan disbursed on or after October 1, 1992, interest on a loan if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer has not been released from the restricted account maintained by the school before that date.

(5) Interest on the portion of a Consolidation loan that represents HEAL loans that have been consolidated.

* * * * *

12. Section 682.301 is amended by revising the section heading; revising paragraph (a)(1); adding a new paragraph (a)(3); and revising paragraph (b) introductory text to read as follows:

§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) * * *

(1) To qualify for benefits on a Stafford loan, a borrower must demonstrate financial need in accordance with Part F of the Act.

* * * * *

(3) A Consolidation loan borrower whose loan application was received by the lender on or after January 1, 1993 qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a loan application to the lender. The application must include a certification from the student's school of the following information:

* * * * *

13. Section 682.302 is amended by revising paragraphs (b), (c)(1)(iii), (c)(2) introductory text, (c)(3)(i) introductory text, (c)(3)(ii) introductory text, and adding paragraph (c)(3)(iii) to read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(b) *Eligible loans.* (1) Except for nonsubsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraphs (b)(2) or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or after July 1, 1987 or under § 682.209(e) or (f), no special allowance is paid for any period for which the interest rate determined under § 682.202(a)(2)(iv)(A) for that loan does not exceed—

(i) 12 percent in the case of a Federal SLS or PLUS loan made prior to October 1, 1992;

(ii) 11 percent in the case of a Federal SLS loan made on or after October 1, 1992; or

(iii) 10 percent in the case of a Federal PLUS loan made on or after October 1, 1992.

(3) In the case of a subsidized Stafford loan disbursed on or after October 1, 1992, the Secretary does not pay special allowance on a disbursement if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer has not been released from the restricted account maintained by the school before that date.

(c) * * *

(1) * * *

(iii) Adding—

(A) 3.1 percent to the resulting percentage for a loan made on or after October 1, 1992;

(B) 3.25 percent to the resulting percentage, for a loan made on or after

November 16, 1986, but before October 1, 1992;

(C) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(D) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or a loan described in paragraph (c)(2) of this section; or

(E) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

* * * * *

(2) The special allowance rate determined under paragraph (c)(1)(iii)(D) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

* * * * *

(3)(i) Subject to paragraphs (c)(3)(ii) and (iii) of this section, the special allowance rate is one-half of the rate calculated under paragraph (c)(1)(iii)(D) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from—

* * * * *

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made prior to October 1, 1992, may not be less than—

* * * * *

(iii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made on or after October 1, 1992, may not be less than 9½ percent minus the applicable interest rate.

* * * * *

14. Section 682.400 is amended by revising paragraph (b) introductory text; revising paragraph (b)(1)(i); and adding a new paragraph (b)(4) to read as follows:

§ 682.400 Agreements between a guaranty agency and the Secretary.

* * * * *

(b) There are four agreements:

(1) * * *

(i) Borrowers whose Stafford and Consolidation loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf;

* * * * *

(4) *Loan Rehabilitation Agreement.* A guaranty agency must have an agreement for rehabilitating a loan for which the Secretary has made a reinsurance payment under section 428(c)(1) of the Act.

* * * * *

15. Section 682.401 is amended by redesignating paragraphs (b)(4) through (b)(22) as paragraphs (b)(5) through (b)(23), respectively; adding a new paragraph (b)(4); revising redesignated paragraph (b)(6); revising redesignated paragraph (b)(14); revising redesignated paragraph (b)(16)(i) introductory text; adding a new paragraph (b)(16)(iii); adding new paragraphs (b)(24) and (b)(25); revising paragraph (c); redesignating paragraphs (e)(2) and (e)(3) as (e)(3) and (e)(4) respectively; and adding a new paragraph (e)(2) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(4) *Reinstatement of borrower eligibility.* For a borrower's loans held by a guaranty agency on which a reinsurance claim has been paid by the Secretary, the guaranty agency must afford a defaulted borrower, upon the borrower's request, renewed eligibility for Title IV assistance once the borrower has made satisfactory repayment arrangements as that term is defined in § 682.200.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include consideration of the borrower's and spouse's disposable income and necessary expenses including, but not limited to, housing, food, medical costs, dependent care costs and other Title IV repayment;

(B) Include documentation in the borrower's file of the basis for the determination, if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater. However, $50.00 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable.

(C) Be based on the documentation provided by the borrower or other sources including, but not limited to—

(*1*) Evidence of current income (e.g. proof of welfare benefits, Social Security benefits, Supplemental Security Income, Workers' Compensation, child support, veterans' benefits, two most recent pay stubs, copy of U.S. income tax return, State Department of Labor reports);

(*2*) Evidence of current expenses (e.g. a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(*3*) A statement of the unpaid balance on all defaulted FFEL loans.

(ii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances upon providing the documentation specified in paragraph (b)(4)(i)(C) of this section.

(iii) A guaranty agency must provide the borrower with a written statement of the reasonable and affordable payment amount required for the reinstatement of the borrower's eligibility for Title IV student assistance, and provide the borrower with an opportunity to object to such terms.

* * * * *

(6) *School eligibility*—(i) *General.* A school that has a program participation agreement in effect with the Secretary under § 682.600 is eligible to participate in the program of the agency under reasonable criteria established by the guaranty agency, and approved by the Secretary, under paragraph (d)(2) of this section, except to the extent that—

(A) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR part 668 or by the guaranty agency under standards and procedures that are substantially the same as those in 34 CFR part 668;

(B) The Secretary upholds the limitation, suspension, or termination of a school by a guaranty agency and extends such sanction to all guaranty agency programs under section 432(h)(3) of the Act or § 682.713;

(C) The school is ineligible under sections 428A(a)(2) or 435(a)(2) of the Act;

(D) There is a State constitutional prohibition affecting the school's eligibility;

(E) The school's programs consist of study solely by correspondence;

(F) The agency determines that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR part 668;

(G) The school fails to make timely refunds to students as required in § 682.607(c);

(H) The school has not satisfied within 30 days of issuance a final judgment obtained by a student seeking a refund;

(I) The school or an owner, director, or officer of the school is found guilty or liable in any criminal, civil, or administrative proceeding regarding the obtaining, maintenance, or disbursement of State or Federal student grant, loan, or work assistance funds; or

(J) The school or an owner, director, or officer of the school has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of State or Federal student financial assistance funds.

(ii) *Limitation by a guaranty agency of a school's participation.* For purposes of this paragraph, a school that is subject to limitation of participation in the guaranty agency's program may be either a school that is applying to participate in the agency's program for the first time, or a school that is renewing its application to continue participation in the agency's program. A guaranty agency may limit the total number of loans or the volume of loans made to students attending a particular school, or otherwise establish appropriate limitations on the school's participation, if the agency makes a determination that the school does not satisfy—

(A) The standards of financial responsibility defined in 34 CFR 668.13; or

(B) The standards of administrative capability defined in 34 CFR 668.14 and 34 CFR 668.15.

(iii) *Limitation, suspension, or termination of school eligibility.* A guaranty agency may limit, suspend, or terminate the participation of an eligible school. If a guaranty agency limits, suspends, or terminates the participation of a school from the agency's program, the Secretary applies that limitation, suspension, or termination to all locations of the school.

(iv) *Condition for guaranteeing loans for students attending a school.* The guaranty agency may require the school to execute a participation agreement with the agency and to submit documentation that establishes the school's eligibility to participate in the agency's program.

* * * * *

(14) *Guaranty agency verification of default data.* A guaranty agency must respond to an institution's written request for verification of its default rate data for purposes of an appeal pursuant to 34 CFR 668.15(g)(1)(i) within 15 working days of the date the agency receives the institution's written request pursuant to 34 CFR 668.15(g)(7), and simultaneously provide a copy of that response to the Secretary's designated Department official.

* * * * *

(16) * * *

(i) Except as provided in paragraph (b)(16)(iii), the guaranty agency must allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

* * * * *

(iii) The guaranty agency must allow a loan to be assigned under paragraph (b)(16)(i) of this section, following the first disbursement of the loan if the assignment does not result in a change in the identity of the party to whom payments must be made.

* * * * *

(24) *Information on loan sales or transfers.* The guaranty agency must, upon the request of an eligible school, furnish to the school last attended by the borrower, information with respect to the sale or transfer of a student's loan prior to the beginning of the repayment period, including—

(i) Notice of the assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party by which contact may be made with the holder concerning repayment of the loan; and

(iv) The telephone number of the assignee.

(25) *Information on designation for exceptional performance.* A guaranty agency must provide the Secretary with any information in its possession regarding an eligible lender or servicer applying for designation for exceptional performance within 30 days following the agency's receipt of a copy of the lender's or servicer's request for designation under 34 CFR 682.415(a)(2). The information provided by the guaranty agency must include, but is not limited to, records relating to the lender's or servicer's compliance with FFEL Program regulations and any information suggesting that the lender or servicer does not meet the requirements for designation for exceptional performance.

* * * * *

(c)(1) *Lender-of-last-resort.* The guaranty agency must ensure that it or an eligible lender described in section 435(d)(1)(D) of the Act serves as a lender-of-last-resort in the State in which it is the principal guaranty agency, as defined in § 682.800(d).

(2) The lender-of-last-resort must make a subsidized Stafford loan to any eligible student who satisfies the lender's eligibility requirements and—

(i) Qualifies for interest benefits, pursuant to § 682.301, for a loan amount of at least $200; and

(ii) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made under paragraph (c)(1) of this section to be made by another eligible lender.

(4) The guaranty agency must develop policies and operating procedures for its lender-of-last-resort program that provide for the accessibility of lender-of-last-resort loans. These policies and procedures must be submitted to the Secretary for approval as required under paragraph (d)(2) of this section. The policies and procedures for the agency's lender-of-last-resort program must ensure that—

(i) The program establishes operating hours and methods of application designed to facilitate application by students; and

(ii) Information about the availability of loans under the program is made available to schools in the State; and

(iii) Appropriate steps are taken to ensure that borrowers receiving loans under the program are appropriately counseled on their loan obligation.

(5) *Limitations on lender-of-last-resort services.* Except as provided in paragraphs (c)(6) and (c)(10) of this section, the lender-of-last-resort is not required to make a subsidized Stafford loan to a student for attendance at a school that—

(i) Has a cohort default rate, as defined in section 435(m) of the Act, that exceeds 25 percent for the most recent year for which a rate has been calculated by the Secretary;

(ii) Has not been eligible for, and has not participated in, the FFEL Program during the most recent 18 months; or

(iii) Is currently subject to emergency action or limitation, suspension, or termination by the Secretary under 34 CFR Part 668 or by any guaranty agency.

(6) Notwithstanding paragraph (c)(5)(i) of this section, the Secretary requires a guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act to make a subsidized Stafford loan for attendance at a school if there are, in the judgment of the Secretary, "exceptional mitigating circumstances", as defined in 34 CFR 668.15(g)(1)(iii), that would make the application of the limitations inequitable.

(7) A guaranty agency must provide a school and the Secretary with written notification of the agency's intent to deny lender-of-last-resort services to the school's students.

(8) The school may submit to the Secretary, with a copy to the guaranty agency, a complete appeal with supporting documentation that is based on the mitigating circumstances of paragraph (c)(6) of this section. Such appeal must be submitted no later than 30 days after the date of the guaranty agency's notice to the school. If the school submits such a complete appeal, the guaranty agency must provide lender-of-last-resort services to students attending the school until the date on which the Secretary rejects the appeal, if it is rejected.

(9) The Secretary makes a case-by-case determination on each appeal by a school that has been notified that lender-of-last-resort services will not be provided to the school's students, and takes action on the school's appeal no later than 45 days after receipt of the school's complete appeal with supporting documentation.

(10) The provisions of paragraph (c)(5) of this section do not apply to institutions that have been designated as historically black colleges and universities, tribally-controlled community colleges, or Navajo community colleges until July 1, 1994.

* * * * *

(e) * * *

(2)(i) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL loans. Examples of prohibited inducements include, but are not limited to—

(A) Compensating lenders or their representatives for the purpose of securing loan applications for guarantee;

(B) Performing functions normally performed by lenders without appropriate compensation;

(C) Providing equipment or supplies to lenders at below market cost or rental; or

(D) Offering to pay a lender, that does not hold loans guaranteed by the agency, a fee for each application forwarded for the agency's guarantee.

(ii) For the purposes of this section, the terms "premium", "inducement", and "incentive" do not include services directly related to the enhancement of the administration of the FFEL Program the guaranty agency generally provides to lenders that participate in its program. However, the terms "premium", "inducement", and "incentive" do apply to other activities specifically intended to secure a lender's participation in the agency's program.

* * * * *

16. A new § 682.405 is added to read as follows:

§ 682.405 Loan Rehabilitation agreement.

(a) *General.* (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers for the purpose of rehabilitating defaulted loans so that the loan may be purchased by an eligible lender and removed from default status.

(2) A loan is considered to be rehabilitated only after the borrower has made one voluntary reasonable and affordable full payment each month within 15 days of the scheduled due date for 12 consecutive months in accordance with this section, and the loan has been sold to an eligible lender.

(b) *Terms of agreement.* In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times—

(1) A borrower may request the rehabilitation of the borrower's defaulted FFEL loan held by the guaranty agency. The borrower must make one voluntary on-time full payment each month for 12 consecutive months to be eligible to have the defaulted loans rehabilitated. For purposes of this section, *on-time* means a payment made within 15 days of the scheduled due date and "full payment" means a reasonable and affordable payment agreed to by the borrower and the agency. The required amount of such monthly payment may be no more than is reasonable and affordable based upon the borrower's total financial circumstances. Voluntary payments are those made directly by the borrower, regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the twelve-(12-) month payment period.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include a consideration of the borrower's and spouse's disposable income and reasonable and necessary expenses including, but not limited to, housing, food, medical costs, dependent care costs and other Title IV repayment.

(B) Include documentation in the borrower's file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater. However, $50.00 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable.

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to—

(*1*) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, two most recent pay stubs, copy of U.S. income tax return, State Department of Labor reports);

(*2*) Evidence of current expenses (e.g., a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(*3*) A statement of the unpaid balance on all defaulted FFEL loans.

(ii) The agency must include any payment made under § 682.401(b)(4) in determining whether the 12 consecutive payments required under paragraph (b)(1) of this section have been made.

(iii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(i)(C) of this section.

(iv) A guaranty agency must provide the borrower with a written statement of the terms of the rehabilitation of the borrower's defaulted loan and provide the borrower with an opportunity to object to such terms.

(2) The guaranty agency must report to all national credit bureaus within 90 days of the date the loan was rehabilitated that the loan is no longer in a default status.

(3) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans made under the same loan type. For the purposes of the maximum loan repayment period, the lender must treat the first payment made under the 12 consecutive payments as the first payment under the 10-year maximum.

(Authority: 20 U.S.C. 1078–6)

17. Section 682.406 is amended by removing "and" at the end of paragraph (a)(12); removing the period at the end of paragraph (a)(13) and adding in its place, "; and" and adding a new paragraph (a)(14) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) * * *

(14) The guaranty agency assures the Secretary that diligent attempts have been made by the lender and the guaranty agency under § 682.411(g) to locate the borrower through the use of reasonable skip-tracing techniques.

* * * * *

18. Section 682.407 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 682.407 Administrative cost allowance for guaranty agencies.

* * * * *

(e) The Secretary does not pay an administrative cost allowance to a guaranty agency based on loans for which the disbursement check has not been cashed or for which an electronic funds transfer has not been completed.

(f) An administrative cost allowance improperly paid on a loan to a guaranty agency must be deducted by the agency from the amount reflected in the following quarter's ED form 1189 when it is submitted to the Department for payment.

* * * * *

19. Section 682.409 is amended by revising paragraph (a); revising paragraph (c)(1); and adding a new paragraph (c)(6) to read as follows:

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

(a)(1) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary may direct a guaranty agency to assign to the Secretary any loan held by the agency on which the agency has received payment under § 682.402(d), 682.402(i), or 682.404 that meets the following criteria as of April 15 of each year—

(i) The unpaid principal balance is at least $100;

(ii) For each of the two fiscal years following the fiscal year in which these regulations are effective, the loan, and any other loans held by the agency for that borrower, have been held by the agency for at least four years; for any subsequent fiscal year such loan must have been held by the agency for at least five years;

(iii) A payment has not been received on the loan in the last year; and

(iv) A judgment has not been entered on the loan against the borrower.

(2) If the agency fails to meet a fiscal year recovery rate standard under paragraph (a)(2)(ii) of this section for a loan type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to assign in addition to those loans described in paragraph (a)(1) of this section, loans in amounts needed to satisfy the requirements of paragraph (a)(2)(iii) or (a)(3)(i) of this section.

(i) *Calculation of fiscal year loan type recovery rate.* A fiscal year loan type recovery rate for an agency is determined by dividing the amount collected on defaulted loans for each loan program (i.e., the Stafford, PLUS, SLS, and Consolidation loan programs) by the agency for loans of that program (including payments received by the agency on loans under § 682.401(b)(4) and § 682.409 and the amounts of any loans purchased from the guaranty agency by an eligible lender) during the most recent fiscal year for which data are available by the total of principal and interest owed to an agency on defaulted loans for each loan program at the beginning of the same fiscal year, less accounts permanently assigned to the Secretary through the most recent fiscal year.

(ii) *Fiscal year loan type recovery rates standards.* (A) If, in each of the two fiscal years following the fiscal year in which these regulations are effective, the fiscal year loan type recovery rate for a loan program for an agency is below 80 percent of the average recovery rate of all active guaranty agencies in each of the same two fiscal years for that program type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to make additional assignments in accordance with paragraph (a)(2)(iii) of this section.

(B) In any subsequent fiscal year the loan type recovery rate standard for a loan program must be 90 percent of the average recovery rate of all active guaranty agencies.

(iii) *Non-achievement of loan type recovery rate standards.* (A) Unless the Secretary determines under paragraph (a)(2)(iv) of this section that protection of the Federal fiscal interest requires that a lesser amount be assigned, upon notice from the Secretary, an agency with a fiscal year loan type recovery rate described in paragraph (a)(2)(ii) of this section must promptly assign to the Secretary a sufficient amount of defaulted loans, in addition to loans to be assigned in accordance with paragraph (a)(1) of this section, to cause the fiscal year loan type recovery rate of the agency that fiscal year to equal or exceed the average rate of all agencies described in paragraph (a)(2)(ii) of this section when recalculated to exclude from the denominator of the agency's fiscal year loan type recovery rate the amount of these additional loans.

(B) The Secretary, in consultation with the guaranty agency, may require the amount of loans to be assigned under paragraph (a)(2) of this section to include particular categories of loans that share characteristics that make the performance of the agency fall below the appropriate percentage of the loan type recovery rate as described in paragraph (a)(2)(ii) of this section.

(iv) *Calculation of loan type recovery rate standards.* The Secretary, within 30 days after the date for submission of the second quarterly report from all agencies, makes available to all agencies a mid-year report, showing the recovery rate for each agency and the average recovery rate of all active guaranty agencies for each loan type. In addition, the Secretary, within 120 days after the beginning of each fiscal year, makes available a final report showing such rates and the average rate for each loan type for the preceding fiscal year.

(3)(i) *Determination that the protection of the Federal fiscal interest requires assignments.* Upon petition by an agency submitted within 45 days of the notice required by paragraph (a)(2)(iii)(A) of this section, the Secretary may determine that protection of the Federal fiscal interest does not require assignment of all loans described in paragraph (a)(1) of this section or of loans in the full amount described in paragraph (a)(2)(iii) of this section only after review of the agency's petition. In making this determination, the Secretary considers all relevant information available to him (including any information and documentation obtained by the Secretary in reviews of the agency or submitted to the Secretary by the agency) as follows:

(A) For each of the two fiscal years following the fiscal year in which these regulations are effective, the Secretary considers information presented by an agency with a fiscal year loan type recovery rate above the average rate of all active agencies to demonstrate that the protection of the Federal fiscal interest will be served if any amounts of loans of such loan type required to be assigned to the Secretary under paragraph (a)(1) of this section are retained by that agency. For any subsequent fiscal year, the Secretary considers information presented by an agency with a fiscal year recovery rate 10 percent above the average rate of all active agencies.

(B) The Secretary considers information presented by an agency that is required to assign loans under paragraph (a)(2) of this section to demonstrate that the protection of the Federal fiscal interest will be served if the agency is not required to assign amounts of loans that would otherwise have to be assigned.

(C) The information provided by an agency pursuant to paragraphs (a)(3)(i)(A) and (B) of this section may include, but is not limited to the following:

(*1*) The fiscal year loan type recovery rate within such school sectors as the Secretary may designate for the agency, and for all agencies;

(*2*) The fiscal year loan type recovery rate for loans for the agency and for all agencies divided by age of the loans as the Secretary may determine;

(*3*) The performance of the agency, and all agencies, in default aversion;

(*4*) The agency's performance on judgment enforcement;

(*5*) The existence and use of any state or guaranty agency-specific collection tools;

(*6*) The agency's level of compliance with §§ 682.409 and 682.410(b)(6); and

(*7*) Other factors that may affect loan repayment such as State or regional unemployment and natural disasters.

(ii) *Denial of an agency's petition.* If the Secretary does not accept the agency's petition, the Secretary provides, in writing, to the agency the Secretary's reasons for concluding that the Federal fiscal interest is best protected by requiring the assignment.

* * * * *

(c)(1) A guaranty agency must assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency must submit this information and documentation in the form (including magnetic media) and format specified by the Secretary.

* * * * *

(6) The Secretary may accept the assignment of a loan without all of the documents listed in paragraph (c)(4) of this section. If directed to do so, the agency must retain these documents for submission to the Secretary at some future date.

* * * * *

20. Section 682.410 is amended by revising paragraphs (a)(1) through (a)(3)(i); and adding paragraphs (a)(6) through (a)(8) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) * * *

(1) *Reserve fund assets.* The guaranty agency must establish and maintain a reserve fund to be used solely for the FFEL Program to which the guaranty agency must credit—

(i) The total amount of insurance premiums collected;

(ii) Funds appropriated by a State for the agency's loan guaranty program, including matching funds under section 422(a) of the Act;

(iii) Federal advances obtained under sections 422(a) and (c) of the Act;

(iv) Federal payments for default, bankruptcy, death and disability, closed schools and false certification claims;

(v) Supplemental preclaims assistance payments;

(vi) Administrative cost allowance payments received under § 682.407;

(vii) Funds collected by the guaranty agency;

(viii) Investment earnings on the reserve fund; and

(ix) Funds received by the guaranty agency from any other source for the agency's loan guaranty program.

(2) *Uses of reserve fund assets.* Except as provided in paragraphs (a)(3) through (a)(5) of this section, a guaranty agency may *only* use the assets of the reserve fund established under paragraph (a)(1) of this section to pay—

(i) Insurance claims;

(ii) Operating costs, including payments necessary in administering loan collections, preclaims assistance, monitoring enrollment and repayment status and any other activities under this part;

(iii) Lenders that participate in a loan referral service under section 428(e) of the Act;

(iv) The Secretary's equitable share of collections;

(v) Federal advances and other funds owed to the Secretary;

(vi) Reinsurance fees;

(vii) Insurance premiums related to cancelled loans; and

(viii) Any other amounts authorized or directed by the Secretary.

(3) *Special rule for use of certain reserve fund assets.* (i) Except as provided in paragraph (a)(4) of this section, a guaranty agency may use funds received as insurance premiums, administrative cost allowances, amounts collected on FFEL loans, interest or investment earnings, and receipts described in paragraph (a)(1)(vi) of this section only for payments necessary to perform functions directly related to the guaranty agency's agreement with the Secretary and for the proper administration of the guaranty agency's FFEL loan guarantee activities.

* * * * *

(6) *Minimum reserve fund level.* The guaranty agency must maintain a current minimum reserve fund level of not less than—

(i) .5 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1993;

(ii) .7 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1994;

(iii) .9 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1995; and

(iv) 1.1 percent of the amount of loans outstanding, for each fiscal year of the agency that begins on or after January 1, 1996.

(7) For purposes of this section, *reserve fund level* means—

(i) The total of the reserve fund assets as defined in paragraph (a)(1) of this section, minus

(ii) The total of the amount of the reserve fund assets used in accordance with paragraphs (a) (2) and (3) of this section.

(8) For purposes of this section, *amount of loans outstanding* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to the agency pursuant to a plan of the Secretary in response to the insolvency of the transferring guaranty agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(C) Payment in full has been made by the borrower;

(D) Reinsurance coverage has been lost and cannot be regained; and

(E) The agency paid claims, excluding the amount of those claims—

(*1*) Paid under § 682.412(e);

(*2*) Paid under a policy established by the agency that is consistent with § 682.509(a)(1); or

(*3*) Paid at the direction of the Secretary.

* * * * *

21. Section 682.507 is amended by revising paragraph (a)(2) to read as follows:

§ 682.507 Due diligence in collecting a loan.

(a) * * *

(2) If two borrowers are liable for repayment of a Federal PLUS or Consolidation loan as co-makers, the lender must follow these procedures with respect to both borrowers.

* * * * *

22. Section 682.511 is amended by revising paragraph (a)(2) to read as follows:

§ 682.511 Procedures for filing a claim.

(a) * * *

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, or a Consolidation loan was obtained jointly by a married couple, the reason for filing a claim must hold true for both applicants.

* * * * *

23. Section 682.601 is amended by removing "and" at the end of paragraph (a)(4); removing the period at the end of paragraph (a)(5) and adding in its place, "; and"; and adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 682.601 Rules for a school that makes or originates loans.

(a) * * *

(6) The school's cohort default rate as calculated under § 668.15 may not exceed 15 percent; and

(7) Except for reasonable administrative expenses directly related to the FFEL Program, the school must use payments received under § 682.300 and § 682.302 for need-based grant programs for its students.

* * * * *

24. Section 682.603 is amended by adding new paragraphs (f)(3), (f)(4) and (h) to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(f) * * *

(3) In certifying a Stafford or SLS loan amount in accordance with § 682.204 (a) and (e) for a borrower enrolled in a program of study of less than 900 clock hours or 24 semester or trimester hours, or 36 quarter hours (where the school defines its academic year to be at least 30 weeks in length), the school must determine the annual FFEL loan limit for the borrower by determining what portion of the academic year the program of study represents by calculating—

(i) Number of clock-hours in program—

900 hours; or

(ii) Credit hours in program

24 semester or trimester hours or 36 quarter hours.

(4) In certifying a Stafford or SLS loan amount in accordance with § 682.204(a) and (e) for a borrower enrolled in a program of study of at least 900 clock hours, 24 semester or trimester hours, or 36 quarter hours (where the school defines its academic year to be less than 30 weeks in length), the school must determine the annual FFEL loan limit for the borrower by determining what portion of the academic year the program represents by calculating—

Number of weeks in program

30 weeks.

* * * * *

(h) Pursuant to paragraph (b)(5) of this section, a school may not request the disbursement of loan proceeds for a borrower who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford or SLS loan earlier than 7 days prior to the 31st day of the student's period of enrollment.

25. Section 682.604 is amended by revising paragraph (c)(3) introductory text; removing paragraph (g)(2)(i); redesignating paragraphs (g)(2)(ii) through (g)(2)(vi), as paragraphs (g)(2)(i) through (g)(2)(v) respectively; removing "and" at the end of redesignated (g)(2)(iv); revising redesignated paragraph (g)(2)(v); adding a new paragraph (g)(2)(vi); revising the introductory text of paragraph (h); and adding a new paragraph (h)(4) to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school must, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's, or in the case of a Federal PLUS loan, the parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL loan to be made, and after the student has registered either—

* * * * *

(g) * * *

(2) * * *

(v) Review with the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan; and

(vi) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, as well as the name and address of the borrower's expected employer that will then be provided within 60 days to the guaranty agency listed in the borrower's records.

* * * * *

(h) * * * Except as provided under paragraph (h)(ii) of this section, or in the case of a student attending a foreign school, if, before the delivery of any Stafford or SLS loan disbursement, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

* * * * *

(4) For purposes of this section, funds obtained from any need-based employment that does not exceed $300 shall not be considered as excess loan proceeds.

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Part VI

Department of Labor

Office of the Secretary

29 CFR Part 24

Procedures for the Handling of Discrimination Complaints Under Federal Employee Protection Statutes; Proposed Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 24

RIN 1215–AA83

Procedures for the Handling of Discrimination Complaints Under Federal Employee Protection Statutes

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: The Department of Labor (Department or DOL) proposes to amend the regulations governing the employee "whistleblower" protection provisions of Section 211 (formerly Section 210) of the Energy Reorganization Act of 1974, as amended, to implement the statutory changes enacted into law on October 24, 1992, as part of the Energy Policy Act of 1992. The Department proposes to establish separate procedures and time frames for the handling of ERA complaints under 29 CFR part 24 to implement the statutory amendments. In addition, a revised procedure for review by the Secretary of Labor of recommended decisions of administrative law judges is proposed.

DATES: Comments are due on or before May 16, 1994.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–8412 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

II. Background

The Department of Labor, through the Employment Standards Administration's Wage and Hour Division (WHD), is responsible under 29 CFR part 24 for investigating complaints under several Federal laws enacted to protect the environment containing employee whistleblower provisions that prohibit discriminatory action by employers when employees report unsafe or unlawful practices of their employers that adversely affect the environment. These whistleblower protections prohibit an employer from discharging or otherwise discriminating against an employee with respect to compensation, terms, conditions or privileges of employment because the employee engages in any of the activities specified in the particular statute as a protected activity. WHD administers seven employee whistleblower protection statutes under 29 CFR part 24, as follows: (1) Safe Drinking Water Act, 42 U.S.C. 300j–9(i); (2) Water Pollution Control Act, 33 U.S.C. 1367; (3) Toxic Substances Control Act, 15 U.S.C. 2622; (4) Solid Waste Disposal Act, 42 U.S.C. 6971; (5) Clean Air Act, 42 U.S.C. 7622; (6) Energy Reorganization Act of 1974, 42 U.S.C. 5851; and (7) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610.

.The Energy Policy Act of 1992, Public Law 102–486, was enacted on October 24, 1992. Among other provisions, this new law significantly amended the employee protection provisions for nuclear whistleblowers under former § 210 (now § 211) of the ERA; the amendments affect only ERA whistleblower complaints and do not extend to the procedures established in 29 CFR part 24 for handling employee whistlblower complaints under the Federal statutory employee protection provisions other than the ERA. The legislative amendments to ERA apply to whistleblower claims filed under § 211(b)(1) of the ERA as amended (42 U.S.C. 5851(b)(1)) on or after October 24, 1992, the date of enactment of § 2902 of the Energy Policy Act of 1992 (§ 2902, Pub. L. 102–486; 106 Stat. 2776).

Before the Energy Policy Act of 1992 was enacted, DOL did not have jurisdiction under former § 210 of the ERA over reprisal complaints by employees of Department of Energy (DOE) contractors or their subcontractors. See *Adams* v. *Dole*, 927 F.2d 771 (4th Cir. 1991), *cert. denied*, 112 S. Ct. 122. The DOE, however, established administrative procedures for handling complaints of reprisal by such employees not covered by DOL's procedures (see 10 CFR part 708). As a result of the statutory amendments to the ERA made by the Energy Policy Act of 1992, contractors and subcontractors of DOE, except those involved in naval nuclear propulsion work, are now expressly included within the statutory definition of a covered "employer" and are, therefore, subject to DOL jurisdiction for complaints filed by their employees of employer-reprisal for engaging in protected activities under the ERA.

III. Summary of Statutory Changes to ERA Whistleblower Provisions

Section 2902 of Public Law 102–486 (106 Stat. 2776) amended former Section 210 of the ERA, 42 U.S.C. 5851, by renumbering it as Section 211 of ERA and making the additional changes described below.

Prohibited Acts. Former Section 210 of the ERA protected an employee against discrimination from an employer because the employee: (1) Commenced, caused to be commenced, or was about to commence or cause to be commenced a proceeding under the ERA or the Atomic Energy Act of 1954 (AEA); (2) testified or was about to testify in any such proceeding; or (3) assisted or participated or was about to assist or participate in any manner in such a proceeding "* * * or in any other action to carry out the purposes of (the ERA or the AEA)." The Department's interpretation, under ERA as well as the other environmental whistleblower laws which DOL administers, is that employees who file complaints internally with an employer are protected from employer reprisals. An employee is protected under 29 CFR 24.2(b)(3) if an employee assists or participates in "* * * any other action to carry out the purposes of such Federal (environmental protection) statute," which would encompass such internal complaints. This conclusion, that whistleblower protections extend to internal safety and quality control complaints, has been sustained by a number of courts of appeals. See, e.g., *Mackowiak* v. *University Nuclear Systems, Inc.*, 735 F.2d 1159, 1163 (9th Cir. 1984); *Kansas Gas & Elec. Co.* v. *Brock*, 780 F.2d 1505 (10th Cir. 1985), *cert. denied*, 478 U.S. 1011 (1986); *Passaic Valley Sewerage Commissioner* v. *Department of Labor*, 992 F.2d 474 (3rd Cir. 1993), *cert. denied*, 62 U.S. L.W. 3334 (1993). *Contra, Brown & Root, Inc.* v. *Donovan*, 747 F.2d 1029 (5th Cir. 1984). Under the Energy Policy Act of 1992, ERA's statutory definition of protected whistleblower activity was

expanded to expressly include employees who file internal complaints with employers, employees who oppose any unlawful practice under the ERA or the AEA, and employees who testify before Congress or in any other Federal or State proceeding regarding the ERA or AEA—thereby overriding the decision of the Fifth Circuit in *Brown & Root*.

Revised Definition of "Employer". Former § 210 of the ERA included within the definition of a covered "employer" licensees of the Nuclear Regulatory Commission (NRC), applicants for such licenses, and their contractors and subcontractors. The statutory amendments revised the definition of "employer" to extend coverage to employees of contractors or subcontractors of the Department of Energy, except those involved in naval nuclear propulsion work under E.O. 12344, licensees of an agreement State under § 274 of the Atomic Energy Act of 1954, applicants for such licenses, and their contractors and subcontractors.

Time Period for Filing Complaints. The time period for filing ERA whistleblower complaints has been expanded from 30 days to 180 days from the date the violation occurs. Investigations of complaints, however, will still be conducted under the statute within 30 days of receipt of the complaint. The ERA amendments apply to all complaints filed on or after the date of enactment. Thus, complaints previously filed that were deemed untimely and were therefore dismissed before the 1992 statutory amendments were enacted may be considered timely under the amended law if the complaint was refiled after October 24, 1992, and within the new 180-day time frame.

Interim Relief. The Secretary is required under the amended ERA to order interim relief upon the conclusion of an administrative hearing and the issuance of a recommended decision that the complaint has merit. Such interim relief may include all relief that would be included in a final order of the Secretary except compensatory damages.

Burdens of Proof; Avoidance of Frivolous Complaints. The 1992 Amendments revise the burdens of proof in ERA cases by establishing statutory burdens of proof and a standard for the dismissal of complaints which do not present a *prima facie* case. Before the 1992 Amendments, the ERA itself contained no statutory rules on burdens of proof—the burdens of proof were based on precedential cases derived from other discrimination law (*see*, e.g., *Mt. Healthy City School District Board of Education* v. *Doyle*, 429 U.S. 274 (1977); *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981); *Mackowiak* v. *University Nuclear Systems, Inc.*, 735 F.2d 1159 (9th Cir. 1984); and *Dartey* v. *Zack Company of Chicago*, Case No. 82–ERA (Decision of the Secretary, April 25, 1983).

Under the former lines of analysis for the ERA and continuing for whistleblower complaints under the other six environmental statutes, once a complainant employee presents evidence sufficient to raise an inference that protected conduct likely was a "motivating" factor in an adverse action taken by an employer against the employee, it is necessary for the employer to present evidence that the alleged adverse treatment was motivated by legitimate, nondiscriminatory reasons. If the employer presents such evidence, the employee still may succeed by showing that the proffered reason was not the true reason for the employment decision; the employee may succeed in this regard by showing that a discriminatory reason more likely motivated the employer, or by showing that the employer's proffered explanation is not believable ("pretext" cases). In certain cases, the trier of fact may conclude that the employer was motivated by both prohibited and legitimate reasons ("dual motive" cases). In such dual motive cases, the employer may prevail by showing by a *preponderance of the evidence* that it would have reached the same decision *even in the absence of the protected conduct*. In pretext cases, rejection of the employer's proffered reasons, together with the elements of the *prima facie* case, may be sufficient to show discrimination. See *Dartey* v. *Zack*, *supra*, pp. 6–9.

The 1992 amendments added new statutory burdens of proof to the ERA. The changes have been described on the one hand as a lowering of the burden on complainants in order to facilitate relief for employees who have been retaliated against for exercising their statutory rights, and, on the other hand, as a limitation on the investigative authority of the Secretary of Labor when the burden is not met.

Under the ERA as amended, a complainant must make a "*prima facie*" showing that protected conduct or activity was "a contributing factor" in the unfavorable personnel action alleged in the complaint, i.e., that the whistleblowing activity, alone or in combination with other factors, affected in some way the outcome of the employer's personnel decision (Section 211(b)(3)(A)). If the complainant does not make the *prima facie* showing, the complaint must be dismissed and the investigation discontinued.

Even in cases where the complaint meets the initial burdens of a *prima facie* showing, the investigation must be discontinued if the employer "demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action" in the absence of the protected conduct (Section 211(b)(3)(B)). The complainant is free, as under prior law, to pursue the case before the administrative law judge (ALJ) if the Secretary dismisses the complaint.

The "clear and convincing evidence" standard is a higher degree of proof burden on employers than the former "preponderance of the evidence" standard. In the words of Representative George Miller, Chairman of the House Committee on Interior and Insular Affairs, "[t]he conferees intend to replace the burden of proof enunciated in *Mt. Healthy* v. *Doyle*, 429 U.S. 274 (1977), with this lower burden in order to facilitate relief for employees who have been retaliated against for exercising their rights under section 210. * * *" 138 Cong. Rec. H 11409 (October 5, 1992).

Thus, under the amendments to ERA, the Secretary must dismiss the complaint and not investigate (or cease investigating) if either: (1) The complainant fails to meet the *prima facie* showing that protected activity was a contributing factor in the unfavorable personnel action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same unfavorable personnel action absent the protected conduct.

These new burdens of proof limitations also apply to the determination as to whether an employer has violated the Act and relief should be ordered. Thus, a determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint (Section 211(b)(3)(C)). Even if the complainant makes this showing, relief may not be ordered if the employer satisfies the statutory requirement to demonstrate by "clear and convincing evidence" that it would have taken the same personnel action in the absence of the protected activity (Section 211(b)(3)(D)).

Other Changes. The ERA whistleblower provisions must be prominently posted in any place of employment to which the Act applies. The amendments also include an

express provision that the ERA whistleblower provisions may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee—codifying and broadening the Supreme Court decision in *English* v. *General Electric Co.*, 496 U.S. 72 (1990). Finally, the amendments direct the Nuclear Regulatory Commission (NRC) and DOE not to delay addressing any "substantial safety hazard" during the pendency of a whistleblower proceeding, and provide that a determination by the Secretary of Labor that a whistleblower violation has not occurred "shall not be considered" by the NRC and DOE in determining whether a substantial safety hazard exists.

IV. Summary of Proposed Rule

Section 24.1(a), which lists the Federal statutes providing employee protections for whistleblowing activities for which the Department of Labor is responsible for enforcement under this part, is updated to add the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610.

Section 24.2, describing obligations and prohibited acts, is revised to reflect the statutory amendments to the protected activities covered under the ERA, and to state that the Secretary interprets all of the whistleblower statutes to apply to such internal whistleblowing activities. The requirements for posting of notices of the employee protection provisions of the ERA are also added, together with a provision that failure to post the required notice shall make the requirement that a complaint be filed with the Administrator within 180 days inoperative, unless the respondent is able to establish that the employee had actual notice of the provisions. This explicit recognition that the statute of limitations may be equitably tolled is based on case law under analogous statutes. See, for example, *Kephart* v. *Institute of Gas Technology*, 581 F.2d 1287, 1289 (7th Cir. 1978), *cert. denied*, 450 U.S. 959 (1981), and *Bonham* v. *Dresser Industries, Inc.*, 569 F.2d 187 (3rd Cir. 1977), *cert. denied*, 439 U.S. 821 (1978), arising under the Age Discrimination in Employment Act, and *Kamens* v. *Summit Stainless, Inc.*, 586 F. Supp. 324 (E.D. Pa. 1984), arising under the Fair Labor Standards Act.

Section 24.3, concerning complaints, is revised to reflect the 180-day filing period for complaints under the ERA.

Section 24.4, concerning investigations, is revised to provide for filing of hearing requests by facsimile (fax), telegram, hand-delivery, or next-day delivery service (e.g., overnight couriers), to conform the regulations to current business practices. In addition, the regulation has been revised to provide that the request for a hearing must be received within five business days, rather than five calendar days, from receipt of the Administrator's determination. The regulation has also been revised to make it clear that the complainant may appeal from a finding that a violation has occurred where the determination or order is partially adverse (e.g., where a complaint was only partially substantiated or the order did not grant all of the requested relief).

A new § 24.5, concerning investigations under the Energy Reorganization Act, details operation of the new provisions under the ERA for dismissal of complaints where the employee has not alleged a *prima facie* case, or the employer has submitted clear and convincing evidence that it would have taken the same personnel action in the absence of the protected activity.

Section 24.6 (formerly § 24.5) makes it clear that the Wage-Hour Administrator may participate in proceedings as a party or as *amicus curiae*. In addition, at the request of the Nuclear Regulatory Commission, a provision has been added to expressly permit Federal agencies to participate as *amicus curiae*, and to receive copies of pleadings on request.

Section 24.7 (formerly § 24.6), concerning recommended decisions and orders, is revised to add the statutory requirement that interim relief be ordered in ERA cases once an administrative law judge issues a recommended decision that the complaint is meritorious. Section 24.7 is also amended with respect to all whistleblower cases to provide that the recommended decision of the administrative law judge becomes the final order of the Secretary if no petition for review is filed.

A new § 24.8 details the procedure for seeking review by the Secretary of a decision of an Administrative Law Judge.

Former § 24.7, concerning judicial review, and former § 24.8, concerning enforcement of decisions of the Secretary, have been removed. These provisions vary from statute to statute among the whistleblower programs. Furthermore, the types of judicial review or enforcement actions which are available does not need to be the subject of rulemaking since it is prescribed by statute and concerns judicial remedies.

Executive Order 12866

The Department believes that this proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12866, in that it is not likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

The Department has determined that the proposed regulation will not have a significant economic impact on a substantial number of small entities. The proposal implements regulatory revisions necessitated by statutory amendments enacted by the Congress which are largely procedural in nature, or which narrowly extend the scope of the law to include employees of contractors or subcontractors of the Department of Energy (except those involved in naval nuclear propulsion work under E.O. 12344), licensees of an agreement State under the Atomic Energy Act, applicants for such licenses, and their contractors and subcontractors. The Department of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, no regulatory flexibility analysis is required.

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 24

Employment, Environmental protection.

Accordingly, for the reasons set out in the preamble, 29 CFR part 24 is proposed to be amended as set forth below.

Signed at Washington, DC, on March 10, 1994.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 24—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER FEDERAL EMPLOYEE PROTECTION STATUTES

1. and 2. The authority citation for part 24 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 300j–9(i); 33 U.S.C. 1367; 15 U.S.C. 2622; 42 U.S.C. 6971; 42 U.S.C. 7622; 42 U.S.C. 5851; 42 U.S.C. 9610.

3. Section 24.1 is proposed to be amended by revising paragraph (a) to read as follows:

§ 24.1 Purpose and scope.

(a) This part implements the several employee protection provisions for which the Secretary of Labor has been given responsibility pursuant to the following Federal statutes: Safe Drinking Water Act, 42 U.S.C. 300j–9(i); Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; and Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610.

* * * * *

4. Section 24.2 is proposed to be amended by revising paragraph (a) and paragraph (b) introductory text, and by adding paragraphs (c) and (d) to read as follows:

§ 24.2 Obligations and prohibited acts.

(a) No employer subject to the provisions of the Federal statute of which these protective provisions are a part, or to the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et. seq.*, may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in this section.

(b) Any employer is deemed to have violated the particular Federal law, including the Atomic Energy Act of 1954, and the regulations in this part if such employer intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee who has:

* * * * *

(c) Under the Energy Reorganization Act, and by interpretation of the Secretary under any of the other statutes listed in § 24.1 of this part, any employer is deemed to have violated the particular Federal law, including the Atomic Energy Act of 1954, and the regulations in this part if such employer intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee who has:

(1) Notified the employer of an alleged violation of such Federal statute;

(2) Refused to engage in any practice made unlawful by such Federal statute, if the employee has identified the alleged illegality to the employer; or

(3) Testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Federal statute.

(d) (1) Every employer subject to the Energy Reorganization Act of 1974, as amended, shall prominently post and keep posted in any place of employment to which the employee protection provisions of the Act applies a notice prepared or approved by the Department of Labor that explains the employee protection provisions of the Act and the regulations in this part. Copies of such notice may be obtained from the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(2) Where the notice required by paragraph (d)(1) of this section has not been posted, the requirement in § 24.3(b)(2) that a complaint be filed with the Administrator within 180 days of an alleged violation shall be inoperative unless the respondent establishes that the complainant had notice of that requirement. If it is established that the notice was posted after the alleged discriminatory action occurred or that the complainant later obtained actual notice, the 180 days shall run from that date.

5. Section 24.3 is proposed to be amended by revising paragraphs (b) and (d) to read as follows:

§ 24.3 Complaint.

* * * * *

(b) *Time of filing.* (1) Except as provided in paragraph (b)(2) of this section, any complaint shall be filed within 30 days after the occurrence of the alleged violation. For the purpose of determining timeliness of filing, a complaint filed by mail shall be deemed filed as of the date of mailing.

(2) Under the Energy Reorganization Act of 1974, any complaint shall be filed within 180 days after the occurrence of the alleged violation.

* * * * *

(d) *Place of filing.* A complaint may be filed in person or by mail at the nearest local office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration, Wage-Hour Division. A complaint may also be filed with the Office of the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

6. Section 24.4 is proposed to be amended by revising paragraph (d)(2) and (d)(3) and by adding a new paragraph (d)(4) to read as follows:

§ 24.4 Investigations.

* * * * *

(d) (1) * * *

(2) If on the basis of the investigation the Administrator determines that the complaint is without merit, the notice of determination shall include or be accompanied by notice to the complainant that the notice of determination shall become the final order of the Secretary denying the complaint unless within five business days of its receipt the Chief Administrative Law Judge receives from the complainant a request for a hearing filed by facsimile (fax), telegram, hand delivery, or next-day delivery service. A copy of any request for a hearing shall be sent by the complainant to the respondent (employer) on the same day that the hearing is requested, by facsimile (fax), telegram, hand delivery, or next-day delivery service.

(3) If on the basis of the investigation the Administrator determines that a violation has occurred, the notice of the determination shall include an appropriate order to abate the violation, and notice to the respondent and complainant that the order shall become the final order of the Secretary unless within five business days of its receipt the Chief Administrative Law Judge receives from the respondent or from complainant (where the determination or order is partially adverse) a request for a hearing filed by facsimile (fax), telegram, hand delivery, or next-day delivery service. A copy of any request for a hearing shall be sent to the complainant or respondent, as appropriate, on the same day that the hearing is requested, by facsimile (fax), telegram, hand delivery, or next-day delivery service.

(4) Copies of any requests for a hearing shall be sent to the Administrator, Wage and Hour Division, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, on the same day that the hearing is requested by facsimile (fax), telegram,

hand delivery, or next-day delivery service.

7. Section 24.7 is proposed to be removed, § 24.6 is proposed to be redesignated as § 24.7; and § 24.5 is proposed to be redesignated as § 24.6 and amended by adding new paragraphs (f) and (g) as follows:

§ 24.6 Hearings.

* * * * *

(f) (1) At the Administrator's discretion, the Administrator may participate as a party or participate as *amicus curiae* at any time in the proceedings. This right to participate shall include, but is not limited to, the right to petition for review of a recommended decision of an administrative law judge, including a decision, based on a settlement agreement between complainant and respondent, to dismiss a complaint or to issue an order encompassing the terms of the settlement.

(2) Copies of pleadings in all cases, whether or not the Administrator is participating in the proceeding, shall be sent to the Administrator, Wage and Hour Division, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(g) (1) A Federal agency which is interested in a proceeding may participate as *amicus curiae* at any time in the proceedings, at the agency's discretion.

(2) At the request of a Federal agency which is interested in a proceeding, copies of all pleadings in a case shall be served on the Federal agency, whether or not the agency is participating in the proceeding.

8. A new § 24.5 is proposed to be added to read as follows:

§ 24.5 Investigations under the Energy Reorganization Act.

(a) In addition to the procedures set forth in § 24.4 of this part, this section sets forth special procedures applicable only to investigations under the Energy Reorganization Act.

(b) (1) A complaint of alleged violation shall be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct as provided in paragraph (b) of § 24.2 was a contributing factor in the unfavorable personnel action alleged in the complaint.

(2) The complaint, supplemented as appropriated by interviews of the complainant, must allege the existence of facts and evidence to meet the required elements of a *prima facie* case, as follows:

(i) The employee engaged in a protected activity or conduct, as set forth in § 24.2;

(ii) The respondent knew that the employee engaged in the protected activity; and

(iii) The employee has suffered an unfavorable personnel action under circumstances sufficient to raise the inference that the protected activity was likely a contributing factor in the unfavorable action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required elements of a *prima facie* case, *i.e.*, to give rise to an inference that the respondent knew that the employee engaged in protected activity, and that the protected activity was likely a reason for the personnel action. Normally the burden is satisfied, for example, if it is shown that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If these elements are not substantiated in the investigation, the investigation will cease.

(c) (1) Notwithstanding a finding that a complainant has made a *prima facie* showing required by this section with respect to complaints filed under the Energy Reorganization Act, an investigation of the complainant's complaint under that Act shall be discontinued if the respondent demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct.

(2) Upon receipt of a complaint under the Energy Reorganization Act, the respondent shall be advised that any evidence it may wish to submit to rebut the allegations in the complaint must be received within five (5) business days from receipt of notification of the complainant. If the respondent fails to make a timely response or if the response does not demonstrate by clear and convincing evidence that the unfavorable action would have occurred absent the protected conduct, the investigation shall proceed. The investigation shall proceed whenever it is necessary or appropriate to confirm or verify the information provided by respondent.

(d) (1) Whenever the Administrator dismisses a complaint pursuant to this section without completion of an investigation, the Administrator shall give notice of the dismissal, which shall contain a statement of reasons therefor, by certified mail to the complainant, the respondent, and their representatives. At the same time the Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and a copy of the notice of dismissal. The notice of dismissal shall include notice that the dismissal shall become the final order of the Secretary denying the complaint unless within five business days of its receipt the complainant files with the Chief Administrative Law Judge by facsimile (fax), telegram, hand delivery, or next-day delivery service, a request for a hearing on the complaint.

(2) Copies of any request for a hearing shall be sent by the complainant to the respondent and to the Administrator, Wage and Hour Division, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, on the same day that the hearing is requested, the facsimile (fax), telegram, hand delivery, or next-day delivery service.

9. Newly designated § 24.7 is proposed to be revised to read as follows:

§ 24.7 Recommended decision and order.

(a) The administrative law judge shall issue a recommended decision within 20 days after the termination of the proceeding at which evidence was submitted. The recommended decision shall contain appropriate findings, conclusions, and a recommended order and be served upon all parties to the proceeding.

(b) In cases under the Energy Reorganization Act, a determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. The proceeding before the administrative law judge shall be a proceeding on the merits of the complaint. Neither the Administrator's determination to dismiss a complaint pursuant to § 24.5 of this part without completing an investigation nor the Administrator's determination not to dismiss a complaint is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation on the basis that such a determination to dismiss was made in error.

(c) (1) Upon the conclusion of the hearing and the issuance of a recommended decision that the complaint has merit, the administrative law judge shall issue a recommended order that the respondent take appropriate affirmative action to abate the violation, including reinstatement of the complainant to the respondent's former or substantially equivalent position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and, when the administrative law judge deems if appropriate, compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate.

(2) In cases brought under the Energy Reorganization Act, when an administrative law judge issues a recommended order that the complaint has merit, the judge shall also issue a preliminary order providing the relief specified in § 24.7(c)(1) of this part with the exception of compensatory damages. This preliminary order shall constitute the preliminary order of the Secretary and shall be effective immediately, whether or not a petition for review is filed with the Secretary. Any award of compensatory damages shall not be effective until the completion of any review by the Secretary.

(d) The recommended decision of the administrative law judge shall become the final order of the Secretary unless, pursuant to § 24.8 of this part, a petition for review is timely filed with Secretary.

10. and 11. Section 24.8 is proposed to be revised to read as follows:

§ 24.8 Review by the Secretary.

(a) Any party desiring review of a recommended decision of the administrative law judge shall file a petition for review with the Secretary. To be effective, such a petition for review must be received within ten business days of the date of the decision of the administrative law judge, and shall be served on all parties and on the Chief Administrative Law Judge.

(b) Copies of the petition and all briefs shall be served on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(c) The Secretary's final decision shall be issued within 90 days of the receipt of the complaint and shall be served upon all parties and the Chief Administrative Law Judge by mail to the last known address.

(d) (1) If the Secretary concludes that the party charged has violated the law, the final order shall order the party charged to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former or substantially equivalent position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and, when appropriate, compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate.

(2) If such a final order is issued, the Secretary, at the request of the complainant, shall assess against the respondent a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant, as determined by the Secretary, for, or in connection with, the bringing of the complaint upon which the order was issued.

(e) If the Secretary determines that the party charged has not violated the law, an order shall be issued denying the complaint.

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Part VII

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB90

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations governing student eligibility under the Higher Education Act of 1965, as amended (HEA). The regulations implement certain new provisions of the Higher Education Amendments of 1992 and the Higher Education Technical Amendments of 1993 that pertain to student eligibility. The regulations also make technical corrections to the final regulations published in the **Federal Register** on June 8, 1993 with regard to the applicability of § 668.7(a)(1) to specific programs set forth in title IV of the HEA (title IV, HEA). The purpose of the regulations is to reduce the potential for abuse in the programs authorized under the title IV, HEA programs by improving the accuracy of the information used to assess a student's eligibility for these programs. The regulations also clarify the Secretary's policy with regard to the eligibility of incarcerated students, students studying abroad, and students enrolled in telecommunications or correspondence courses.

EFFECTIVE DATE: Subject to meeting the requirements of section 431(d) of the General Education Provisions Act (20 U.S.C. 1232(d)), these regulations take effect on July 1, 1994. When these regulations become effective, they govern student eligibility for any title IV, HEA program assistance that may be awarded to any student for award years beginning with 1994–95.

FOR FURTHER INFORMATION CONTACT: Claude Denton, Program Specialist, Student Eligibility and Verification Section, General Provisions Branch, Division of Policy Development, U.S. Department of Education, 400 Maryland Avenue SW., (ROB–3, Room 4318), Washington, DC 20202. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that apply to all institutions that participate in the title IV, HEA student financial assistance programs. The title IV, HEA student financial assistance programs include the Federal Pell Grant, Federal Stafford Loan, Federal PLUS Loan, Federal Supplemental Loans for Students (SLS), Federal Direct Student Loan (Direct Loans), State Student Incentive Grant (SSIG), Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs. The last three programs are known collectively as the "campus-based programs."

These regulations implement portions of the Higher Education Amendments of 1992, Public Law 102–325, enacted July 23, 1992. Regulatory implementation of this statute revises the Student Assistance General Provisions (34 CFR part 668), which apply to all students seeking assistance under the title IV, HEA programs. These revisions seek to improve the efficiency of the title IV, HEA programs and, by so doing, improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

Waiver of Rulemaking

On June 8, 1993, the Secretary published final regulations in the **Federal Register**, 58 FR 32188, that implement statutory changes, make technical modifications, and enhance program integrity in the title IV, HEA programs. As published, § 668.7(a)(1) of those regulations incorrectly states that an otherwise eligible student who is enrolled for no longer than one twelve-month period as at least a half-time student in a course of study necessary for enrollment in an eligible program is eligible to receive assistance under the Stafford Loan, PLUS, SLS, FWS, Federal Perkins Loan, or FDSL programs. Under section 484(b)(3) of the HEA, as amended by the Higher Education Technical Amendments of 1993 (Technical Amendments)(Pub. L. 103–208, enacted December 20, 1993), this student would be eligible to receive assistance under the Stafford Loan, PLUS, SLS or FDSL programs only.

In addition, the Higher Education Amendments of 1992 amended section 484(b)(4) of the HEA to provide that an otherwise eligible student, who is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, is now eligible to receive assistance under the FWS, Federal Perkins Loan, or FDSL programs in addition to funds under the Stafford Loan, PLUS, or SLS programs. Section 668.7(a)(1) has been corrected to reflect the applicable statutory requirements. Until the effective date of these regulations, the statutory requirements of section 484(b) (3) and (4) of the HEA supersede § 668.7(a)(1) as published in the June 8, 1993 final regulations.

For purposes of this rulemaking, the Technical Amendments also exempt students from three Pacific Island republics from the requirement of providing social security numbers as a condition of eligibility for title IV, HEA assistance. In addition, the Technical Amendments provide for institutional authority to determine that a social security number is correct without the need for a subsequent review by the Secretary. In accordance with these statutory changes, §§ 668.7(a)(16) and 668.7(i) have been revised, respectively.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely incorporate statutory requirements into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

Major Issues

On October 4, 1993, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 51712). The NPRM included a discussion of the major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

Amendment to General Definitions contained in § 668.2 to add a definition of the term "output document" to ensure consistent use of the term throughout part 668 (page 51713);

Addition of provisions for a data match with the Selective Service System and providing that a confirmation of Selective Service registration on the student's application output document that is submitted to the institution fulfills the Selective Service registration requirement (page 51713);

Addition of a provision making incarcerated students ineligible to receive assistance under the Federal Family Education Loan, Federal Direct Student Loan, and Federal Perkins Loan programs (page 51713);

Addition of a provision requiring a student, as a condition of eligibility for title IV, HEA assistance, to provide a social security number (page 51714);

Addition of provisions for a data match with the Social Security Administration to verify the accuracy of social security numbers provided by students and institutional requirements related to this verification (pages 51714–51715);

Addition of a provision making a student ineligible to receive title IV, HEA assistance for a correspondence course unless the course is part of a program leading to an associate, bachelor's, or graduate degree (page 51715);

Addition of a provision establishing a methodology for calculating the percentage of telecommunications and correspondence courses delivered by the institution for the purpose of determining whether the total number of telecommunications and correspondence courses exceeds 50 percent of all courses offered (page 51715); and

Addition of a provision clarifying that if a program of study abroad is approved for credit by the home institution at which a student is enrolled, the otherwise eligible student is eligible to receive title IV, HEA assistance without regard to whether the study abroad program is required as part of the student's degree program (pages 51715–51716).

Section 668.7(i) has been revised, in response to public comments, to provide for institutional verification of a student's social security number if the institution has information that conflicts with the Secretary's initial determination that the student's social security number is accurate.

The Technical Amendments redesignated several provisions of HEA section 484 and, accordingly, several references to that statutory provision in these regulations have been revised.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 31 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Section 668.7 Eligible Student

Selective Service Registration Status

Comments: Several commenters supported the provision for a data match with the Selective Service System and the provision that a confirmation of Selective Service registration on the student's output document that is submitted to the institution fulfills the requirement to file a separate statement of compliance. One commenter recommended a waiver of the Statement of Registration Status when a student presents other documentation from the Selective Service System proving registration. One commenter questioned the need for a 30-day period for the student to collect and submit documentation to the institution to support his claim of registration or exemption from registration, and suggested that a statement from the student or a telephone call to the Selective Service System would be equally effective and less burdensome to the institution. One commenter requested that the Secretary address the issues regarding students who failed to register with Selective Service and are currently beyond the age of registration, veterans of the Armed Forces who never registered, and aliens who missed the opportunity to register. One commenter suggested that the data match with the Selective Service System eliminates the need for a Statement of Registration Status and recommended deletion of the Statement of Registration Status from the student's output document. Another commenter noted that section 484(n) of the HEA provides that an institution may use data or documents to support the student's registration, or exemption from registration, as a substitute for a separate statement of compliance, but the commenter suggested that no regulatory provisions exist, or are proposed, for waiver of the Statement of Registration Status if the student submits documentation proving that he is registered. Concern was also expressed by a commenter that the 30-day minimum period allowed for the student to submit a Statement of Registration Status imposes Selective Service enforcement responsibilities on institutions. Another commenter suggested that the Secretary stress in the preamble to these regulations that the 30-day provision is a minimum requirement and that institutions have the option of a later deadline. One commenter was concerned about whether an institution can allow exceptions to the 30-day deadline if an output document is submitted close to the end of an award year and the 30-day period would extend beyond the end of the award year, thereby precluding the student's eligibility for programs without late disbursement provisions. Another commenter questioned whether the 30-day period should begin at the time the institution receives the student's output document, given the fact that many institutions using electronic output documents receive the output documents before the student receives them. One commenter requested specific examples of what the Secretary would describe as clear and unambiguous evidence of compliance with Selective Service registration requirements, and suggested that the examples should include returned Postal Service receipts from the Selective Service System. Another commenter suggested that the Secretary add a provision to § 668.7(a)(13) to provide that if a student submits a Statement of Registration Status claiming to be registered with Selective Service and that claim is not confirmed by the data match, the student should be required to present evidence from the Selective Service System to resolve these conflicting sources of information. Several commenters suggested that if the data match is out of service, the Secretary should delay processing the student's application for title IV, HEA assistance until the data match is again operational.

Discussion: Section 484(n) of the HEA requires the Secretary to conduct a data base match with the Selective Service System for the purpose of enforcing the Selective Service registration provisions of section 113 of Public Law 97–252. Since the Secretary's participation in this data match is mandatory, the institution's compliance with section 2 of the Computer Matching and Privacy Protection Act of 1988 is also mandatory with respect to providing the student a minimum of 30 days to provide a Statement of Registration Status, or clear and convincing evidence to the institution to support the student's claim to have registered, or to be exempt from, Selective Service registration. If the data match does not confirm that the student is registered with Selective Service, the Secretary does not consider the student's statement to be "clear and convincing" evidence, but considers the institution's documented statement based on a telephone conversation with an employee of the Selective Service System to meet the "clear and convincing" standard. Returned Postal

Service receipts from the Selective Service System are also acceptable forms of documentation. Regarding the recommendation for a waiver of the Statement of Registration Status if evidence of registration is submitted by the student, the Secretary notes that provisions for such a waiver already exist in § 668.33. However, the Secretary believes that a revision to § 668.7(a)(13)(ii) is needed to clarify that § 668.33 may require the student to file a Statement of Registration Status or other evidence. With regard to veterans of the U.S. Armed Forces who failed to register with the Selective Service System, the Secretary recently issued final regulations (58 FR 32188, June 8, 1993) that address this issue. Section 668.33(b) of the Student Assistance General Provisions now provides that the student is not required to be registered with the Selective Service System if the student "served as a member of one of the U.S. Armed Forces on active duty and received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the reserve forces and National Guard." Section 668.33(b) also provides that a student who was required to be registered with the Selective Service System prior to age 26, is now at least 26 years old or older, and claims to have unknowingly failed to register with the Selective Service System must demonstrate to the institution that he did not knowingly and willfully fail to register with Selective Service. This requirement is satisfied if the student obtains and presents to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register, and the institution does not have uncontroverted evidence that the student knowingly and willfully failed to register. Section 668.33, as revised by the June 8, 1993 final regulations, also provides for a waiver of the Statement of Registration Status if the student submits to the institution documentation proving that he is registered. With regard to the comment suggesting removal of the Statement of Registration Status, the statute provides for use of documentation as a substitute for the Statement of Registration Status only if the student is able to submit such documentation. If the student claims to have registered with Selective Service, or claims to be exempt from registration, and does not have evidence to support such claims, the Statement of Registration Status is an effective means of communicating these claims to the institution. With regard to the comment that the 30-day period for the student to submit a Statement of Registration Status forces institutions into an "enforcement" position of denying title IV, HEA assistance based on institutionally-set deadlines, the Secretary wishes to emphasize that the 30-day requirement is mandated by the Computer Matching and Privacy Protection Act of 1988 and that the provision establishes a minimum length of time, giving institutions the option of setting a later deadline. Furthermore, the 30-day period is intended to provide due process protection to an individual who may be adversely affected by the results of a data match, and is not intended to force the institution into denying title IV, HEA assistance to students before the institution would otherwise be prepared to do so. The Secretary also realizes that strict adherence to the 30-day minimum period may create difficulties when the student's application is being processed near the end of the award year, and supports the use of institutional discretion in setting deadlines that conform to existing statutory requirements and practical considerations regarding the time needed to process title IV, HEA applications. With regard to the comment concerning the beginning of the 30-day period for institutions with electronic access to output documents, the 30-day period should not begin until the student acknowledges to the institution receipt of the output document containing information relating to the results of the data match.

Changes: Section 668.7(a)(13)(ii) is revised to clarify that if the student's Selective Service System status is not confirmed by the data match, the student may be required to file a Statement of Registration Status or other evidence as required by § 668.33.

Incarcerated Students

Comments: One commenter requested clarification with respect to whether a student meets the Secretary's definition of "incarcerated" if the student is furloughed during the day for the purpose of attending classes and returns to confinement in a correctional institution at night. Other commenters questioned whether an incarcerated student should be allowed to receive his or her loan for a period of attendance completed before the incarceration begins. One commenter requested that the Secretary describe or reference calculation and disbursement procedures for borrowers who have reduced eligibility due to incarceration. Another commenter questioned whether a student who is incarcerated at the beginning of an enrollment or payment period and is subsequently released prior to the end of that period should be considered eligible for the entire period.

Discussion: The Secretary is considering the definition of an "incarcerated student" in a separate proposed rulemaking published in the Federal Register on February 10, 1994 (59 FR 6446–6465). Until that rulemaking is effective, institutions are advised to seek the advice of their own legal counsel with regard to compliance with section 484(b)(5) of the HEA, which makes incarcerated students ineligible to receive assistance under the title IV, HEA loan programs. This comment will be considered along with any others received during the comment period applicable to that rulemaking. With regard to whether an incarcerated student can receive a loan disbursement for a period of attendance completed before incarceration, section 484(b)(5) of the HEA precludes an incarcerated student from receiving a loan disbursement, even if the disbursement would have applied toward a period of attendance already completed. Calculations of eligibility for students who become incarcerated during a payment period should be similar to the calculations made with regard to cost of attendance for a borrower who withdraws from the institution during the period. A student who is incarcerated at the beginning of a payment period and is subsequently released before the end of the payment period is eligible for disbursement of loan funds provided that the disbursement is made after release from incarceration and the student maintains an eligible student status as provided in § 668.7.

Changes: None.

Social Security Number

Comments: One commenter questioned the need for a social security number data match, suggesting that institutions should be allowed to maintain evidence of a correct social security number on file. Several commenters expressed concern that title IV, HEA assistance may be delayed to a student if the data match with the Social Security Administration is out of service at the time the student's application for title IV, HEA assistance is processed and the student is unable to promptly provide evidence of a correct social security number. One commenter suggested the use of several data elements as matching criteria, including proper names, nicknames, abbreviated names, and married names. One commenter questioned the Secretary's

proposal to resubmit the student's social security number for a final determination if there is a possibility the data match could again be nonoperational. Title IV, HEA assistance may be delayed, according to other commenters, when institutions choose not to incur liability if a student provides evidence of a correct social security number that differs from the social security number originally submitted to the Secretary. Several commenters suggested that the Secretary should issue a rejected output document if the student's social security number is not confirmed, and that responsibility for reconciliation of the nonconfirmed match should be placed on the student and the Social Security Administration. Several commenters suggested that, if the accuracy of a student's social security number is not confirmed because the data match is not in operation, the institution should assume that the social security number provided by the student is correct until a subsequent data match indicates that the social security number is incorrect, and that the student should not be required to present evidence to prove the accuracy of his or her social security number. One commenter asked the Secretary for specific guidance on how to assist the student in providing evidence and obtaining a final determination from the Secretary with regard to the accuracy of the student's social security number, and several commenters urged the Secretary to allow the institutions to make this final determination. Another commenter requested the opportunity to make a first disbursement without liability if the student can provide evidence of an accurate social security number. One commenter suggested that, once verification confirms that the student's social security number is accurate and such verification is documented in the student's file, no subsequent verification of the student's social security number be required in subsequent years. One commenter questioned whether corrections to the student's social security number will cause a permanent change to the student's record identification number, and whether the default data match will be initiated based on the corrected social security number. Several commenters suggested that a maximum turnaround time be allowed for institutions to await a final determination from the Secretary with regard to the accuracy of a student's social security number and that, if a final determination is not received by the due date, that the institution be allowed to disburse title IV, HEA funds. Several commenters requested a thorough test of the matching data base to prevent nonconfirmations of social security numbers because of name changes, misspellings, and other typographical errors. One commenter suggested that the institution should be allowed to require evidence of an accurate social security number if the institution has information that conflicts with the Secretary's confirmation that the student's social security number is correct. One commenter recommended the deletion of § 668.7(i)(1), contending that there are no circumstances in which the institution would be required to comply with this provision. One commenter objected to any assignment of liability to the institution in light of section 484(p)(4) of the HEA, which prohibits the Secretary from taking any compliance, disallowance, penalty, or other regulatory action against an institution with respect to an error in a social security number, unless the error is the result of institutional fraud. One commenter suggested that students who do not meet the institutional deadline as proposed in § 668.7(i)(3)(i) should be ineligible for the period of enrollment during which they applied for title IV, HEA assistance, not for the entire award year.

Discussion: With regard to the comment concerning the need for a data match with the Social Security Administration, section 484(p) of the HEA requires the Secretary, in cooperation with the Commissioner of the Social Security Administration, to verify any social security number provided by a student applying for title IV, HEA assistance. The Secretary believes that a data match is the most efficient method of accomplishing this task. The Secretary understands that a student with a social security number that is not confirmed by the Secretary because the data match is out of service may experience delays in title IV, HEA assistance if he or she cannot promptly provide evidence of a correct social security number. As a possible solution to this problem and to reduce administrative burden on institutions, the Secretary considered carefully the possibility of delaying the processing of applications when the data match is out of service. Such delays would back up entire batches of applications on subsequent processing days, however, and would seriously compromise the efficiency of the processing system during peak volume periods. The Secretary is confident that interruptions in data match operations will be rare, that the data match will provide virtually trouble-free, continuous service and that the institution will very infrequently need to resubmit a social security number because the data match is out of service. If the match is out of service, however, the Secretary believes that the institution should require documented evidence from the student of a correct social security number and should make a determination that the student's social security number is correct before disbursing title IV, HEA assistance. With regard to the comment favoring the use of proper names, nicknames, abbreviated names and married names as matching criteria, the Secretary, in cooperation with staff at the Social Security Administration, considered a number of possible data items that are normally collected by the Social Security Administration, and has determined that the student's name, date of birth, and social security number are the three most useful matching elements. With regard to the commenter who suggests that title IV, HEA assistance will be delayed if the student's institution chooses not to incur liability if the student provides evidence of a social security number that differs from the social security number originally submitted to the Secretary, section 484(p)(2) has been revised by the Higher Education Technical Amendments of 1993 to accommodate this concern. According to this revised statutory provision, if a student's social security number is determined by the Secretary to be incorrect, the institution must deny the student's eligibility for title IV, HEA assistance until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct. The Secretary will not impose any liability on the institution making this determination if the student's social security number is subsequently found to be incorrect, provided that the institution has not committed fraud and the institution's determination is based on clear and convincing evidence. The institution may make a determination that a social security number is correct and disburse title IV, HEA assistance to an otherwise eligible student even if the student is submitting a social security number that differs from the social security number originally submitted to the Secretary. If such a determination is made, the institution will be required to report the new social security number to the Secretary, and the Secretary will accept the new social security number as accurate. This statutory change addresses the concerns of commenters seeking guidance on how to provide evidence and obtain a final

determination from the Secretary with regard to a student's social security number that has not been confirmed as accurate by the data match. The institution has the authority to make a determination with regard to the accuracy of a student's social security number. Commenters urging the Secretary to allow the institution to make a final determination, commenters seeking to make disbursements without liability if the student can provide evidence of an accurate social security number, and commenters suggesting a maximum turnaround time for the Secretary's final determination have also had their concerns addressed by this change. The Secretary agrees in principle with the commenter who suggests that the Secretary should issue a rejected output document if the student's social security number is not confirmed. Rejected output documents are planned for applications in which the social security number does not correspond with a valid social security number in the Social Security Administration data base. However, the Secretary plans to use the output document to alert the institution to particular matching criteria, such as the date of birth, that do not match corresponding data in the Social Security Administration data base, rather than rejecting the application for minor discrepancies. The Secretary is interested in minimizing the burden on institutions wherever possible in this process of reconciling nonconfirmed matches and solicits comments from institutions at any time with regard to the technical aspects of data match operations. However, the Secretary disagrees with the commenter who would place responsibility for reconciliation of nonconfirmed matches on the student and the Social Security Administration. The institution retains primary responsibility for ensuring that all students receiving title IV, HEA assistance are eligible students in accordance with this section of the regulations. The Secretary agrees with the commenter's suggestion that a verified social security number should not need verification in subsequent years, and will include the social security number as part of the renewal application data items that are transferred from year to year. With regard to the comment regarding use of the student's corrected social security number as the student's record identification number and for purposes of the default match, the Secretary will maintain both social security numbers in the processing system but will automatically rerun the default match for any corrected social security number. The Secretary agrees with the commenter who suggests that the Social Security Administration data base be tested to prevent nonconfirmations due to name changes, misspellings, and other typographical errors, and has begun such testing. However, the Secretary recognizes that the data base is only as accurate as the data that is made available to it and kept updated by individuals. The Secretary also agrees with the commenter who suggests that the institution be allowed to require evidence of an accurate social security number from the student if the institution has information which conflicts with the Secretary's determination from the data match that the student's social security number is accurate. The Secretary does not agree with the commenter who proposes the deletion of § 668.7(i)(1), which prohibits an institution from denying, delaying, reducing, or terminating a student's eligibility for title IV, HEA assistance because social security number verification is pending. This provision, also found in section 484(p)(1) of the HEA, prevents delays in disbursements of title IV, HEA assistance to students attending institutions that would otherwise not disburse title IV, HEA assistance on the basis of their own determinations that the student's social security number is correct. For students whose social security numbers are not confirmed as correct by the data match, section 484(p)(2) mandates a delay in title IV, HEA disbursements until documented evidence of a correct social security number is provided to the institution. However, once this evidence is provided and the institution determines that the social security number is correct, section 484(p)(1) prohibits any further delays in title IV, HEA disbursements to otherwise eligible students. The Secretary disagrees with the commenter who argues that the Secretary cannot assign liability to an institution failing to comply with the requirements of this section, on the basis that section 484(p)(4) of the HEA prohibits the Secretary from taking any compliance, disallowance, penalty, or other regulatory action against an institution with respect to an error in a social security number, unless the error is the result of institutional fraud. The Secretary, in accordance with this provision, will not take any of the administrative actions mentioned in HEA section 484(p)(4) against an institution that, notwithstanding compliance with this section, makes a title IV, HEA disbursement to a student using an incorrect social security number. However, section 484(p) does not prevent the Secretary from holding an institution liable for any title IV, HEA disbursements made in error to a student if the erroneous disbursements were caused by the institution's failure to comply with the provisions of this section.

Changes: If there is a determination by the Secretary that the social security number provided by a student to an institution is incorrect, § 668.7(i) is revised to allow an institution to determine that a student's social security number is correct based on documented evidence. If the institution verifies the accuracy of a social security number that differs from the social security number originally provided to the Secretary, the institution is required to report the correct social security number to the Secretary. Section 668.7(i)(2) is also revised to require an institution to collect evidence of a correct social security number if the institution has information that conflicts with the Secretary's determination that the student's social security number is correct.

Enrollment in Correspondence or Telecommunications Courses

Comments: One commenter suggested that the Secretary clarify that a student's ineligibility for title IV, HEA assistance because of the student's enrollment in a correspondence course not leading to a degree extends only to that course, and that the same student may be eligible for title IV, HEA assistance if he or she is enrolled in degree program courses. The same commenter inquired as to whether a student enrolled in a telecommunications course that is being categorized as a correspondence course for purposes of HEA section 484(l)(1) is also counted as a correspondence student for purposes of HEA section 481(a)(3).

One commenter questioned whether a course taught through live, interactive telephone transmission qualifies as a telecommunications course. One commenter requested clarification with regard to whether the Secretary's use of the phrase "part of an educational program" in § 668.7(a)(15) refers to part of the student's academic program or part of the curriculum of the institution. One commenter questioned whether students enrolled in residential degree programs who enroll in additional correspondence courses for purposes of certification or licensure would be eligible for title IV, HEA assistance. The same commenter inquired as to whether an aid officer can deny funding applicable to correspondence programs

provided at another institution with which a consortium agreement exists. One commenter suggested that the Secretary should institute a waiver procedure which would allow certain institutions to waive the 50 percent standard provided in § 668.7(j). One commenter requested that the Secretary define the term "correspondence."

Discussion: The Secretary agrees with the commenter's presumption that a student enrolled in a telecommunications or correspondence course that is not part of a degree program is ineligible for title IV, HEA assistance only to the extent that he or she is enrolled in ineligible courses. An otherwise eligible student who is enrolled in both degree program coursework and non-degree correspondence courses continues to be eligible for title IV, HEA assistance to offset the costs of the degree program courses. With regard to the applicability of the 50 percent standard to HEA section 481(a)(3), the Secretary wishes to emphasize that the calculation of the percentage of telecommunications and correspondence courses provided for in § 668.7(j) is applicable only to § 668.7(j), and does not apply to the standard set for percentage of students enrolled in correspondence courses in HEA section 481(a)(3). With regard to the question concerning use of the phrase "part of a program" in § 668.7(a)(15), the phrase refers to the student's academic program, which must lead to an associate, bachelor's, or graduate degree. A student enrolled in correspondence courses for the purpose of attaining certification or licensure is not eligible for title IV, HEA assistance for those courses, but may be eligible to receive title IV, HEA assistance for other correspondence courses in a degree program. With regard to the comment concerning consortium agreements, the aid officer may deny title IV, HEA assistance to a student for any correspondence courses that do not meet degree-seeking requirements, including correspondence courses taken by consortium agreement at another institution. With regard to whether a course taught through live, interactive telephone transmission is a telecommunications course, the Secretary notes that HEA section 484(m)(4) defines "telecommunications" as "the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that such term does not include a course that is delivered using video cassette or disc recordings at such institution and that is not delivered in person to other students of that institution." Since the definition encompasses audio or computer conferencing, a course taught through interactive telephone transmissions must be considered a telecommunications course. With regard to the comment requesting a waiver procedure, the Secretary has no authority to prescribe procedures for waiving any of the provisions in HEA section 484. With regard to a definition of "correspondence," the Secretary is considering a definition of "correspondence course" in a separate proposed rulemaking published in the Federal Register on February 10, 1994 (59 FR 6446–6465). Until that separate rulemaking is published as final regulations, the commenter may refer to § 600.2 of the Institutional Eligibility regulations, which defines a "program of study by correspondence" as "an educational program offered principally by mail by an institution. Under this type of program, the institution prepares lesson materials and mails them to the student in a sequential and logical order. The student completes the lessons and mails them back to the institution within a specified period of time. The program may include a required period of residential training."

Changes: None.

Program of Study Abroad

Comments: One commenter questioned whether the Secretary intends to limit the eligibility of permanent resident aliens and other noncitizen students seeking assistance under the Federal Family Education Loan Program for the purpose of enrolling in study abroad programs. One commenter asked for clarification concerning the circumstances under which an aid officer could approve a study abroad course that is not part of the student's degree program.

Discussion: Permanent resident aliens and other noncitizens who are determined to be eligible students for purposes of § 668.7(a)(4)(ii) and part 668, Subpart I, and are otherwise eligible, are not prohibited from enrolling in study abroad programs. With regard to the approval of a study abroad course that is not part of a degree program, this provision ensures that an eligible student may receive title IV, HEA assistance for any study abroad course that is approved for credit at an eligible institution, and that the course need not be required for completion of a specific degree. For example, an otherwise eligible student pursuing a degree in mathematics may receive title IV, HEA assistance for an elective course in art history taken abroad, provided that the art history course is approved for credit by the eligible institution toward the student's graduation.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Student aid.

Dated: February 2, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Federal Supplemental Opportunity

Grant Program, 84.007, Federal Stafford Loan Program, 84.032; Federal PLUS Loan Program, 84.032; Federal Work-Study Program, 84.033; Federal Perkins Loan Program, 84.038; Federal Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069; Early Intervention Scholarship Program, 84.272)

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.2, paragraph (b) is amended by adding in alphabetical order a new definition for "Output document" to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), other document or automated data generated by the Department of Education's central processing system as the result of processing the data provided in a Free Application for Federal Student Aid (FAFSA) or multiple data entry application.

* * * * *

3. Section 668.7 is amended by revising paragraph (a)(1)(ii) and adding a new paragraph (a)(1)(iii); revising paragraph (a)(8); removing the word "and" at the end of paragraph (a)(11)(vii); removing the period at the end of paragraph (a)(12), and adding, in its place, a semicolon; and by adding new paragraphs (a)(13), (a)(14), (a)(15), (a)(16), (i), (j), and (k) to read as follows:

§ 668.7 Eligible student.

(a) * * *

(1) * * *

(ii) For purposes of the Stafford Loan, PLUS, SLS, or Federal Direct Student Loan Program, enrolled for no longer than one twelve-month period as at least a half-time student in a course of study necessary for enrollment in an eligible program; or

(iii) For purposes of the Stafford Loan, PLUS, SLS, CWS, Perkins Loan, or Federal Direct Student Loan Program, enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State;

* * * * *

(8) In accordance with the requirements of § 668.32, has filed a Statement of Educational Purpose;

* * * * *

(13) Has filed—

(i) An output document confirming registration with Selective Service by providing the results of a data match with the Selective Service System; or

(ii) In the absence of confirmation as provided in paragraph (a)(13)(i) of this section and within a deadline to be set by the institution of no less than 30 days from the date the institution receives the output document, a Statement of Registration Status or other evidence in accordance with § 668.33;

(14) For purposes of the FFEL, Federal Direct Student Loan, and Federal Perkins Loan programs, is not an incarcerated student at the time funds are delivered or disbursed;

(15) Is, if enrolled in a telecommunications or correspondence course, enrolled in a telecommunications or correspondence course that is part of an educational program leading to an associate, bachelor's, or graduate degree; and

(16) Except for residents of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau, has a correct social security number that has been verified in accordance with the requirements of paragraph (i) of this section;

* * * * *

(i) *Social security number* The Secretary verifies a social security number provided by a student to an eligible institution and shall enforce the following conditions:

(1) An institution shall not deny, reduce, delay or terminate a student's eligibility for assistance under the title IV, HEA programs because social security number verification is pending;

(2) If the institution receives an output document from a student indicating that the Secretary has determined that the student's social security number is correct, the institution shall not require the student to produce other evidence to confirm that the student's social security number is correct, unless the institution—

(i) Has documentation that conflicts with the social security number status reported on the output document; or

(ii) Has reason to believe the output document is incorrect.

(3) If the institution receives an output document from a student indicating that the Secretary has determined that the social security number provided to the institution by the student is incorrect, or that the Secretary was unable to confirm that the social security number provided to the institution by the student is correct, the institution—

(i) Shall provide the student an opportunity, within a deadline of at least 30 days from the date the institution receives the output document, to provide clear and convincing evidence to verify that the student has a correct social security number; and

(ii) May disburse any combination of title IV, HEA program funds, employ the student under the Federal Work-Study Program, or certify a Federal Stafford, Federal PLUS, Federal SLS, or Federal Direct Student loan application for the student upon making, based on the evidence provided for in paragraph (i)(3)(i) of this section, a determination that the social security number provided by the otherwise eligible student to the institution is correct; and

(iii) Shall report the student's correct social security number to the Secretary if the correct social security number differs from the social security number previously reported by the student to the Secretary

(4) If a student fails to submit the documentation by the deadline established in accordance with paragraph (i)(3)(i) of this section, the institution may not disburse to the student, or certify the student as eligible for, any title IV, HEA program funds for that period of enrollment or award year; employ the student under the Federal Work-Study Program; or certify a Federal Stafford, Federal PLUS, Federal Direct Student Loan, or Federal SLS loan application for the student for that period of enrollment.

(5) If the Secretary determines that the social security number provided to an eligible institution by a student is incorrect, and the institution has not made a determination under paragraph (i)(3) of this section, and a loan has been guaranteed for the student under the Federal Family Education Loan Program, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, until the Secretary or the institution determines that the social security number provided by the student is correct, but the guaranty shall not be voided or otherwise nullified with respect to disbursements made before the date that the lender and the guaranty agency receive the notice.

(6) Nothing in this section shall permit the Secretary to take any

compliance, disallowance, penalty or other regulatory action against—

(i) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or

(ii) Any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.

(j) *Special provisions regarding telecommunications and correspondence courses.* (1) A student enrolled in an educational program at an eligible institution (other than an institution that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor's, or graduate degree conferred by the institution is not enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of all courses delivered at that institution.

(2) The percentage provided in paragraph (j)(1) of this section is calculated by comparing the total number of correspondence and telecommunications courses delivered during the preceding award year with the total number of all courses delivered during that award year. If an institution delivers the same course in person, by telecommunications, or by correspondence, the Secretary considers each delivery of the course by the institution to be a separate course for purposes of this calculation.

(3) A student is subject to reduced eligibility for title IV, HEA assistance if the financial aid administrator determines under the discretionary authority provided in section 479A of the HEA that the student's telecommunications instruction results in a substantially reduced cost of attendance to the student.

(k) *Program of study abroad.* (1) An otherwise eligible student who is engaged in a program of study abroad is eligible to receive title IV, HEA assistance if—

(i) The student maintains enrollment in an eligible institution during his or her program of study abroad; and

(ii) The eligible institution approves the program of study abroad for academic credit at the eligible institution.

(2) The study abroad program need not be required as part of the student's degree program.

§ 668.131 [Amended]

4. Section 668.131 is amended by removing the definition of *Output document.*

[FR Doc. 94–6127 Filed 3–15–94; 8:45 am]
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